



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

KG

6386

HN 34BD S

KG 6386

~~11557~~



HARVARD UNIVERSITY

LIBRARY OF THE

Semitic Department



Reproduction of the Grand Prize Diploma for the first translation (into a modern language) of the Babylonian Talmud. The name of the translator leads those in Group III., Class 13, of the American Collective Exhibit. Presented by the International Jury of Awards, August 18, 1900.



Reproduction of the Grand Prize Diploma for the first translation (into a modern language) of the Babylonian Talmud. The name of the translator leads those
 in Group III., Class 13, of the American Collective Exhibit. Presented by the International Jury of Awards, August 18, 1900.

Love from Robinson!

[illegible][illegible]

Amiga

beringia.

His chosen family's father, who you and
 William mention after the flight at
 Constantine to Willoughby as being
 his private, much loved son,
 and who says to the last, "I am alone
 myself & mine's private. I'll try
 never to be known to you,"
 is in constant possession of himself
 when speaking of himself.

Sag die meinen Namen und den Worten
Vortänze haben, beschützt und zum
intymen Charakter, und wenn ich, unter
den vielen Werten für der feinen Färbung
mit hohen Güte, Produkte

The Officers

Translation of the original letter of the Privy Councillor to H. I. M.
the German Emperor, Prof. Lazarus, Ph.D., D.D.

"You have been kind enough to dedicate you English translation of Volume VI (*vi*) of the Babylonian Talmud to me, in conjunction with Monsieur the Grand Rabbi of France, Zadoc Kahn. You have conferred upon me a high honor and I beg of you to accept, therefore, my heartiest thanks. It would be a deceiving flattery were I to say your work is perfect, for I am but a layman so far as the English language is concerned, hence on that point am not in a position to judge. I know, however, that only by means of a difference which cannot be estimated and through unvarying energy—and that possessed by a skillful pilot who has mastered the whole sea of the Talmud—can such a gigantic work be accomplished.

Judaism with such praiseworthy zeal, will be proud of the fact that this ever-desired and never-accomplished task, the translation of the whole Talmud into a modern idiom, was consummated on American soil.

That you have connected my name with your work obliges me to express my sincerest thanks, with the expression of which I remain, with many hearty wishes for your future welfare and success, your
"LAZARUS."

NEW EDITION
OF THE
BABYLONIAN TALMUD
_ע

Original Text, Edited, Corrected, Formulated, and
Translated into English

BY
MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)
TRACTS MACCOTH, SHEBUOTH
AND EDUYOTH

Volume IX. (XVII.)

NEW YORK
NEW TALMUD PUBLISHING COMPANY
1117 SIMPSON STREET

KG 6386

June 5, 1903
Harvard University
Semitic Dept. Library



EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.
2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.
3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waibayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.
4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.
5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.

COPYRIGHT, 1903, BY
MICHAEL L. RODKINSON.

TO HIM
WHO IS HIGHLY RESPECTED BY THE PEOPLE FOR HIS GENIUS
AND GENEROSITY THE

HONORABLE JACOB A. CANTOR
PRESIDENT OF THE BOARD OF ALDERMAN, BOROUGH OF MANHATTAN, NEW YORK

THIS VOLUME IS RESPECTFULLY DEDICATED BY THE
EDITOR AND TRANSLATOR

MICHAEL L. RODKINSON

NEW YORK
ROSH CHODESH SIVAN, 5663
(MAY 27, 1903)

CONCLUDING WORDS

TO THE COMPLETION OF SECTIONS FESTIVAL AND
JURISPRUDENCE.

With the benediction to the Almighty, who prolonged our life to see the completion of our translation the above two large sections of the Talmud, we deem it necessary to say a few words concerning the criticisms which have recently appeared, and to which we are grateful for having called our attention to some important matters. However, before we will come to the point we beg to say that we were anxious during the whole time to see a true criticism to our entire work, pointing out the mistakes or errors which must be found in the editing as well as in the translating itself of such a difficult and voluminous work. But to our knowledge such has not appeared anywhere as yet, although reviews and notices of different kinds were given in more than a hundred leading papers in both the old and the new world. The praises encouraged us but little, and some of the criticisms did not discourage us at all, for the reason that both were only phrases, without giving any evidence or important facts to which our proper attention should be called. And we would still be grateful indeed to those who would give such criticisms in compliance with our wishes, as this would be a great help to us in the continuation of the translation of the four remaining sections, which may take about twelve volumes or so more. Now to the point. There was a criticism in the "Open Court" of Chicago, Vol. XVI., pp. 425-427, accusing us that we have omitted the discussion of some sages concerning "evangelium." How it should be written **און-גליין** or **ען-גליין**.*

*The meaning of the first two words is one and the same. And the *aelph* here is the same as the *ayem*. The same differ also about the same letters concerning the word "Eidehen," Abuda Zara, p.I. (see foot-note there); hence, as it is without any importance for the English reader, we have to omit it, according to our method. But that what was said in the name of Jesus by Jacob (James) we have translated, although we do not believe that this was so (see foot-note, *ibid.* p. 27).

and for such an omission he exclaimed that we have no translation of the whole Talmud.* We have received also some private letters from educated people, asking why they do not find any mention of Jesus of Nazareth. And in answer to the criticism as well as to the many letters we have received, we beg to give some letters of an editor of a scientific paper of this country, which we think will throw some light on this matter.

June 1, 1901.

REV. MICHAEL RODKINSON,
New York City.

Dear Sir:—The receipt of Volume XII. of the Talmud brings back recollections of a pleasant hour spent with you in my office, and the information which you so kindly gave me on several very obscure points. Perhaps you will pardon a personal letter of inquiry on a point or two in "Sabbath" that have especially interested me.

You will remember where the subject is discussed as to whether it was lawful to rescue books from the flames, the point turning especially, as I read it, that on the one hand the books of unbelievers should be allowed to perish, while on the other hand, these same books also contain the Sacred Name.

R. Abuha is asked if the books of the Be Abhidon should be saved, and gives an equivocal reply. It is stated that Rabh went to neither the Be Abhidon nor the Be Nitzrephe. Samuel went to the Abhidon, and Mar Bar Joseph "was of their society."

Your note on the passage leaves it conjectural who the people were. To me it seems altogether likely that they were Christian sects (possibly Jewish Christians and Gentile Christians). I should infer this because, first, R. Tarphon's statement immediately precedes it, and Christian tradition at least connects him with disputes with Christians. Second, the story of Ema Shalom and her brother Gamaliel II., and the philosopher and judge follows it. It seems to me that there are at least three implied quotations in this story from Matthew's Gospel or some other Christian document: "Let your light shine," "I came not to destroy but fulfill the law," and the statement about son and daughter inheriting alike.

Do Hebrew scholars think that Christians are indicated by Be Abhidon and Be Nitzrephe? And if so, how is the fact explained that Samuel went to one of them, unless it be that Samuel is Saul (Paul), and how could Mar Bar Joseph be of their society?

It seems to me that I find a number of places where Christian usages or

* Some one has called our attention to this article being in the public library about a year ago and we only glanced at it for lack of time. And for the same reason we could not have the original before us when we are writing our answer. By the way, we like to say that there is published a booklet, "Chasronoth-Hashas," containing the omission made by the censor about Jesus and his disciples, to which we do not pay any attention, as its contents are nonsense and we are sure that these were not said or written by the talmudic scholars. We also possess a letter from the late lamented Dr. Mielziner, who agrees with us on this point.

CONCLUDING WORDS.

vii

doctrines are referred to, and I wish I were informed as to the names and other indications which would show this. If you could give me some light, without trespassing too much on your time, I would be very grateful indeed.

June 12, 1901.

My Dear Sir: Your kind favor of the 9th at hand and carefully noted. I assume that you have good and sufficient reasons for your hesitation in such a matter, although they may not be apparent to me. Therefore it only remains for me to assure you as strongly as I know how, that the information I seek is only for myself, that it will not be published, that it will not be quoted even in conversation as your opinion.

I simply wish to read understandingly the fine work you are placing before English readers; I want to get into the atmosphere of the times as much as possible. Judaism and Christianity must have touched elbows a good deal in the first three centuries, and there must be some evidences of it in the Talmud to those who can read between the lines. I think I can see references. For instance, were there Saducees after the final overthrow, and is not the term, at least occasionally, applied to Christians?

My own conviction, which of course, is based on very superficial knowledge mostly gleaned from the early Christian Fathers, is that at first, the line of demarcation between the Jewish Christians and the Jews was not so strong as it became afterwards. But at any rate, there must be more references to them than appear on the surface, it seems to me, and that is what I want to know. But I have no theory to vindicate and seek the knowledge only for myself.

July 2, 1901.

My Dear Sir: I wish to acknowledge the receipt of your very kind and instructive letter of two weeks ago. It covers substantially the points I wished to know, and saved me much research that night in the end prove barren of results. I shall remember your kindness. Again thanking you, I am,

And to these letters we may add a paragraph of Tract Sabbath, p. 119. "R. Aqiba said: 'The wood-gatherer was Zelophchad.' To which R. Jehudah b. Bathyra exclaimed: 'Aqiba! Whether your statement be true or false, you will have to answer for it at the time of the divine judgment; for if it be true, you disclosed the name of the man whom the Scriptures direct to shield, and thus you brought him unto infamy, and if it be false, you slandered a man who was upright,'" etc. (See there.) And this rule we adopted while engaged in this translation—namely, not to give hypotheses to the reader, as there is not one line in the whole Mishna which speaks clearly of Jesus and his beliefs. In our book on "Phylacteries" we have alluded to the reason why the editor of the Mishna did so. And the same reason prevented us from *interpreting* passages or paragraphs which seemed to us to treat about Jesus and his

followers, as after all these are only hypotheses, and we do not like to throw our suppositions in a translation which ought to be more or less authentic. This is all that we can say in answer to the "Open Court."

There has appeared in the "Baltimore Sun," April 17, 1903, a notice which, in the main, is very flattering, but gives also some criticisms that are of interest, and correct from the standpoint of the writer. They concern the remarks sub 3 and 4 of the "Explanatory Remarks" published in each volume on the other side of the title-page. Concerning the fourth he says: "There are many who would be glad to verify references who may not have a copy of the new Hebrew text, or unable to use it, if they had it." Concerning the third remark he says: "This seems unfortunate. The alternative interpretation is often of very considerable value, and may be used for historical purposes even if not so important theologically." To this we may say that we were very careful when omitting the first version, and where we found it important we translated both, as the reader will find in our Talmud in many places, "If you wish, it may be said so, and if you wish, it may be said so and so." And we did not fail even to translate a third "if you wish" when we saw that they all were of importance. In general, however, only the last versions are of great account, and the decisions of the post-talmudical rabbis were only in accordance with those. And only they are the guides of the Schul'han Arush (Jewish Code).

Concerning the fourth we may confess that the critic is perfectly right in his contention. However, it is not our fault but that of the circumstances which deceived us in the beginning of our undertaking. We previously thought that we would find subscribers for the Hebrew text also, and so give the Hebrew with the English together, and then there would have certainly been no need of separately marking the pages of the text. Unfortunately, there was no demand for the text at all, so that we were unable to furnish it with the translation, and in reality, for the general English reader who is not able to read Hebrew the page of the text is immaterial. And for the Hebrew students, who are very few, we could not afford to go to such expense, as a separate column for each page would be necessary for this purpose, for such could not be inserted in the text even in parentheses.

Concerning the last Tract Hori'oth, which speaks of sacrifices

and offerings only, we are at a loss to understand why it was inserted in the section Jurisprudence, unless the reason be the treatment of whether the expenses of the offerings must be carried by the judges of the court themselves or by the treasury of the congregation, which may belong to the category of damages. However, the whole tract treats almost of one and the same point, so that we could not give the contents of each chapter separately, and confined ourselves by giving the synopsis of the beginning of each Mishna and some important matters from the Gemara of the last.

M. L. R.

NEW YORK, *May* 25, 1903.

CONTENTS.

	PAGE
SYNOPSIS OF SUBJECTS OF TRACT MACCOTH (STRIPES) . . .	vii

CHAPTER I.

RULES AND REGULATIONS CONCERNING COLLUSIVE WITNESSES IN BOTH CRIMINAL AND CIVIL CASES, AND THE APPLICATION THERETO OF CORPOREAL AND OTHER PUNISHMENTS	I
---	---

CHAPTER II.

RULES AND REGULATIONS CONCERNING UNINTENTIONAL MURDER AND EXILE. WHICH IS THE PUNISHMENT THEREFOR.—WHO IS AND WHO IS NOT SUBJECT TO EXILE.—THE CITIES OF EXILE AND THEIR PREPARATIONS.—THE REDEEMING OF THE EXILED BY THE DEATH OF THE HIGH-PRIEST	15
--	----

CHAPTER III.

WHO IS SUBJECT TO THE PUNISHMENT BY STRIPES.—THE DETAILS OF THE PROCEDURE REGARDING THE EXECUTION THEREOF.—WHAT CIRCUMSTANCES FREE THE CULPRIT THEREFROM.—THE RESPECTIVE DUTIES OF THE THREE JUDGES WHO MUST WITNESS THE EXECUTION . . .	35
--	----

SYNOPSIS OF SUBJECTS

OF

TRACT MACCOTH (STRIPES).

CHAPTER I.

MISHNA I. TO X. How should witnesses be made collusive? There are another sort of witnesses who are not subject to the punishment of collusiveness but who are to suffer stripes instead. Where do we find a hint in the Scripture that collusive witnesses shall be punished with stripes? There are four points concerning collusive witnesses, etc. And they are not sold as Hebrew slaves. As it reads: "He shall be sold for his theft, but not for his collusiveness." A collusive witness pays his share. What does this mean? We testify that so and so has divorced his wife and has not paid the amount mentioned in her marriage contract, etc. We testify that so and so owes to his neighbor a thousand zuz, etc. If one says I will make you a loan with the stipulation that the Sabbathic year shall not release me, it nevertheless releases. If one loans money to his neighbor without a fixed term of return, he has no right to demand it before the elapse of thirty days. We testify that so and so owes 200 zuz to his neighbor, and they were found collusive, etc. To a negative commandment that does not contain manual labor, stripes does not apply. The fine of money may be divided into two or three shares; however, this is not to be done with stripes. Witnesses cannot be made collusive unless the falsehood lies in their bodies. A woman once brought witnesses, and they were found false. She then brought another party, who were also found false; she then brought another party, etc. Because she is suspicious should all Israel be suspected of testifying falsely? Collusive witnesses are not to be killed unless the sentence of capital punishment for the defendant is rendered. There is no punishment on the ground of a *fortiori* conclusions. May I not live to see the consolation of our nation, if I have not killed a collusive witness for the purpose of removing from the mind of the saducier, etc. The verse punishes one, an accomplice who conjoins himself to transgressors with the same punishment, etc. And we may learn from this; that so much the more will he who conjoins himself to those who are engaged in meritorious acts, be rewarded, etc. There is no capital punishment, unless two witnesses have warned this culprit. If both of the witnesses have seen him who warned them, they are considered conjoined. The court of Sanhedrin is to be established in Palestine as well as in the countries outside of it. In the large cities but not in the small ones, 1-14

CHAPTER II.

MISHNA I. TO V. The following are exiled, he who kills a person unintentionally. The act of one who thought that such is allowed is not to be considered an accident, but almost intentional. If one has climbed a ladder and the step under him broke and killed, one Boraitha declares him guilty, etc. If the iron of a hatchet slipped off and killed. One threw a lump of brittle stone at a date tree, and the dates fell off and killed (a child). What is considered second force according to Rabbi? If one throws a stone in a public ground and it kills, he is to be exiled. The punishment of exile attaches but to a private set. Is hewing wood always considered a private affair? All kinds of human beings are exiled when they killed by accident an Israelite. A father is exiled if he killed his son accidentally. A heathen or a slave is to be exiled or punished with stripes through an Israelite and vice versa. A stranger or an idolator who has killed even unintentionally is put to death. Only then when, thinking that such is allowed; "For he is a prophet." How is this to be understood? Because he is a prophet she has to be returned, but if a layman, she would not, etc. Exile does not apply to a blind one. An enemy is not exiled (as such a punishment does not suffice). If the rope to which the man's instrument was attached, broke—then he is exiled; but if the instrument slips out of his hand, exile is not sufficient. Whither are they to be exiled? To the cities of refuge, etc. They were also obliged to prepare roads from one city to the other. Formerly all murderers, accidental as well as intentional, used to flee to the cities of refuge, etc. "Giliad is become a city of workers of wickedness," etc. What does this expression mean? The city of refuge must neither be too large nor too small, but middle-sized ones. Be situated in places where there is water and markets. If a disciple is exiled, his master is exiled with him; because the expression, "and live," means you shall supply him with the sources of moral life. He who loves the abundance of scholars possesses the fruit of knowledge. I learned much from my masters, more, however, from my colleagues, and still more from my disciples. The Holy One, blessed be He, appoints them into one inn, and he who had killed intentionally is placed under a ladder, while the other, who killed unintentionally, descends the steps, falls and kills him. According to one he wrote only the eight verses, which begin with. "And Moses died," etc., 14-28

MISHNA VI. TO X. There is no difference between the high priests who were anointed with the holy oil, etc. Therefore the mothers of the priests used to support the murderers with food and clothes, etc. It is counted as a sin to the priest who should pray that no accident might happen in that generation. If a sage has put some one under the ban conditionally, etc. The forty years during which Israel was in the desert, the remains of Judah were dismembered in his coffin until Moses prayed for him, etc. If after the decision has been rendered, the high priest dies, he is not exiled, etc. If it happens that a murderer goes outside of the limit, etc. What has the high priest done that the murderer's fate should depend upon his death? Joab erred twice in so acting: (a) he thought that the horns of the altar protect, etc. The cities of refuge are not given for cemeteries. If one killed accidentally in the city of refuge, he is to be exiled, etc. If a murderer

was exiled, the townsmen like to honor him, he has to say to them : " I am a murderer," 28-34.

CHAPTER III.

MISHNA I. TO V. To the following stripes apply : Crimes under the category of Korath, as well as under that of capital punishment, are also punished with stripes if they were so warned. To a negative command, which is preceded by a positive one, stripes apply. The culprit does not get stripes unless he abolishes the succeeding positive command. R. Simeon b. Lakish, however, differs, and says : He is free from stripes only when he has fulfilled the succeeding one. He who took the mother-bird with her children gets, according to R. Jehudah, stripes. It happened with a children teacher who struck too much the children, and R. A'ha excommunicated him ; Rabbma, however, returned him because he could not find as good a teacher. Stripes also apply to him who partook of the first fruit before the ceremony of reading was performed. If a positive succeeds a negative, no stripes apply. A stranger who had consumed sin and transgression offerings before their blood was sprinkled is free from any punishment. Concerning the first fruit, placing it in the temple is the main thing, and not the ceremony of reading. The culpability for second tithe arises only after it has seen the face of the wall of Jerusalem. He who makes a baldness in the hair of his head, or rounds it, etc., is liable. The culpability arises only, then, when he took it off with a razor. What should be the size of the bald spot which would make him culpable ? If one made an incision with an instrument he is culpable. For dead he is culpable at all courts whether by hand or instrument. The culpability for etching-in arises only when he has done both, wrote and etched-in with dye, etc. A Nazarite who was drinking wine the whole day is culpable only for one negative. There is an instance that one may plough only one bed and shall be culpable for eight negatives. The number of stripes is forty less one, 34-47.

MISHNA VI.-IX. The examination as to the number of stripes he can receive and remain alive must be such that can be equally divided by three. If one commits a sin to which two negatives apply, etc. How is the punishment with stripes to be performed ? The striker strikes him with one hand so that the strokes shall become weaker. If, after he has been tied, he succeeds to run away from the Court, he is free. As he was already disgraced, he is not taken to be disgraced again. The Lord wanted to make Israel blissful and therefore he multiplied to them his commands. At three places the Holy Spirit appeared. At the court of Shem, etc. Six hundred and thirteen commands were said to Moses, etc. Isaiah reduced them to six. Michah came and reduced them to three. Isaiah (the second) again reduced them to two. " Keep ye justice and do equity." Amos reduced them to one. " Seek ye for me, and ye shall live," 47-56.

APPENDIX.

He who speaks ill of his neighbor, he who listens to such evil-speaking, finally, he who bears false testimony deserves to be thrown to the dogs, 47-56.

TRACT MACCOTH (STRIPES).

"The Sanhedrin who executes a person once in seven years, is considered pernicious. R. Eliezar b. Azariach said: Even one who does so once in seventy years is considered such. Both R. Tarphon and R. Aqiba said: If we were among the Sanhedrin, a death sentence would never occur." (Mishna X.)

CHAPTER I.

RULES AND REGULATIONS CONCERNING COLLUSIVE WITNESSES IN BOTH CRIMINAL AND CIVIL CASES, AND THE APPLICATION THERETO OF CORPOREAL AND OTHER PUNISHMENTS.

MISHNA I.: How should witnesses be made collusive (so that they should be punished)? If, *e.g.*, they testify that so and so (who is a priest) is a son of a divorced woman (whom his father had illegally married, wherefore he lost his priesthood), the court has not to decide that the witness who has falsely testified shall be regarded such (and shall lose his priesthood if he is a priest), but he should be punished with forty stripes; likewise if one testifies that so and so is to be exiled for an unintentional murder, the court has not to decide that he, the witness, be exiled for false witnessing, but he is punished with forty stripes.

GEMARA: How should the text of the Mishna be understood? It states, "how should witnesses be made collusive," and according to the illustration hereafter adduced it ought to be: How should the witnesses not be made collusive (as the punishment of a collusive witness is according to the Scripture that the same which is to be inflicted upon the defendant if the accusation prove true, and it states that such a punishment does not apply to the witness; it furthermore states concerning the case of collusive witnesses, that they are considered collusive only, then, when another party of witnesses come and say that the witnesses in question were with them at another place on the same date on which, according to their testimony, the

alleged crime was done. Hence, only in such cases they are considered collusive, but not otherwise. The Tana of the Mishna refers to this passage (Sanhedrin, p. 261): "Because all who are to be put to death biblically, their collusive witnesses and their abuses are punished with the same, except in the case of the married daughter of a priest," etc. And he (the Tana) adds that there are another sort of witnesses who are not subject to the punishment of collusiveness, but who are to suffer stripes instead, and this are those who testify that so and so is a son of a divorced woman or of such who has performed the ceremony of chalitza.

Whence is this deduced? Said R. Jeoshia b. Levy: From here [Deut. xix. 19]: "Then shall ye do unto him as he had purposed to do unto his brother; to him but not to his descendants" (and if the decision were that he should lose his priesthood, then even his children would be affected). But let the court affect him only and not his descendants? This cannot be done, as the law dictates that it shall be done just the same to him as to the alleged defendant, and if such be the case his descendants would necessarily be affected. B. Pada, however, says: This is to be drawn by *a fortiori* reasoning—viz.: he who has transgressed (by illegal marriage of a divorced woman) does not lose his priesthood, and only his descendants from this marriage lose it. Much less so should the witness who falsely testified lose his priesthood. Rabbina opposed: Were we to use such theory the whole case of collusiveness would be made illusory. As the same *a fortiori* method could be applied thus: He through whose false testimony a man was already stoned, is not to be stoned; so much less so if the accused man was not as yet stoned? Therefore the best is as it is answered above.

"*Is to be exiled.*" Whence is all this deduced? Said Resh Lakish: From here [Deut. xix. 5]: "This one shall flee unto one of these cities," etc., *i.e.*, *this one*, but not his collusive witnesses. R. Jochanan, however, said: This is to be drawn by *a fortiori* reasoning. He who has done such a crime intentionally does not become exiled; so much less so he who is only testifying to such a crime. This statement, however, cannot be taken into consideration, as the reason why an intentional murderer is not to be exiled is that he shall not be atoned. But the witnesses who have not perpetrated such a crime should be exiled, so that they should expiate; therefore, the best interpretation is that of Resh Lakish given above.

Ula said: Where do we find a hint in the Scripture that collusive witnesses shall be punished with stripes (here is quoted from Tract Sanhedrin, p. 20, l. 39 to p. 21 up to l. 17. See there): The rabbis taught, "there are four points concerning collusive witnesses: (a) they are not made sons of a divorced woman or of such who has performed the ceremony of chalitza; (b) they are not exiled to the cities of refuge; (c) they do not pay the atoned money, and (d) they are not sold as Hebrew slaves." In the name of R. Aqiba it was said that: Nor do they pay on self-confession. They are not made sons of a divorced woman, etc., as said above, nor are they to be exiled as said above, and they do not pay atoned money, because the rabbis hold that the money which one has to pay in case his ox has killed a person is not considered as a recompense for damages, but as an atonement, and collusive witnesses are not under the category of atonement. And who is the Tana who holds this? Said R. Hisda: It is R. Ismael, the son of Johanan b. Brokah. (See Baba Kama, p. 90, l. 2 from bottom, to 91, l. 16.)

"And they are not sold as Hebrew slaves." R. Hamnuna was about to say that this is only in the case when he, the alleged defendant, has money to pay for the theft, or if the witnesses have money to pay; but in case both have not they are to be sold. Said Rabba to him: It reads [ibid. xxii. 2], "he shall be sold for *his theft*, but not for his collusiveness." The text says in the name of R. Aqiba, etc.: What is his reason? He holds that this is only a fine, and one does not pay fine upon his self-confession. Said Rabba: There is a support to R. Aqiba's theory in the fact that a collusive witness, though he has not committed the crime manually, is nevertheless responsible, and is to be killed in case his testimony caused a death-sentence; and likewise in civil cases he has to pay, although he has done no damage. And similarly said R. Na'hman.

R. Jehuda in the name of Rabh said: A collusive witness pays his share. What does this mean? Shall we assume that in the case where two witnesses were found collusive each of them pays half? This is already stated further on in a Mishna. Or does it mean that if one of them was found collusive, he has to pay half? This is not so, as there is a Boraitha which states that there is no payment imposed unless both are found collusive. Said Rabba: He speaks of the case when one came before

the court testifying: I, together with so and so, have testified before such and such a court, and we, having been found collusive, the court has decided that we have to pay such and such an amount. And lest one say that, as his testimony does not make liable his colleague, he himself should not be responsible either, he comes to teach us that this is not so.

MISHNA II.: We testify that so and so has divorced his wife and has not paid the amount mentioned in her marriage contract (and that testimony was false). Although they have not done any damage, as the husband has to pay the marriage contract at some time, they are nevertheless not free from the following payment—namely, it is to be appraised how much one would risk for her marriage contract in case she should remain a widow or be divorced. However, if she died while her husband is still alive, he would inherit her (and such an amount they have to pay).

GEMARA: How should the appraisement be made? (here are two kinds of risks, one can risk to buy the inheritance of a woman from her husband, who would inherit her in case of her death when he is still alive; and one can also risk to buy this from the woman in case her husband die first. However, there is a great difference concerning the amount one would risk. As a rule, one would give much more when buying it from the husband than from the wife). According to R. 'Hisda the appraisement must be of the husband's, and according to R. Nathan b. Oshia, of the wife's estate. Said R. Papa: It prevails that the appraisement should be as of the wife's, and only to the amount mentioned in her marriage contract, without, however, touching the benefit which her husband has in the fruit of her estate while she is yet alive.

MISHNA III.: We testify that so and so owes to his neighbor a thousand zuz on the condition to pay him this debt after thirty days from to-day. He, however, claims that he has to pay the amount at the expiration of ten years: and such was found to be the case. It remains, then, to appraise how much one would give for keeping a thousand zuz ten years instead of thirty days, and such an amount they have to pay.

GEMARA: R. Jehuda in the name of Samuel said: If one made a loan to his neighbor for ten years the Sabbathic year does not annul it, and although when the Sabbathic year will arrive, he would transgress the negative commandment. "He shall not exact it of his neighbor" [Deut. xv. 2], yet at present

this commandment does not exist, and we do not care for the later time. Said R. Kahana: This we have also learned in our Mishna, which states that the witnesses have to pay only the difference between thirty days and ten years. And if the Sabbathic year released the whole debt, they would have to pay the whole thousand zuz. Said Rabha: The Mishna may refer to one who lends his money on a pledge, or to one who transfers his documents to the court; and there is a Mishna teaching that in such cases the Sabbathic year has no effect.

R. Jehuda said again in the name of the same authority: "If one says I will make you a loan with the stipulation that the Sabbathic year shall not release me, it nevertheless releases." Shall we assume that Samuel holds that such is considered a condition against the biblical law, and it therefore does not hold good? Is it not taught (Baba Metzia, p. 126) if one says: I sell this article to you on the condition that you shall not claim any cheating against me, etc.? According to Samuel the condition holds good, though such a condition is against the written law? Yea, but to this it was added by R. Anan that Samuel himself has explained it to him (see continuation, p. 127); and according to this explanation there is no contradiction here. Now as the case here is analogous, it follows that he made the condition: "The Sabbathic year shall not release *me*, it releases nevertheless. But if he says in the condition that *you* shall not release it, then his condition holds good."

There is a Boraitha to the effect that if one loans money to his neighbor without a fixed term of return, he has no right to demand it before the elapse of thirty days. And Raba b. b. 'Hana was about to interpret this Boraitha in the presence of Rabh that such is the case only when he lends on a document, as one would not trouble himself to write a document for less than thirty days; but if it was a verbal loan, he may demand it at any time. Said Rabh to him: So said my uncle that there is no difference between a verbal and a written loan as regards the thirty days, so long as the loan was made without any term. Similarly we have learned in a Boraitha. Samuel said to R. Mathna: You shall not sit down before you have explained me the courses wherefrom is based the Halakha that one shall not demand a loan no matter whether it be verbal or written before the elapse of thirty days? And he answered from [ibid., ibid. 9]: "The seventh year, the year of release," etc. Is it not self-evident that the seventh year is the year of release? why then

the apposition? To tell that there is another release similar, and this is a loan without a term which cannot be demanded before thirty days, as the master said that thirty days, a fragment of a year, is considered a whole year.

MISHNA *IV.*: We testify that so and so owes 200 zuz to his neighbor, and they were found collusive; they have to suffer both stripes and payment, because the negative commandment for the trespass of which they have to receive stripes does not make them pay. And only another verse concerning collusiveness makes them to pay. Such is the decree of R. Mair. The sages, however, maintain that he who pays is not to be punished with stripes. If they testify that so and so has deserved forty stripes, and are found collusive, they are to be punished with twice forty stripes, once on the basis of the negative commandment: "Thou shalt not bear false witness," and, secondly, on that of the commandment: "Shall ye do unto him as he had purposed to do unto his brother"; such is the decree of R. Mair. The sages, however, say: they suffer stripes only once.

GEMARA: This is in accord with the rabbis' theory, which reads [*ibid.* xxv. 2]: "According to the degree of his fault," which statement is to be explained that he is made responsible for one fault, and not for two. But what is the reason of R. Mair's decree? Said Ula: He bases it upon the case of an evil name, for which crime the law prescribes the double punishment of stripes and payment, and analogous is the case here treated. But is not the payment for an evil name considered a fine? He, R. Mair, holds with R. Aqiba that the payment of collusive witnesses is also required as a fine.

There are others who refer the saying of Ula to the following Boraitha: It reads [*Ex. xii. 10*]; (see *Sanhedrin*, p. 185, l. 23, to the end of the par.), and to the question, whence is it known that to a negative commandment that does not contain manual labor, the punishment of stripes does not apply, Ula answered from the case of an evil name stated above. What, then, do the rabbis who do not hold that they shall be beaten twice infer from "Thou shalt not bear false witness"? They need this for a warning to the case of collusiveness. And where is to be found such a warning according to R. Mair? Said R. Jeramaia in [*Deut. xix. 20*]: "And those who remain shall hear and be afraid, and shall henceforth," etc. The rabbis, however, infer from this passage that such a case must be heralded (see *Sanhe-*

drin, p. 256). As to R. Mair, he, too, infers from here heralding, as according to him the words "and shall be afraid" would be superfluous, if heralding were not inferred therefrom.

MISHNA V.: The fine of money may be divided into two or three shares; however, this is not to be done with stripes. How so? If they have falsely testified that one owes to his neighbor 200 zuz, and they were two or three persons, each of them has to pay his share to complete that amount. But if they have falsely testified that one deserves forty stripes, each of them is to get forty stripes in full.

GEMARA: Whence is all this deduced? Said Abaye: Concerning stripes, it reads [Deut. xxv. 2]: "Wicked"; and [Numb. xxxv. 31] it reads also "wicked" concerning capital punishment, and as that cannot be divided, so stripes are not to be divided either. Rabha, however, said: The reason is this: The punishment ought to be done to him as he had the purpose to do it to his brother. And as each one of them intended that the defendant be beaten with forty stripes, he has to get just the same. But why should not the same be concerning money fine? Because money if counted together completes the amount he should suffer, which is not the case with stripes.

MISHNA VI.: Witnesses cannot be made collusive unless the falsehood lies in their bodies; how so? If, e.g., they testify that so and so has killed a person and another party of witnesses came to contradict them, saying: How can you testify so? The killed one or the alleged murderer was with us at that date in such and such a place. They are, nevertheless, not considered collusive (so that they should be killed instead); but if the other party say you yourself were with us at that date in such a place, consequently you could see neither the murderer nor the killed one, then they are considered collusive and are to be killed upon such a testimony. If, thereafter, a third party of witnesses came and made collusive the second party, and a fourth party made collusive the third party, even if the number reach to 100 parties they all are to be killed. R. Jehuda, however, maintains that such parties of witnesses are to be considered *στασίς*, and only the first party is to be killed.

GEMARA: Whence is this deduced? Said R. Ada: From [Deut. xix. 18]: "And, behold, if the witness be a false witness, he hath testified a falsehood against his brother," which means that the body of the witness should be found false. The disciples of R. Ismael taught, it reads [ibid., ibid. xix. 16]:

"Testify against him for any deviation," * which means the testifying itself should be a deviation.

Rabha said: "If two persons testify that one has killed a man in the east side of such and such a palace, and another party of witnesses come, saying that the same witnesses were with them in the west of the same, it is to be investigated if, while standing on the west side, one can see what is going on in the east side, they are not to be considered collusive, otherwise they are." Is this not self-evident? Lest one say that we have to investigate, perhaps their sight is better than the usual one, so that they could see, he comes to teach us that this does not matter. The same said again: "If two have testified that one has killed a person in the City of Sura Sunday morning, and another party came and testified that the same persons were with them in the City of N'hardaia Sunday evening, an investigation is to be made, if it is possible.

If the investigation shows that it is possible for one to walk during that time from Sura to N'hardaia, then they are not collusive; otherwise they are." Is this not self-evident? Lest one say it is to be feared perhaps the man went to the latter city in a balloon, † he comes to teach us that such fear must not be taken into consideration.

And he said again: If they testify that on Sunday one has killed a person and are contradicted by another party that on Sunday they were with them, however it is a fact that the same person has killed a man on Monday; or even if they said that this man killed a person on Friday, the collusive witnesses are to be put to death, because at the time they testified the defendant was not as yet sentenced to death. But if they testified that the death sentence occurred on Sunday, and the other party testifies that they were with them at that time, the sentence, however, having occurred on Friday, or even on Monday, the first party is not to be considered collusive, because at the time they testified, the defendant was already sentenced to death. And the same is the case concerning fines. If, for instance, they testify that so and so has stolen an ox, slaughtered him or sold, on Sunday (for which he has to pay four and five fold), and the other party says that on Sunday they were with

* Leaser translates "wrong"; however, he is wrong according to the sense in the text.

† The text says it shall be feared that they went there on a flying camel. We have rendered it a balloon, as the sense is the same.

them, but the defendant did so on Monday, the first party is subject to the fine, because on Sunday the defendant was not as yet liable. However, if they say that the accused has done so on Friday; or even if they say that the decision of the court occurred on Monday the first party is not considered collusive, because at the time they testified, the man was already sentenced to a fine.

"*R. Jehuda, however, said,*" etc. But according to him that all the parties are *stacis*, why should the first party be put to death? Said Rabha: He means to say that if there was only one party of witnesses. But did he not say the first party only? This difficulty remains. A woman once brought witnesses, and they were found false. She then brought another party, who were also found false. She then brought a third party. Said Resh Lakish: This woman is to be considered suspicious whose purpose is to use false witnesses. Said R. Alazar to him: Because she is suspicious should all Israel be suspected of testifying falsely? Such a case happened also before the court of R. Johanan, and Resh Lakish said the same as above. But R. Johanan exclaimed: "If she is suspicious should all Israel be suspected?" He (Resh Lakish) looked at R. Alazar rebukingly, saying: You have heard your statement from Bar Naf'ha (R. Johanan), and you have not mentioned his name! Shall we assume that R. Johanan is in accordance with the rabbis of our Mishna, and Resh Lakish is in accordance with R. Jehuda? Nay. Resh Lakish may say: "I am in accordance even with the rabbis, as in that case there was no one who searched for witnesses. In this case, however, the woman was searching for them. And R. Johanan may say: "I am in accordance with R. Jehuda"; however, this case is different, as she may have thought that the first parties were aware of her case, and she erred. The third party, however, may be aware of it.

MISHNA VII.: Collusive witnesses are not to be killed unless the sentence of capital punishment for the defendant is rendered. As only the Saducier declare that the collusive witnesses are put to death after the defendant was executed. Because it reads [Ex. xxi. 23]: "Life for life," to which the sages answered: Is it not written: "It shall be done to him as he had purposed to do unto his brother"? which means that his brother is still alive. Why, then, is it written "Life for life"? Lest one say that they should be executed as soon as their testimony was accepted, therefore it reads, "Life for life," to teach

that they are to be put to death only, then, when the death sentence for the defendant was already rendered.

GEMARA: There is a Boraitha Biribi says: If the man who was accused by them was not executed as yet, the collusive witnesses are put to death; but if he was already executed, they are not. Said his father: "My son, can this not be argued by *a fortiori* reasoning that they should be put to death, if the accused was executed?" And he answered: "My master, have you not taught me that there is no punishment on the ground of *a fortiori* conclusions?" And this we have learned in the following Boraitha: It reads [Lev. xx. 17]: "If a man take his sister, the daughter of his father, or the daughter of his mother," from this we know only about the daughter of his father, not of his mother, and *vice versa*. But where do we know that he is guilty when she was the daughter both of his father and mother? To this it reads at the end of this verse, "The nakedness of his sister hath he uncovered." And this is written only for the purpose that one should not say that such is to be drawn by *a fortiori* conclusion, thus: If he is guilty for his sister who was only from one side, his father's or mother's, how much the more should he be guilty when she was his sister from both sides? Hence, from this we have to learn, that there is no punishment based on *a fortiori* conclusions. Thus far concerning punishment; but whence do we know that the same is the case concerning warning? To this it reads [ibid. xviii. 9]: "The nakedness of thy sister, the daughter of thy father, or the daughter of thy mother." And it is also repeated [ibid., ibid. ii.]: "She is a sister," etc. Also for this purpose one shall not base this on *a fortiori* conclusion. All this is concerning capital punishment. But whence do we know that the same is the case with stripes? From an analogy of the expression "wicked" stated above (p. 7) and whence do we know that the same is the case concerning exile? From the analogy of expression "murder" as stated above. There is a Boraitha. R. Jehuda b. Tabai said: "May I not live to see the consolation of our nation, if I have not killed a collusive witness for the purpose of removing from the mind of the Saducier, who say that, collusive witnesses are not put to death, unless their accused were executed. Said Simeon ben Shata'h to him: I, too, swear by the consolation of our nation that you had shed innocent blood, as the law dictates that witnesses should not be put to death unless both of them are found collusive. Then Jehuda ben Tabai decided that he

shall not render any decision before consulting Simeon ben Shatah. And all his lifetime he used to prostrate himself upon the grave of that witness. And a voice was heard. People thought that this was the voice of the dead one. But Jehuda told them that it was his own voice, saying, "You will see that after my death no voice will be heard."

MISHNA VIII.: It reads [Deut. xvii. 6]: "Upon the evidence of two or of three witnesses, shall he that is worthy of death," etc. If the evidence of two persons is sufficient, why does the Scripture mention three? To compare the evidence of three to that of two in the case of collusiveness, as another party of two, make the first party of two collusive, so they make them collusive even if the first is of three. And whence do we know that, even if they were a hundred persons, the evidence of two persons is sufficient? To this it reads: "Witnesses." R. Simeon, however, maintains that as two cannot be put to death, unless both of them are found collusive, so is it if they were three, all of them must be found collusive. And even if their number reaches a hundred, all of them must be found collusive before sentencing one of them to death. R. Aqiba, however, maintains that the third witness mentioned in the Scripture was not for the purpose to make for him the punishment more lenient, but, on the contrary, to make it more rigorous—viz., lest one say as the testimony of the third one was superfluous, because the evidence of two suffices, and, therefore, he should not be punished at all. The Scripture terms the third one in order to make him equal with the former two. From this we see that the verse punishes one, an accomplice who conjoins himself to transgressors, with the same punishment to be inflicted upon the transgressors themselves. And we may learn from this: That so much the more will he who conjoins himself to those who are engaged in meritorious acts, be rewarded equally with them. Three witnesses are also equal to two in case one of them was found a relative or legally unfit for witnessing, as it is in the case of two when the testimony is invalidated, so it is in the case when one of the three was found such. And the same law applies even when their number reaches a hundred, from the expression "Witnesses." Said R. Jose: This is said concerning criminal cases only, but in civil cases, if one was found a relative or unfit, the evidence of the remainder is to be taken into consideration. Rabh, however, said, that as regards this there is no difference between civil and criminal

cases. However, this rule holds good only when the relatives took part in warning the trespasser; but if they did not, the evidence of the others must be taken into consideration, since, if not, what could two brothers do when both saw that some one has killed a person (and there were also some other ones who have seen the murder, should then the testimony of the others be eliminated as void because there were also two brothers)?

GEMARA: Rabha said: The Mishna treats of a case where all of them have testified at once. Said R. A'ha of Difti to Rabbina: How could such a thing be possible with a hundred persons; could all of them testify at once? And he answered: It means that every one of them has testified just as his colleague has finished his testimony.

"*What could two brothers do?*" But how shall the court examine them? Said Rabha: They are to be questioned for what purpose they came here: to testify, or merely to see? If they say, we came to testify, then, if there was a relative or an unfit among them, their testimony is void; but if they say that merely to see, then must be taken into consideration the testimony of the others, since what could two brothers do, etc., as illustrated in Mishna.

It was taught: R. Jehuda in the name of Samuel said: The Halakha rules in accordance with R. Jose. And R. Nachman said: It rules in accordance with Rabbi.

MISHNA IX.: If two persons have seen the crime from one window and two others have seen it from another window, and there was one standing in the middle and warning the criminal, if the two parties could see each other, all of them are considered as one party of witnesses. But if not, they are considered two parties. And therefore if one of the parties was found collusive, he (the accused) and they (the collusive) are put to death, and the other party is free. R. Jose, however, maintains that there is no capital punishment unless two witnesses have warned this culprit, as it reads: "Upon the mouth of two witnesses." * Another explanation of the words upon the mouth is that the Sanhedrin must not hear the evidence from a demonstrator (but they themselves must understand the language of the witness).

GEMARA: R. Zuthra b. Tubia in the name of Rabh said:

* The term in the Bible is *al pe* and the Hebrew term for mouth is *pe*, and he takes it literally.

Whence do we know that one witness is not relied upon? From [ibid., ibid. 6]: "He shall not be put to death upon the evidence of one witness." What does the expression, "one witness," mean? If it means that the testimony of one witness does not suffice, this is already stated above, "two witnesses"; hence it means that if two witnesses saw the crime separately, each from another place, and if they themselves could not see each other, such witnesses are not considered conjoined, so that their testimony should be taken into consideration. Furthermore, even if this was from one window, but one has seen it first, and then the other, they are likewise not to be considered conjoined. Said R. Papa to Abayi: Was it necessary to state this after the former statement, that even if each of them has seen the whole crime they are not to be conjoined if they do not see each other? So much the less so if each of them has seen but half of the act. And he answered: He speaks of an adultery case. Rabha said: If both of the witnesses have seen him who warned them, they are considered conjoined. And he said again that the warning suffices even if it comes from the mouth of the killed one. And even if a voice of warning was heard without their knowing whom it is from. R. Na'hman said: The individual witnesses in question are fit for civil cases, as it reads: "He shalt not be *put to death* upon the evidence of one witness," from which we learn about criminal cases only, but in civil cases they are to be considered.

"*R. Jose said,*" etc.: Said R. Papa to Abayi: does R. Jose really hold such a theory? Have we not learned in a Mishna that if an enemy has killed unintentionally, he may be put to death because he is considered vicious, and warned? And he answered: This is not R. Jose from our Mishna, but R. Jose b. Jehuda from the following Boraitha, who said: A scholar needs no warning, for the warning is on the whole only for the purpose, that the court know whether it was done intentionally or unintentionally.

"*From a demonstrator,*" etc. There were two foreigners who appeared in the court of Rabha, and he appointed an interpreter for them. But why did he do so? Is it not stated that the judges must not hear the case through an interpreter? Rabha understood what they said, but he could not answer them in that language.

Ailea and Tubia were relatives of a surety, and R. Papa was about to say that they are fit to be witnesses, because they are

not relatives of the lender and borrower. Said R. Huna b. R. Joshua to him: If the borrower should not pay would not the lender demand the debt from the surety? Hence they are considered relatives in this case, and are not fit to be witnesses.

MISHNA X.: If, after the decision had been rendered the guilty one ran away, and thereafter he returned to the same court, his case must not be reconsidered. Everywhere, if two persons standing at any place testify that a decision was rendered for so and so by such and such a court, according to the testimony of the witnesses, so and so, the accused may be put to death upon their testimony.

The court of Sanhedrin is to be established in Palestine as well as in the countries outside of it.

The Sanhedrin who executes a person once in seven years, is considered pernicious. R. Eliezar b. Azariach said: Even one who does so once in seventy years is considered such. Both R. Tarphon and R. Aqiba said: If we were among the Sanhedrin, a death sentence would never occur. To which R. Simeon b. Gamaliel said: Such scholars would only increase bloodshed in Israel.

GEMARA: The Mishna states if he return to the same court his case must not be reconsidered. From which it is to be understood that if he returns to another court, it is to be reconsidered. And in the latter part it states that if two testify that such a decision was rendered, etc., he is to be put to death without any reconsideration? Said Abayi: This presents no difficulty. If he runs away to a court in Palestine from outside, it is to be reconsidered. As it is stated in the following Boraita, R. Jehuda b. Dusthai said in the name of R. Simeon b. Shatah: That if one runs from the Palestine court to an outside court, his case must not be reconsidered. But if *vice versa*, it is to be reversed, because of the privilege Palestine has.

"*Sanhedrin are to be established*," etc. Whence is this deduced? From what the rabbis taught. It reads [Numb. xxxv. 29]: "For a statute of justice throughout your generations, in all your dwellings." From this it is inferred that Sanhedrin are to be established in Palestine as well as in the countries outside. But why is it written elsewhere "in thy gates"? To say that "in thy gates" in Palestine, you have to establish courts in every principal city, as well as in the small cities; but in the countries out of Palestine, you have to establish them in the large cities but not in the small ones.

CHAPTER II.

RULES AND REGULATIONS CONCERNING UNINTENTIONAL MURDER AND EXILE WHICH IS THE PUNISHMENT THEREFOR.—WHO IS AND WHO IS NOT SUBJECT TO EXILE.—THE CITIES OF EXILE AND THEIR PREPARATIONS.—THE REDEEMING OF THE EXILED BY THE DEATH OF THE HIGH-PRIEST.

MISHNA I. : The following are exiled: He who kills a person unintentionally. If, *e.g.*, one fixes his roof with a machine and the latter falls from his hand and kills a man, or if he takes off a barrel from the roof and it falls from his hand and kills, or if he himself falls from the ladder while descending and kills, he is to be exiled. However, if, while carrying the machine up to the roof, or pulling a barrel on a rope up to the roof, the rope breaks and the barrel falls and kills, or if he himself, while ascending to the roof, falls and kills, there is no exile. As there is a rule that for killing while descending, he is exiled, but not while ascending.

GEMARA: Whence is this deduced? Said Samuel: From [Numb. xxxv. 23]: "And he have let it fall upon him, that he died," which means that it fell in the usual manner. The rabbis taught [ibid., ibid. 15]: "Unawares" means to exclude the case when it was done intentionally; [Deut. xix. 4] "without knowledge" to exclude him who intends to do so. But is it not self-evident that he who kills a person intentionally is to be put to death? Said Rabha: It excludes even him who thought that such is allowed. Said Abayi to him: Is the act of one who thought that such is allowed not to be considered an accident? Answered Rabha: I hold that such is to be considered almost intentional.

Further on it is stated "without knowledge to exclude him who intended to do so." Is this not self-evident? Said Rabha: *i.e.*, to exclude him who intended to kill an animal, and killed a man, or miscarried and killed a full term child.

The rabbis taught: It reads [Numb. xxxv. 22]: "If he have pushed against him accidentally" means to exclude a cor-

ner (where the injured one has entered, while the murderer was going from the opposite with a knife in his hand and wounded the former). "Without enmity" excludes the case where the murderer was his enemy. "Pushed" means with his body. "Or have cast upon him" includes the one who injured while bending himself for the purpose of raising his instrument to land the blow harder. "Without lying in wait" excludes him who intended to strike in one side, but struck in the opposite. [Ex. xxi. 13] "And if he did not lie in wait" excludes the one who intended to throw it as far as two and threw it four yards. [Deut. xix. 5] "And he that goeth into the forest with his neighbor" means as the entrance into a forest is permitted to every one, so also must the place be open where the accident happened—be open to every one—to the injurer as well as to the injured. R. Abuhu questioned R. Johanan: What is the law in this case: If one was climbing a ladder and, a step having been broken under him, he fell down and killed; is this to be considered on *ascending*, for which one is not liable, or on *descending*, for which he is? And he answered: It is already explained above: That a *descending* for the purpose of *ascending* is included. He (Abuhu) objected to him from the following: "This is the rule, that if while descending he is to be exiled, but if while ascending, he is not." Does not the expression "while ascending" include a similar case to that about which I questioned you? And he answered: According to your theory, the expression "while descending" must also include something. And what is it? You must then say that it means to include chopping, *e.g.*, a butcher that chops meat and kills a man (by a slip of the hatchet, etc.); similarly it may be said that the expression "while ascending" means to exclude same. As we have learned in the following Boraitha: "A butcher who has chopped meat," etc. One Boraitha declares him guilty if the killing was in front of him, but not if it happened behind. And another Boraitha asserts the contrary. A third one, however, declares him free at any rate. And they are not contradictory, since one of them speaks of the case that, while he was bending himself, the accident took place in front of him, he is then responsible. And if through his rising the accident happened behind, he is free. And the other two Boraithas speak of cases which happened to be in the contrary and otherwise.

Shall we assume that in this case the Tanaim of the following Boraitha differ—viz.: If one has climbed a ladder and the

step under him broke and killed, one Boraitha declares him guilty, and another free. Is it not because one considered his climbing as *ascending* and the other as descending? Nay, according to both, it is considered as *ascending*. But that which declares him liable means in respect of damages, and that which declares him free means from exile.

MISHNA II.: If the iron of a hatchet slipped off and killed, according to Rabbi he is not to be exiled, and according to the sages he is. The same differ also as regards the case where a piece of wood split off from the felled tree and kills; according to Rabbi he is, and according to the sages he is not exiled.

GEMARA: There is a Boraitha. Rabbi said to the sages: Does it read [Deut. xix. 5]: "The iron slippeth from *its* tree"? It reads, "from *the* tree." And secondly, in the beginning of the verse the expression is "to hew (*etz*) trees," and here with "the iron slippeth," the same word, *etz*, is used, whence, as above, it means that a chip slipped from the tree, so by the expression "from the *etz*" is meant a piece of wood split from the tree. Hence, he is to be exiled. Said R. Hiye b. Ashe in the name of Rabh: Both (the sages and Rabbi) took their opinion from one and the same passage cited above. Rabbi holds that the law must be decided in accordance with the Masora writing, which is "*v'nishshel*," *i.e.*, and the iron chips off a part of the wood. And the rabbis hold that the attention must be called to the traditional reading which is *v'nashal*, *i.e.*, "and the iron slips off the helve." But does Rabbi indeed hold that attention must be given to the *Masora*? Did not R. Itz'hak b. Joseph in the name of R. Jo'hanan say: Rabbi, R. Jehuda b. Roietz, the school of Shamaï, R. Simeon and R. Aqiba all hold that the attention must be given to the traditional reading? For this purpose Rabbi added in his discussion "and secondly," etc.

R. Papa said: If one threw a lump of brittle stone at a date tree and the dates fell off and killed (a child), we come to the differing of Rabbi and the sages mentioned in our Mishna.

Is this not self-evident? Lest one say that Rabbi would consider this as a secondary force (*i.e.*, the killing was not the result of the direct force of the man who struck the tree, but of the second force of the tree), he came to teach us that it is not so. What then is considered second force according to Rabbi? If, *e.g.*, he struck a bare branch of the tree, and *it* struck the

branch upon which the dates were growing, and the dates fell and killed.

MISHNA III.: If one throws a stone in a public ground and it kills, he is to be exiled. R. Eliezer b. Jacob, however, maintains: If after the stone had been thrown one bent his head and received it, the thrower is free. If one throws a stone in his yard and kills a person, he is guilty if the killed one had a right to enter it, otherwise he is not. Because concerning this case a forest is mentioned in the Scripture, that the place of injuring should be similar to a forest into which every one is allowed to enter; excluding a private yard into which every one is not permitted to enter. Aba Shaul said: As the hewing of wood (mentioned in the Scripture in this case) is a private thing, so also the punishment of exile attaches but to a private act; excluding, *e.g.*, a father who struck his son, or a teacher his pupil, or the messenger of the court who was on duty.

GEMARA: In public ground! Then he must be considered an intentional murderer? Said R. Samuel b. Itz'hak: It speaks that the accident occurred while he was removing his wall (see the discussion to this answer in Baba Kama, p. 72, l. 11-26).

"*R. Eliezer b. Jacob said,*" etc. The rabbis taught: It reads [Deut. xix. 5]: "And find * his neighbor," to exclude him who causes himself to be found under the stone. And from this R. Eliezer b. Jacob inferred his theory, that if after the stone was already thrown, one has put his head under it and was killed, the thrower is free.

"*As hewing wood,*" etc. One of the rabbis questioned Rabha: Is hewing wood always considered a private affair? Is there not a meritorious act to hew wood for making a *Sukka* or for the purpose of burning it upon the altar? Hence, if an accident happened by such an act, let him be free. And he answered: This cannot be considered so, as a *Sukka* can be prepared from hewed wood, and the same it is with the altar. Hence, such an act cannot be considered meritorious.

MISHNA III.: A father is exiled if the accident happened to his son, and *vice versa*. All kinds of human beings are exiled when they killed by accident an Israelite; and same is exiled if he killed one of *them* accidentally, except a proselyte (who accepted upon himself only the seven commandments which

* Leeser translates "strieth" according to the sense. The text, however, takes it literally.

were given to the descendants of Noah) who is to be exiled only, then, when he killed accidentally a proselyte like himself.

GEMARA: The Mishna states: A father is exiled if he killed his son accidentally. Was it not taught above that a father who struck his son is excluded? It speaks of a case where the son was already a learned one; or of a father who taught a trade to his son, who had had already another trade.

"*And the son may be exiled,*" etc. There is a contradiction from the following. It reads [Numb. xxxv. 15]: "That killeth any person unintentionally." "Any person" means to exclude him who struck his father? Said R. Ka'hana: This presents no difficulty; the cited Boraitha is in accordance with R. Simeon, who holds that choking, which applies to killing one's father, is more rigorous, and such cannot be atoned. And our Mishna is in accordance with the rabbis, who hold that the sword is more rigorous than choking. And therefore the sword applies to parricide; however, an error in a crime to which the sword applies, can be atoned.

"*All kinds of human being,*" etc. What does the expression "all" mean to add? If a heathen and a slave, this was taught by the rabbis: A heathen or a slave is to be exiled or punished with stripes through an Israelite and *vice versa*. But how is this to be understood? It is correct that they are to be exiled in case an Israelite was accidentally killed by them, and by stripes if they cursed an Israelite. But how can this be done with an Israelite? It is correct that he is exiled when he killed one of them accidentally; however, how can he be beaten if he cursed one of them? Is it not written [Ex. xxii. 27]: "And a ruler among thy people thou shalt not curse." And it was explained that it speaks of him who acts according to the rules of thy people. Said R. A'ha b. R. Aika: It speaks of a case that one of the above-mentioned has hit an Israelite in such a manner as could not be appraised with payment. As R. Ami said in the name of R. Jo'hanan, that in such a case the heathen gets stripes. And the same is the case when an Israelite hits a heathen. And we do not compare the case of hitting with the case of cursing.

"*Except a proselyte,*" etc. There are some who presented a question of contradiction in the following passages—viz. [Numb. xxxv. 15]: "For the children of Israel, and for the stranger and for the sojourner among them, shall these six cities," etc., while [ibid., ibid. 12] "And these cities shall be

unto you for a refuge," which means to exclude strangers. Said R. Kahana: "This presents no difficulty; verse 12 means in case the stranger killed an Israelite, while verse 15 speaks of a stranger who killed one of his like." But there is a contradiction from the following: "And therefore a stranger, or an idolator who has killed even unintentionally is put to death; hence, it compares a stranger to an idolator, as in the case of an idolator there is no difference whether he kills a person of his like, or any person. The same is the case with a stranger." Said R. 'Hisda: "This presents no difficulty, as one Boraitha speaks of him who killed while *descending*, and the other while *ascending*. He who killed while descending, in which case an Israelite is to be exiled, is also exiled; but if he killed while ascending, in which case an Israelite is free, is put to death." Said Rabha to him: "Is it not to be drawn by a *fortiori* argument that in such a case he is to be free; namely, if while descending, in which case an Israelite is exiled, he is also exiled only; in case of ascending, in which an Israelite is free, so much the more he should not be put to death?" and therefore, says Rabha, that only then when the stranger has killed intentionally, thinking that such is allowed; and this is in accordance with his foregoing theory (p. 15) that such is to be considered almost intentional. Abayi and R. 'Hisda, however, consider such a case an accident. Rabha objected to them from the following [Gen. xx. 3]: "Behold, thou shalt die for the sake of the woman whom thou hast taken." Does this not mean that he will die upon the decision of a human court? (Hence, although Abimelech thought she is single, nevertheless the court would sentence him to death)? Nay, it means he deserves death by Heaven. And as evidence to this can be adduced, the expression [ibid., ibid. 6] "against me." But how can this theory be taken as evidence? Is it not written [ibid. xxxix. 9] "and sin against God"? Does this mean and not against men? It surely means that for such a sin against God he will be tried by the human court (which punishes adultery with death).

Abayi objected to Rabha from [ibid. xx. 4]: "Lord, wilt thou then slay also a righteous nation?" (Hence we see that his uncertainty is considered accidentally.) Nay, this objection was already met as follows: It reads [ibid., ibid. 7]: "For he is a prophet." How is this to be understood? Because he is a prophet she has to be returned, but if a layman, she would not

have to be returned? We must then say that this passage is to be interpreted in accordance with R. Samuel b. Na'hman thus: "Thou shalt return the wife at any rate, and to thy question, 'Lord, wilt thou then slay also a righteous nation? . . . She is my sister,' etc., the answer is, he is a prophet, and has learned to say so from thyself." Usually, when a guest comes to a house, he is questioned about eating and drinking, but not whether the woman accompanying him is his wife or sister. (In his country, however, Abraham said that she is his sister only because he was questioned.) From all this it is to be inferred that a descendant of Noah is put to death because he had to learn and did not.

MISHNA IV.: Exile does not apply to a blind one. So says R. Jehuda. R. Meyer maintains that it does. An enemy is not exiled (as such a punishment does not suffice). R. Simeon, however, maintains: An enemy is to be put to death, for he is considered vicious. To which R. Simeon said: "It depends upon circumstances; sometimes such is exiled, and at other times he is not. For this is the rule: If there is a possibility to think that he killed intentionally, exile is not sufficient; but if such is not the case, he is exiled."

GEMARA: The rabbis taught [Numb. xxxv. 23]: "Without seeing" means to exclude a blind one who cannot see at all. So R. Jehuda. R. Meyer, however, maintains that this *includes* him; and their reasons are as follows [Deut. xix. 5]: "Into the forest," where, as usually, also the blind go; therefore the expression "without seeing" excludes him. Such is the reason of R. Jehuda. And R. Meyer's is: Because "without seeing" is an exclusion, and there being another expression "without knowledge," which is also an exclusion, we have two exclusions, and there is a rule that an exclusion after an exclusion comes to add something; hence it adds a blind one. R. Jehuda, however, explained the last expression to mean the exclusion of an intentional murder.

"*An enemy is to be put to death.*" Why, he was not warned? Our Mishna is in accordance with R. Jose b. Jehuda, who says above (p. 13) that no such warning is needed.

"R. Simeon said," etc.: There is a Boraitha: How does R. Simeon illustrate his theory? If, *e.g.*, the rope, to which the man's instrument was attached, broke—then he is exiled; but if the instrument slips out of his hand, exile is not sufficient, as he was the enemy of the killed, it is to be supposed that he did

it intentionally. But have we not learned in another Boraitha: R. Simeon said: He is not exiled "until the entire ramming machine slips out of his hands"? Hence it contradicts in both cases: in case the rope broke, and in case the instrument slips. Nay, there is no contradiction in case of the rope; as one speaks of an enemy and the other of a friend. There is also no contradiction in case of the slipping of the instrument; as one Boraitha is in accordance with Rabbi (who says: If such a case happen to a friend he is exiled), while the other is in accordance with the rabbis who do not agree with him.*

MISHNA V.: Whither are they to be exiled? To the cities of refuge, three of which are situated on the other side of the Jordan and three in the land of Cana'an. As [Numb. xxxv. 14]: "Three of these cities shall ye give on this side of the Jordan, and the three other cities shall ye give in the land of Cana'an." However, until the latter three were selected, those on this side of the Jordan have not protected as yet; as it reads [ibid., ibid. 13]: "six cities of refuge," which means none of them protects unless all the six are selected.

They were also obliged to prepare roads from one city to the other; as it reads [Deut. xix. 3]: "Thou shalt put in order for thyself the (way to them), and divide into three." Two scholars are to accompany the exile on the road to protect him, so that he shall not be killed by the relatives of the deceased, and they are to reconcile them. R. Meyer, however, said: He himself has to reconcile them, as it reads [ibid., ibid. 4]: "And this is the talk† of man-slayer." R. Jose b. Jehuda, however, said: Formerly all murderers, accidental as well as intentional, used to flee to the cities of refuge; the court then sends after them and tries them. He who was found guilty was executed, otherwise he was freed; and him who was to be exiled they returned to the city of which he was taken; as it reads [Numb. xxxv. 25]: "The congregation shall restore him to the city of his refuge."

GEMARA: The rabbis taught: Three cities Moses separated on this side of the Jordan, and opposite them Joshua separated out in the land of Cana'an, and they were right oppo-

* In text is not explained the theory of Rabbi and his opponents. Rashi, however, explained this in one version as we did. He brought also some others in which he doubts.

† The term for talk in Hebrew is "dabar," literally "talk" or "word"; Leeser, however, translates it "case," in accordance with the sense.

site: one against the other, as two rows in a vineyard." Namely [Joshua xx. 7] "Hebron in Judah," opposite [Deut. iv. 43] "Bezer in the wilderness," "Shechem in the mountain of Ephraim," "Ramoth in Gil'ad," "Kedesh in Galilee in the mountain of Naphtali," "Golan in Bashan." "And divide into three" means there shall be the same distance from South Palestine to Hebron as from Hebron to Shechem; and from Hebron to Shechem as from the latter to Kedesh, and from Shechem to Kedesh as from the latter to North Palestine. Now let us see: three were needed on the other side of the Jordan, and only three for the whole land of Israel? Said Abayi: In Gil'ad there were many murderers, as it reads [Hosea vi. 8]: "Gil'ad is become a city of workers of wickedness, is full of traces of blood." What does this expression mean? Said R. Elazar: They were thirsty to shed blood. Why were the cities on both sides of the Jordan far from the boundary, and the middle one was near? Said Abayi: Because Shechem was also full of murderers; as it reads [ibid., ibid. 9]: "And troops that lie in wait for a man, like the band of priests, they murder on the way to Shechem." * "Band of priests"—what does it mean? Said R. Elazar: They conjoin themselves to kill as the priests conjoin themselves to receive the heave-offering from the barns. But were there not more cities of refuge? Is it not written [Numb. xxxv. 6]: "And in addition to them shall ye give forty and two cities"? Said Abayi: The former protect the refugee at any rate, whether he is aware of that city being a place of refuge or not; while the latter accept him only when he was aware.

Was then the city of Hebron indeed a city of refuge? Does it not read [Judges i. 20]: "And they gave Hebron," etc. Said Abayi: It was only the suburb of it, as it reads [Joshua xxi. 12]: "But the fields of the city, and its villages, they gave to Caleb." Was Kedesh one of them? Does it not read [ibid. xix. 37]: "And Kedesh, and Edre'i," etc.? And there is a Boraitha that the city of refuge must neither be too large nor too small, but middle-sized ones. (The cities mentioned there were, however, all large ones?) Said R. Joseph: "There were two cities of the same name." Said R. Ashi: As, for instance, Sliquus and Aquri of Sliquus.

The text says: Middle ones. To this is added: They must

* Leeser's translation does not correspond at all.

be situated in places where there is water, and also where there are markets; and if such are not found, the same must be established. Also must they be situated near the army, and if the army was diminished, it must be added. If the dwellings in such cities become vacated, there must be brought new people composed of priests, Levites, and Israelites; and ammunition must not be sold in such cities, according to R. Ne'hamayi. The sages, however, allow this. But both agree that neither snares (for catching beasts) nor rope factories must there be established. All this is to prevent the relatives from coming to the cities in question. And R. Itz'hak said: This is inferred from [Deut. iv. 42]: "And that he should flee unto one of these cities and live," which means you shall prepare for him all the necessities of life. And there is a Boraitha that if a disciple is exiled, his master is exiled with him; because the expression "and live" means you shall supply him with the sources of moral life. And R. Zera said: From this we infer that one shall not teach a disciple of bad character. R. Johanan says: If it happens that the head of a college is exiled, the whole college is exiled with him. Is that so? Did not R. Johanan say that the study of the Torah relieves one; for immediately after the verse "in the wilderness" stated above, is written "and this is the law"? This presents no difficulty: it relieves only at the time he is occupied with it, but not otherwise. And if you wish, it may be said that it relieves from the Angel of Death; as it happened with R. Hisda, who was studying continuously, so that the Angel of Death could not come near him until he caused the cedar in the yard of the college to break, the noise of which stopped his studying, and the Angel of Death took hold of him. R. Tan'hum b. Hanilaye said: Why is the tribe of Reuben mentioned first among the cities of safety? Because he was the first to save Joseph from his brothers, as it reads [Gen. xxxvii. 21]: "And when Reuben heard it, he delivered him out of their hand."

R. Simlae lectured: It reads [Deut. iv. 41]: "Then Moses set aside three cities on this side of the Jordan, toward the rising of the sun." The Holy One, blessed be He, said to Moses: "Thou hast made the sun shining toward the murderers."

R. Simaye lectured: It reads [Eccl. v. 9]: "He that loveth money will never be satisfied with money; but he that loveth abundance, will finally have income."* He that loveth money

* Leeser's translation does not correspond at all.

means Moses, our Master, who was aware that the three cities on the other side of the Jordan do not accept until the other three cities are selected; nevertheless he selected them, saying: I shall not fail to perform a meritorious act which came to my hand. And "he that loveth abundance"—who is fit to lecture before a crowd, he who possesses the fruits of knowledge (of Bible, Mishna, Halakha and Hagada). And this is what R. Elazar said: It reads [Psalm cvi. 2]: "Who can utter the mighty acts of the Lord? He who can publish all his praise." (He takes the latter not as a question, but as answer to the former.) The rabbis, according to others, Rabba b. Mari explained this passage thus: He who loves the abundance of scholars possesses the fruit of knowledge; and the rabbis looked upon Rabha b. Rabba who possessed such a quality. R. Ashi said: He who likes to learn among a crowd of scholars possesses the fruit of their knowledge. And this is what R. Jose bar Hanina said: It reads [Jer. l. 36]: "The sword on the *badim* means the sword may cut the necks of the scholars who are studying separately each for himself; and not only this, but they become also foolish and also commit a crime thereby." * Rabina said: He who loves to teach many, has the fruit of knowledge. And this is what Rabbi said: I learned much from my masters, more, however, from my colleagues, and still more from my disciples.

R. Jehoshua b. Levi said: It reads [Psalm cxxii. 2]: "Our feet are now standing within thy gates, O Jerusalem." Who caused that our feet shall conquer the enemy and stand within the gates of Jerusalem? The same gates in which the Law was studied. He said again: It reads [ibid., ibid. 1]: "I was rejoiced when they said unto me, Unto the house of the Lord let us go." David said before the Holy One, blessed be He, Lord of the Universe, I have heard people say, When will this man die, so that Solomon, his son, shall build the Holy Temple and we will rejoice? And He answered [ibid. lxxxiv. 11]: "For better is a day in thy courts than a thousand." I like one day in which thou art occupied with the Law better than the thousand burnt-offerings which Solomon, thy son, will sacrifice before me in the future.

"*To prepare roads,*" etc. There is a Boraitha. R. Eliezer

* The analogy of expression used in text to infer the foolishness and sin mentioned, we omitted; it was also impossible to use the translations of Leeser, etc., as the Talmud has here its own way.

b. Jacob said: "The word 'refuge' was written at every crossing for the purpose that the murderer shall recognize the way to take. Said R. Kahana: This is inferred from the above-cited verse [Deut. xix. 3], which means you shall establish all preparations needed on this way.

R. Hamma b. Hanina, when he wanted to lecture on this case, used to begin with [Psalm xxv. 8]: "Good and upright is the Lord: therefore he pointeth out to sinners the right way," saying, If He puts the sinners in the right way, so much the more the upright.

Resh Lakish used to begin his lecture on this case with [Ex. xxi. 13 and I Sam. xxiv. 14]: "From the wicked proceedeth wickedness." The Scripture speaks about two men each of whom killed a person: one of them intentionally, and the other unintentionally, but there were no witnesses in either of these cases. The Holy One, blessed be He, appoints them into one inn, and he who had killed intentionally is placed under a ladder, while the other, who killed unintentionally, descends the steps, falls and kills him (the one under the ladder). Hence the outcome is: he who has killed intentionally was killed; and the unintentional killer was exiled.

Rabba b. R. Huna in the name of his father, according to others the latter in the name of R. Elazar, said: From the Pentateuch, Prophets, and Hagiographa it is inferred that the way the man likes to follow, he is led upon by Heaven. From the Pentateuch [Numb. xxii. 12]: "Thou shalt not go with them," and [ibid., ibid. 20]: "Rise up, go with them"; from the Prophets [Is. xlviii. 17]: "Who teach thee for thy profit, who lead thee by the way thou shouldst go"; and from Hagiographa [Prov. iii. 34]: "If (it concern) the scornful, he will himself render them a scorn; but unto the lowly doth he give grace."

R. Huna said: If a relative killed the murderer who had already been in the city of refuge, he is nevertheless free; because he holds that the expression "he deserveth not a judgment of death" [Deut. xix. 6] applies to the relative. An objection was raised from the following: The just-cited verse speaks of the murderer; but perhaps it speaks of the relative of the dead? For this purpose it reads [ibid., ibid. 4]: "When he hath not been an enemy to him in time past." Hence the verse in question speaks of the murderer? He (R. Huna) holds with the Tana of the following: The verse in question speaks of the

relative; but perhaps of the murderer? For this it reads (4) "enemy"; hence the verse in question necessarily concerns the relative.

Another objection was raised from our Mishna which states: "Two scholars have to accompany him." Was it not for the purpose of warning the relatives, that, in case they would attempt to slay, the same will be done to them? Nay, only to reconcile them; they should not consider him as a blood-shedder, for he has done it by error. And to the opinion of R. Mair that the murderer himself could do so, it was answered: "Outside defence is more considered."

R. Elazar said: A city, the majority of which are murderers, does not protect; as it reads [Joshua xx. 4]: "And speak in the ears of the elders of that city *his* words," but not the words which they (the elders) had to speak for themselves some time ago. The same said again that a city in which there are no elders does not protect. In this case, however, R. Ami and R. Assi differ. According to one it does, and according to the other it does not. The same differ concerning a stubborn and rebellious son, and also concerning breaking the neck of the heifer [Deut. xxi.], as in all the cases the elders are mentioned, and they are not found; however, he who holds that it does not matter maintains that it was written only because it is usual that a city should have its elders, but not to prevent if there are none.

R. Hama b. Hanina said: Why is the portion of murderers with a strong language [Joshua xx. 1]: "And the Lord *spoke* to Joshua" instead of *said*; and also at the end of the verse (2), "Whereof I have *spoken*"? Because this command was the only one which the Lord commanded Joshua to fulfil what had been already written in the Pentateuch. And whence do we know that *spoke* is stringent language? From [Gen. xlii. 30]: "Spoke roughly." However, concerning this subject R. Jehudah and the rabbis differ: according to the one it was because Jeshuah delayed to establish them, and according to the others the reason is as said above.

It reads [Josh. xxiv. 26]: "And Joshua wrote these words in the book of the law of God." R. Jehudah and R. Ne'hamiah differ: according to one he wrote only the eight verses, which begin with "And Moses died"; according to the other he wrote the portion of the cities of refuge. And the latter explains the expression "in the book of the law of God" thus: Joshua wrote

in *his* book that which had been already written in the book of the law of God.

In case the Holy Scrolls were sewn with thread of flax, R. Jehuda and R. Meyer differ: according to the one it is valid; according to the other it is not. The latter's reason is [Ex. xiii. 9]: "In order that the Law of the Lord may be in thy mouth," we see, then, that the Law is compared to Tephilin, and as the Tephilin are to be sewn with thread of a calf, the same is the case with the Holy Scrolls. And according to the other it is compared only as regards the hide of such cattle which is allowed to the mouth, but not concerning other laws. Said Rabh: I have seen the Tephilin of my uncle and they were sewn with thread of flax. (Says the Gemara): The Halakha, however, does not prevail with him.

MISHNA VI.: There is no difference between the high-priests who were anointed with the holy oil (in the first Temple) and those who were sanctified by the holy dress (in the second Temple), and even him who has temporarily substituted the high-priest in case of sickness—they all release the murderer by their death. R. Jehudah said: Even the priest who was anointed for the war only. Therefore the mothers of the priests used to support the murderers with food and clothes that they shall not pray death to their sons.

GEMARA: Whence is this deduced? Said R. Kahana: From [Numb. xxxv. 25–28], where the death of the high-priest is mentioned three times, from which we infer the three kinds of priests in the Mishna. And R. Jehudah, who adds also the anointed for the war, infers it from verse (32), where the priest is mentioned the fourth time. The rabbis, however, do not care to add same, because the word *high* is not mentioned there, hence it means one of the above-mentioned.

"*The mothers of the priests*," etc. They shall not pray, but what if they should, would it effect? Does it not read [Prov. xxvi. 2]: "As the bird (cometh) to flit away, as the swallow, to fly off: so will an undeserved curse not come (to fulfilment)"? Said a certain elder: I understood from the lecture of Rabha that it is counted as a sin to the priest, who should pray that no accident might happen in that generation, and he did not. As it happened with one whom a lion has consumed a distance of three passas from R. Jehoshua b. Levi's dwelling, and Elisha did not talk to him for three days. Said R. Jehudah in the name of Rabh: The curse of a sage and be it for nothing, is realized;

and this we see to have been the case with Achithaphel. When David was digging under the altar a hole to reach the watery depth of the earth (-*Shithin*), the water came up and menaced to inundate the world; whereupon David asked: Is it allowed to inscribe the Holy name upon a piece of broken clay and drop it into the water; and as no answer came from the people present, he exclaimed: Whoever amongst ye knows and abstains from answering, shall be suffocated! Then Achithaphel concluded *a fortiori* thus: If the Lord has allowed His name to be erased by water in order to make peace between husband and wife, so much the more so when the peace of the whole world is concerned. Accordingly he decided that it is allowed; David then following this decision dropped the bit of clay with the name on into the water, and the water turned back into its depths. Nevertheless Achithaphel choked himself [2 Sam. 17, 23]; all which corroborates Rabh's saying quoted above by R. Jehudah.

R. Jehudah in the name of Rabh said: If a sage has put some one under the ban conditionally, a release must take place at any rate by the same sage or by some other one. And this is inferred from the case of Judah, of whom it reads [Gen. xliii. 9]: "If I bring him not unto thee," etc. R. Samuel b. Na'hamoni in the name of Jonathan said: It reads [Deut. xxxiii. 6-7]: "May Reuben live . . . this is the blessing of Judah." (Why, then, is Judah mentioned just after Reuben and also his blessing distinguished with the expression "and *this*"?) Because all the forty years during which Israel was in the desert, the remains of Judah were dismembered in his coffin until Moses arose and prayed for him, saying: Lord of the universe! Who caused Reuben to confess if not Judah? Hear, Lord, the voice of Judah!" Immediately, then, the members of his body were placed in their order. However, he was not allowed to enter the heavenly college until Moses prayed: "And bring him unto his people." Still he could not discuss with the rabbis; to this Moses said: "Let the power of his hand contend for him!" Still he could not answer questions; thereupon Moses said: "And be thou a help to him from his adversaries."

The schoolmen propounded a question: When is the murderer released? Does the release of the murderer require the death of all those priests mentioned in the Mishna or the death of one of them suffices? Come and hear: If his decision was rendered at the time when a high-priest did not exist, he remains there forever. Now, if he is released by the death of one

of them, let him be returned by the death of a substitute? Hence he must wait until the death of them all. However, perhaps the Mishna speaks of a case where there was no substitute?

MISHNA VII.: If after the decision had been rendered the high-priest dies, he is not exiled. If, however, the priest dies before it was rendered and another priest was appointed and the decision was then rendered, he returns on the death of the second one. If, however, his decision was rendered while a high-priest did not exist, or he was to be exiled, because he killed a high-priest, or a high-priest who himself killed accidentally, he never returns from his exile.

The murderer is never to go out from his place of exile even if he was a witness to a meritorious or to a civil, or even to a criminal case. And even if Israel needs him and should he be a captain in Israel, like Johab b. Zeruah, he must not go out all his life; as it reads [ibid., ibid. 25]: "To the city of his refuge, whither he had fled," which means there shall be his dwelling, there shall be his death, there his burial.

As the city itself protects, so does its limit; therefore, if it happens that a murderer goes outside of the limit and the relatives of the deceased meet him, according to R. Jose, the Galilean, it is a meritorious act for the relatives to kill him; and if a stranger kills him he is not responsible. R. Aqiba, however, maintains that a relative is not responsible, but it is not meritorious; while a stranger is responsible for his death.

GEMARA: What is the reason of the first statement in the Mishna? Said Abayi: This is to be drawn by a *fortiori* reasoning: he who was already exiled is released, so much the more is he who is only sentenced to it. But perhaps he who was already in exile is atoned, but not he who was not there as yet? Does, then, the exile atone? The death of the high-priest atones.

"Dies before it was rendered," etc. Whence is this deduced? Said R. Kahana: From [Numb. xxxv. 25]: "And he shall abide in it until the death of the high-priest, who hath been anointed with the holy oil." Who has anointed him? Certainly not the murderer! It, therefore, means: He who was anointed in his days. But what has the high-priest done that the murderer's fate should depend upon his death? He ought to have prayed that the decision of the court be in behalf of the defendant, which he did not.

Abayi said: We have a tradition that if after the decision was rendered the defendant dies, his remains must be carried to

the city of refuge; as it reads [ibid., ibid. 32]: "That he should come again to dwell in the *earth** until the death of the priest." Dwelling in the *earth* means the grave. There is a Boraitha: If he dies in the city of refuge before the death of the high-priest, his remains may be carried to his native place; as it reads [ibid., ibid. 28]: "The manslayer may return unto the earth of his possession." What is meant by "the earth of his possession"? The *grave*. In the case when after the decision had been rendered, the high-priest was found unfit for his dignity, *e.g.*, he was the son of a married, or of one who performed the ceremony of *Halitsah*, R. Ami and R. Itz'hak of Nafha differ: one holds that the priesthood is dead, and it is equivalent to the death of the high-priest; while the other holds that it is abolished, hence he was never a priest and the decision against the murderer was rendered when a high-priest did not exist; accordingly, he must remain there forever.

"*And a high-priest did not exist*," etc. R. Jehudah said in the name of Rabh: It reads [I Kings ii. 28]: "And Joab fled unto the tabernacle." Joab erred twice in so acting: (*a*) he thought that the horns of the altar protect, while the roof of the Temple protects; and (*b*) he thought that the altar of the tabernacle of Shila protects; in reality, however, the altar of the Temple, only, protects. Said Abayi: He erred also in this: he thought that it protects every one, while in reality it protects only a priest on duty, which was not the case with him.

Resh Lakish said: It reads [Isaiah lxiii. 1]: "Who is this that cometh from Edom, dyed red in his garments from Bozrah?" The heavenly ruler of Rome will err thrice in the future. (*a*) He will think Bozrah protects, while only Bezer does so; (*b*) that it protects even an intentional criminal, while it does so only an unintentional; and (*c*) it protects only a man, but not an angel as he was.

R. Abuhu said: The cities of refuge are not given for cemeteries, as it reads [Numb. xxxv. 3]: "And their open spaces shall be for their cattle, and for their goods, and for all their requirements," *i.e.*, requirements for life, but not for death; and the statement above that the murderer must be buried in the city is no objection, as concerning him the Scripture dictates a separate law.

* The term in Hebrew is *erefs*, literally *earth*. Leeser translates *land* in accordance with the sense.

"*So does its limit.*" There is a contradiction from the following: It reads [ibid., ibid. 25]: "And he shall abide in it," but not in its limit? Said Abayi: This presents no difficulty: concerning protection it does, but to dwell he is not allowed.

"*Outside of the limit.*" The rabbis taught: It reads [ibid., ibid. 27]: "And the avenger of the blood should kill the manslayer: he shall not be guilty of blood." It is a meritorious act of the avenger to do so; and every stranger may do so if there is no relative. Such is the decree of R. Jose the Galilean. R. Aqiba, however, maintains that if the relative likes to do so, he may; but it is not meritorious. A stranger, however, if he did so, is guilty. The reason of the former is: it does not read "*if* he will kill him; and the reason of the latter is: it does not read "*he shall* kill him." Mar Zutra b. Tubiah in the name of Rabh, however, said that if the relative has killed him while he was out of the limit, he is to be killed if he did it intentionally. But this is not in accordance with R. Jose, nor with R. Aqiba. In accord with whom, then, is his theory? With the Tana of the following Boraitha: R. Eliezer said [ibid., ibid. 12]: "Until he have stood before the congregation for trial." To what purpose is this written (is it not self-evident that he is not to be executed without a trial)? Because (27) reads "should kill . . . not guilty of blood"; lest one say that so it is even if the avenger had killed him before he was tried and found guilty, therefore it reads "until he have stood . . . for trial." R. Jose and R. Aqiba, however, infer from the just-cited passage that if the Sanhedrin themselves have seen one killing a man, they must not execute him unless he has been tried before another court and found guilty.

The rabbis taught: It reads (26): "Should at any time pass the boundary," etc., which means intentionally, but whence do we know as to if he pass unintentionally? Therefore, "at any time," which would be superfluous if not signifying this case. But is there not a Boraitha to the effect that if one has killed intentionally he is put to death, etc.? This presents no difficulty: the Boraitha cited is in accordance with him who holds that the Scripture speaks in accordance with human language, while the rabbis do not hold so. Said Abayi: It seems to me that he who holds that the Scripture speaks in accordance with human language is correct in this case, because his final case should not be more rigorous than the beginning. In the beginning if he had killed a man intentionally he is put to death, and

if unintentionally he is exiled; and the same is to be his final case: if he goes out of the limit intentionally, he is killed; but if unintentionally, he must be returned to his exile.

If a father has killed a son unintentionally, his other son may be considered the avenger in accordance with one Boraitha; another Boraitha, however, states that he must not be so considered. Shall we assume that one is in accordance with R. Jose and the other with R. Aqiba? How can such be borne in mind? Is it not decided (Sanhedrin, p. 246) that a son must not be appointed by the court to punish his father with whatsoever punishment, etc.? Therefore, we must say that one Boraitha speaks of his son, and the other of his grandson.

MISHNA VIII.: A tree placed in the limit, but its branches extending outside of it or *vice versa*, in any case the inclination of the branch must be considered.

GEMARA: There is a contradiction from the following: A tree which stands inside but is inclined outside, or *vice versa* if from opposite the surrounding wall and inside, it is considered as inside; and if the same were inclined outside it is considered as outside.* Do you contradict tithe with cities of refuge? Concerning tithe the Scripture relies upon the surrounding wall of the city, but concerning the cities in question it relies upon the dwelling, and one can use his dwelling under the branch but not upon the root of a tree. Rabh Ashi explains the expression of the Mishna, "the inclination of the branch must be considered," with *also, i.e.*, the inclination must also be considered, and so much the more the root of it.

MISHNA IX.: If one killed accidentally in the city of refuge, he is to be exiled from one neighborhood to another; and if such happen to a Levite, he is to be exiled from one city to another.

GEMARA: The rabbis taught: It reads [Ex. xxi. 13]: "Will I appoint thee a place," etc., *i.e.*, while thou art still alive. "Whither he shall flee" signifies that if such happen while Israel was still in the desert, they were exiled. And where to?—to the camp of the Levites. From this it was said that if it happen to a Levi that he killed, he is exiled from one district to another; and even if he was exiled to the district in which he resides, it protects him. And R. A'ha b. R. Aika said:

* This Mishna is concerning the second tithe which must be eaten inside of Jerusalem only.

This may be inferred from [Numb. xxxv. 28]: "Because in the city of his refuge shall he remain," *i.e.*, "his refuge" means which was his before he was exiled.

MISHNA X: Similarly, if a murderer was exiled to the city of refuge and the townsmen like to honor him, he has to say to them: "I am a murderer"; and if they say it does not matter, he may accept. The exiled have to pay to the Levites rent for their dwellings. So R. Jehudah. R. Mair, however, said: They have not. If, after the high-priest's death, he returns to his city, he is returned to that office which he occupied before (*e.g.*, head of a college), according to R. Mair. R. Jehudah, however, maintains: He must not occupy the same.

GEMARA: Said R. Kahana: The Tanaim of the Mishna differ concerning the rent in the six cities in question only, for one explains the expression "unto you" to mean for protection only, and the other one explains it "unto all your necessities." However, on the addition of 42 cities all agree that they have to pay rent. Said Rabha to him: There cannot be any doubt in the explanation of "unto you," which certainly means to all your necessities, and therefore it is the contrary: they differ concerning the 42 cities; the one holds they were added only for protection, and the other holds they were added on equal terms with the six; but concerning the six themselves all agree that there was no rent.

"*He returns to his office.*" The rabbis taught: It reads [Lev. xxv. 41]: "And he shall return unto his own family, and unto the possessions of his father shall he return," *i.e.*, he may return only to his family, but not to the office which his parents occupied. So R. Jehudah. R. Mair, however, said he may return to the offices of his parents, and the same is the case with exile. And this is inferred from the pleonastic words, "shall he return." What does it mean, "the same is with exile"? As the following Boraitha: The murderer shall return to the land of his possession, *i.e.*, he may return only to the land, but not to the office of his parents. So R. Jehuda. R. Mair, however, maintains: He may also occupy the place of his parents, because of the analogy of expression "return," which is mentioned in both places, Ex. xxi. and Numb. xxv.

CHAPTER III.

WHO IS SUBJECT TO THE PUNISHMENT BY STRIPES.—THE DETAILS OF THE PROCEDURE REGARDING THE EXECUTION THEREOF.—WHAT CIRCUMSTANCES FREE THE CULPRIT THEREFROM.—THE RESPECTIVE DUTIES OF THE THREE JUDGES WHO MUST WITNESS THE EXECUTION.

MISHNA I.: To the following stripes apply: He who had intercourse with his own sister, with his sister of his father or his mother, or the sister of his wife, with the wife of his brother or his father's brother, or with a woman while menstruating. (To each of these crimes Korath—shortened life—applies, and according to this Mishna the human court has a right to punish them also with stripes.) The same is the case if a high-priest marries a widow; a common priest—a divorced or her who performed the ceremony of Halitzah; an Israelite—a bastard or a descendant of the Gibeonites; and the same is, if a daughter of an Israelite marries the just-mentioned persons. If a high-priest marries a widow who was previously divorced, he is to be beaten twice, because of two names ("widow" and "divorced"); if, however, a common priest marries a widow who has previously performed the ceremony of Halitzah, he is liable only for the violation of one negative. A high-priest who was unclean and partook of things belonging to the sanctuary or entered the sanctuary while unclean; and he who consumed illegal fat, blood, or meat left overnight from the sacrifice, or *piggul*,* or unclean meat, and also of such which was slaughtered and brought outside of the Temple; he who ate leaven on Passover, ate or labored on the Day of Atonement; who compounded oil similar to that of the Temple, or compounded the frankincense of the Temple, or anointed himself with the oil used in the Temple; who ate carcasses or animals preyed by beasts, or reptiles—to all of them stripes apply.

It applies also to him who partook of mixture, of first tithe

* *I. e.*, meat of a sacrifice illegally slaughtered.

of which the heave-offering was not separated as yet, of second tithe and eatables belonging to the sanctuary which were not redeemed yet. How much has one to partake of the mixture to make him liable? According to R. Simeon, whatsoever; while to the rabbis, not less than the size of an olive. Said R. Simeon to the sages: Do you not admit that if one consumed an ant—minute as it is—he is culpable? And he was answered: Because it is a creature in itself. Rejoined he: One grain of wheat is also complete as to its creation.

GEMARA: The Mishna treats of those crimes to which Korath applies, but not of those under the category of capital punishment. Hence it is in accordance with R. Aqiba of the following Boraitha: Crimes under the category of Korath, as well as under that of capital punishment, are also punished with stripes if they were so warned. So R. Ismael. R. Aqiba, however, maintains: Only that of Korath; because if they repent after the punishment with stripes, the heavenly court forgives them; but if they are under capital punishment the human court cannot forgive them even though they repent.* What is the reason of Ismael's theory? [Deut. xxviii. 59]: "Then will the Lord render peculiar thy plagues," etc. What the peculiarity is, is not stated; however, from [ibid. xxv. 2]: "The judge shall cause him to lie down" (the expression of which has a similarity), we understand that the peculiarity is stripes; and in [ibid. xxviii. 58] it reads: "If thou wilt not observe," etc.; hence the violation of all negative commands is punished by stripes. But if so, let them apply also to the violation transgression of a positive commandment? It reads: "If thou wilt *not* observe." R. Aqiba's reason is: concerning stripes the expression is "according to the degree of his *fault*," which means for one fault, but not for two faults, to which capital punishment applies.†

"*Things belonging to the sanctuary*," etc. It is correct, the transgression of entering the sanctuary of which the punishment as well as the warning is stated—viz.: the punishment [Numb. xix. 13]: "Hath defiled the tabernacle of the Lord; and that soul shall be cut off from Israel," and the warning [ibid. v. 3]:

* The text contains also what Itz'hak said, repeated from Kherithoth,—the proper place.

† The text contains a long discussion about this subject, which is repeated in many places of the Talmud; here, however, this is very complicated and not important, and therefore omitted.

"That they defile not their camp"; but concerning eating sanctity, we find the punishment [Lev. vii. 20]: "The flesh . . . his uncleanness upon him . . . shall be cut off." But where is the warning to it? According to Resh Lakish from [ibid. xii. 4]: "Any thing hallowed shall she not touch"; and R. Jehanan said: Bardelah taught: From an analogy of expression "his uncleanness" here, and the same expression is found in the above quotation [Numb. xix.]. As there the punishment and the warning are stated, the same also applies to this case.

There is a Boraitha in accordance with Resh Lakish: "Hallowed shall she not touch" is a warning to the consumer. You say *consumer*, but perhaps it means literally (touching); therefore it reads further on, "into the sanctuary shall she not come," etc. Hence hallowed is compared to the sanctuary. As to the transgression of the sanctuary Korath applies, so also the warning concerning the hallowed must speak of a similar punishment (*i.e.*, consuming). But not of touching, to which Korath does not apply.

Rabba b. b. Hanna in the name of R. Jehanan said: To a negative command which is preceded by a positive one, stripes apply. There were people who questioned R. Johanan whether he said so, and he answered: Nay! Said Rabba: I swear that he said so, and it is also written and taught; "written" [Numb. v. 3]: "Shall ye send out . . . that they defile not their camps"; and "taught" in our Mishna: A defiled person who enters the sanctuary gets stripes. But why did R. Johanan retract his previous statement? Because the case of a seducer was difficult to him—namely, a seducer who had divorced his seduced wife, if he is a common Israelite, remarries her, but is not punished with stripes; if he, however, was a priest (who is forbidden to marry a divorced woman), he gets stripes and does not remarry. Now, as in this case, the negative command: "That he must not divorce her all his life" is succeeded by the positive command: "That he shall marry her," why, then, should not a common Israelite be punished with stripes for divorcing her? Said Rabha: The reason why he does not get stripes is that the positive "He shall remarry her" rests upon him all his life. (This is inferred from the words "all his days," which, if they were not explained that in case he has divorced her he shall remarry her, would be superfluous; with the explanation, however, the command, "He shall remarry her," is

attached to the negative "He shall not divorce her"; and there is a rule that to a negative command which is succeeded by a positive, no stripes apply.) And when Rabbin came from Palestine he said the same in the name of R. Johanan. Said Rabh Papa to Rabha: Why did R. Jehanan say above that he gets stripes? The negative in question is not similar to the negative of "muzzling" (which was said that it is placed there to teach that only to such which is not succeeded by a positive stripes apply)? Rejoined Rabh Papa: Should the negative become weaker because of the succeeding positive? Answered Rabha: According to your theory stripes should apply to each negative which is succeeded by a positive, which is not the case. Said Rabh Papa again: There it is different, as the positive usually comes to remove the negative (*i.e.*, one shall *not* do so, but if he did, *shall* he do so and so). But Rabha's explanation holds good only according to him who holds that the culprit does not get stripes unless he abolishes the succeeding positive command. (*I.e.*, the seducer who has divorced his wife may always say: "I will remarry her." Hence the positive is not abolished, and therefore he is not liable. But according to him who holds that only then is he free from stripes when he fulfils the command (*i.e.*, if he comes to the court, which commands him to marry her immediately, and if he does not listen he gets stripes). Hence, you cannot say that this positive rests upon all his life, and consequently it does not modify its preceding negative? Let us see: this objection applies only to Johanan's foregoing theory, and he said to the disciple who has repeated before the Boraitha concerning a positive which succeeds a negative: "Go and teach thus: Only when he has abolished the succeeding one, but not otherwise." R. Simeon b. Lakish, however, differs, and says: He is free from stripes only when he has fulfilled the succeeding one.

What is their point of difference? A doubtful warning—*e.g.*, in the case in question, if he was warned that he shall not divorce her, it was still doubtful whether after divorcing he will not remarry her; hence such a warning is not considered certain. But, nevertheless, according to R. Johanan it suffices, so that he may be punished; but according to Resh Lakish he is not. And both differ in the explanation of R. Jehudah's theory in the following Boraitha: It reads [Ex. xii. 10]: "And ye shall not let anything of it remain until morning; and that which remaineth of it until morning ye shall burn." We see, then,

that the verse comes to place a positive after a negative for the purpose that if one did leave he shall not be punished, and has only to burn it. Such is the decree of R. Jehudah. R. Johanan explains R. Jehudah's words thus: The reason why he does not get stripes is the succeeding positive, but if it were not he would be punished, although the warning was doubtful, as he could thereafter burn it. Resh Lakish, however, explains it thus: The reason why he does not get stripes is the succeeding, but if it were not he would get stripes, as to a negative command that does not contain manual labor, stripes do apply. But let us see: Resh Lakish cannot deny that such a warning was a doubtful one, and R. Johanan cannot deny that such a negative does not concern manual labor; what, then, is the use of their explanation? Both agree that, if not for the succeeding, stripes would apply; notwithstanding that there were both a doubtful warning and a positive of no manual labor. Resh Lakish shares the opinion of R. Jehudah of another Boraitha (Chulin 82, b.), in which R. Jehudah admits that a doubtful warning is not considered; and R. Johanan holds with R. Jehudah of the following: R. Idi b. Abin in the name of R. Amram and R. Itz'hak, quoting R. Johanan, said: R. Jehudah in the name of R. Jose the Galilean declared that for the violation of all the negatives of the Torah, if there be manual labor implied, the transgressor is punished with stripes, but not if mental, except in the cases of an oath, exchanging,* and cursing his neighbor by the Holy name. But if so, then, R. Johudah contradicts himself? Resh Lakish may say that there are two Tanaim who said in the name of R. Jehudah differently, and R. Jehanan may say that in the latter Boraitha R. Jehudah declared the theory of his master, but his own opinion he declared in the former Boraitha.

There is a Mishna: He who took the mother-bird with her children gets, according to R. Jehudah, stripes, but is not obliged to send away the mother-bird; and according to the sages, he sends away, but is not punished with stripes; as the rule is: for a negative which is conjoined with a positive there is no liability. Said R. Johanan: There is only one more case similar to this. And to the question of R. Elazar, What is it? he rejoined: Go and find out! He did so and found the following: "If a seducer has divorced," etc., v. above, p. 37. But this can be correct only with him who holds that he is released from

* Lev. xxvii., 10.

stripes after the fulfilment of the positive only. But according to him who holds that stripes do not apply unless the positive is abolished, such can be done only with the former mother-bird by killing her, as then the positive he "shall send her away" is abolished. But how can such be found in the case of the divorce in question; and should you say that he killed her, then he deserves capital punishment; and there is a rule that stripes do not apply to him who is to be executed? Said R. Simi of 'Huznah: "E.g., he accepted betrothal money for her from some one else, hence she becomes the wife of another, and the positive "he shall remarry" is abolished. Said Rabh: Such cannot be considered; as in case she made him her messenger to accept the above, she may ignore the message; and, if he did it without asking her who gave him the right to such that it should be considered? Therefore said R. Simi of Nehardea: If, e.g., he has made a vow publicly that he must not derive any benefit from her (and such a vow cannot be absolved), hence the positive is abolished and he is liable. Are there indeed no more similar cases to those by R. Johanan stated? Is there not robbery to which it reads, "Thou shalt not steal," and the positive "He shall return it," and also concerning a pledge to which the negative is, "Thou shalt not come to pledge," and the positive is "Thou shalt return the pledge at sunset"? And these two cases also can be explained in both ways: Fulfilled the positives or not, abolished the positives or not? With these cases it is different, for he has to pay, and there is a rule: He who pays does not get stripes. But is there not "Peah," the negative of which "thou shalt not cut . . . the corners" and the positive "unto the poor . . . leave" [Lev. xxiii. 22], which also may be explained in both ways as said above? Therefore we must say that R. Jehanan by his statement, There is only one similar case, meant "Peah" and not a seducer; since concerning the latter the Law dictates that even if there were a vow on the mind of the public* it can be absolved when such absolution is necessary to a meritorious act; as it happened with a children-teacher who struck too much the children and R. A'ha excommunicated him, Rabbina, however, returned him, because he could not find as good a teacher.

"*Carcasses preyed*," etc. Said R. A'ha: He who neglects nature's duties when called, transgresses the negative "ye shall

* This will be explained in Tract Gittin.

not make your souls abominable" [Lev. xx. 25]. And R. Bibi b. Abayi said: He who drinks water from the horn of a barber transgresses the same.

"*Partook of mixture, first tithe,*" etc. R. Bibi in the name of Resh Lakish said: They differ only in case he take a grain of it, but as regards flour all agree that the size of an olive is needed. R. Jeremei in the name of same authority, however, said: As they differ in respect of wheat so they do in that of flour too. An objection was raised from our Mishna. R. Simeon said to them: Do you not agree if he ate an ant, etc., and to the answer of the rabbis "because it is a creature" he rejoined, A wheat grain is also complete in its creation, hence we see that they only differ in respect of the grain, but not in that of flour? R. Simeon meant to say thus: According to my opinion it is the same with flour, but to your theory, admit that if he ate a grain of it he shall be culpable, because of its completeness. The rabbis, however, maintain: We cannot compare a grain to a living creature. There is a Boraitha in accordance with R. Jeremei: R. Simeon said concerning stripes: Size does not count; it counts only concerning sacrifices.

MISHNA II.: Stripes also apply to the following: To him who partook of the first fruit before the ceremony of reading* was performed; of the sacrifices under the category of the most holy outside of the curtains, and of those under the category of a minor grade or of second tithe outside of the surrounding wall; and also to him who breaks a bone in the Paschal Lamb if it was a clean one. However, if he left from a fit one, or broke a bone of an unfit one, stripes do not apply.

To him who takes a mother-bird with her children from her coop according to R. Jehudah stripes apply, but he is not obliged to send the mother away, and according to the sages he must send her away and stripes do not apply, according to the rule: If a positive succeeds a negative, no stripes apply.

GEMARA: Said Rabba b. b. Hana in the name of R. Johanan: Our Mishna is in accordance with R. Aqiba, whose name is omitted, as it is one of the many anonymous Mishnayoth which bear his opinion without mentioning his name. The sages, however, maintain that concerning first fruits, their placing on the Temple is the main thing, but the ceremony of reading

* Deut. xxv, 15.

is no obstacle. But why not say that it is in accordance with R. Simeon, to whose opinion, also, most of the Mishnayoth were composed anonymously? This comes to teach that R. Aqiba is in this respect in accordance with R. Simeon. Which R. Simeon? Of the following Boraitha: It reads [Deut. xii. 17]: "And the heave-offering of thy hand," which means the first fruits; said R. Simeon: What does this come to teach us? If only that they must not be eaten outside the surrounding wall, it was not necessary at all, as this could be inferred from tithe, regarding which the law is more lenient, by drawing a *fortiori* conclusion: If one consumes tithe regarding which the law is lenient, outside of the wall, he gets stripes, so much the more when he consumes first fruits, concerning which case the law is more rigorous; therefore we must say that the verse means to include him who had consumed them before the ceremony of reading was performed. And "thy freewill-offering" [ibid., ibid.], means thanks and peace-offerings. R. Simeon, however, said: The verse does not mean them, as it was not necessary to teach that they must not consume outside of the wall, for the same reason that they could be inferred from the leniency in tithe by the same *a fortiori* reasoning. Therefore it means him who consumed of same sacrifices before their blood was sprinkled. And "first born" means literally. Said R. Simeon: If it meant so, it was not necessary either, as this could likewise be inferred by a *fortiori* reasoning from tithe; and if it means: who commanded them before blood-sprinkling, it was also not necessary, as it could be inferred from the above-mentioned sacrifices by a *fortiori* reasoning, as they are more lenient than the first born. Therefore we must say that it means to include him who consumes a first born even after its blood was sprinkled. "Thy herds or of thy flocks" means sin and transgression-offerings. R. Simeon, however, said: That if it meant them, it would not be necessary, as they could be inferred by a *fortiori* reasoning from tithe; thanks and peace-offerings, and first born, all of which are more lenient than that of sin and transgression. Therefore it means to include him who consumed from the latter even after sprinkling outside of the curtain. "Nor any of thy vows" means burnt-offerings. Said R. Simeon: It would not be necessary, as they could be inferred by a *fortiori* reasoning from all those cases mentioned above, and therefore it means to include him who consumes from a burnt-offering after sprinkling even inside the curtains, that he get stripes. Said Rabha:

Every mother should bear a son like R. Simeon; although his theory can be objected to.*

It was taught: R. Gidel in the name of Rabh said: A stranger who had consumed sin- and transgression-offerings before their blood was sprinkled, is free from any punishment, because it reads [Ex. xxix. 33]: "And they shall eat those things wherewith the atonement was made to consecrate them, and to sanctify them; but a stranger shall not eat thereof, because they are holy." Now as the sprinkling of blood only atones, they can be considered holy only after the sprinkling was performed, but before this act they are not considered as yet holy; so that the negative "one shall not eat because they are holy" does not rest upon the consumer.

R. Elazar said in the name of Hosea: Concerning the first fruit, placing it in the Temple is the main thing, and not the ceremony of reading, as it is not considered the final act. In this case the following Tana'im differ [Deut. xxvi. 10]: "Thou shalt set it down before the Lord," *i.e.*, lift it up (before the Lord in all four directions). But perhaps it means literally, to place it? This is already written in verse (9). So R. Jehudah. R. Eliezer b. Jacob, however, maintains: This means literally (hence, this is the main act which completes the ceremony prescribed to first fruit); lifting up, however, he infers from [ibid., ibid. 4]: "And the priest shall take the basket out of thy hand," *i.e.*, that the priest shall lift it up towards all four directions. His reason is based on the analogy of expression "hand," which is also mentioned concerning peace-offering [Lev. vii. 30]: "His own hands shall bring it." And as there lifting up is needed by both the ripest and the owner of the offering, so also here the hands of both are needed. How so? The priest places his hand under those of the owner, and the two lift it up together.

Rabha b. Ada in the name of R. Itz'hak said: One is culpable for the first fruits immediately after they have seen the face of the Temple; and it is in accordance with the Tana of the following Boraitha: R. Eliezer said: Of the first fruit, a part of which was outside and a part inside, that of outside is considered common in all respects, while that of inside is considered holy in all respects. And R. Shesheth said: Only the placing is the main act of the ceremony and not the reading.

* The text argues as to how the theory can be objected to by a very complicated process of reasoning, and from things entirely irrelevant to the subject, and therefore omitted.

"*Most holy*," etc. But why the repetition? It has been already stated with regard to second tithe and things of the sanctuary which were not as yet redeemed? Said R. Jose b. Hanina: The second part of the Mishna treats of a case when both were pure—and the man and the second tithes which were consumed outside of the wall, and the first part speaks of the case when both were defiled, and that he consumed them within the city. And whence do we know that one is culpable because of defilement? From the following Boraitha: R. Simeon said [Deut. xxvi. 14]: "Neither have I removed thereof while unclean," * means neither when I was unclean and they were clean, nor *vice versa*. R. Eliezer said: Whence do we know that second tithe which became defiled may be redeemed even within Jerusalem! From [Deut. xiv. 24]: "Not able to carry it," which means also when it was not fit for eating, as the expression for carrying is "sheath" and in [Gen. xliii. 34], a similar expression is used for eatables. R. Bibbi in the name of R. Assi said: From the just-cited verse is to be also inferred that even one step outside the wall one may redeem the second tithe, if it is too heavy for him to carry it further. R. Hanina and R. Hosea, while sitting together propounded the following question: How is it if he was already within the gate of the wall in such a position that he was already inside but his load was outside—may he redeem it at that place or not? A certain old man then taught them in the name of R. Simeon b. Jo'hai: It reads [Deut. xiv. 24]: "Is too far from *thee*," means from the full extent of your capacity (and as he is already within the gate it cannot be considered far any longer, etc., and is not to be redeemed). R. Assi said in the name of R. Jehanan: The culpability for second tithe arises only after it has seen the face of the wall of Jerusalem, and the reason is [ibid. xii. 12]: "But before the Lord thy God must thou eat them," and (17): "Thou mayest not eat within thy gates"; hence, only at that time when the positive "before thy Lord must thou eat them" can be fulfilled, the negative: "Thou mayest not eat," etc., applies, but not otherwise.

MISHNA III.: He who makes a baldness in the hair of his head, or rounds it; he who destroys the corners of his beard, or makes incisions in his flesh for his dead, is liable. There is no difference whether he made one incision for five dead bodies or

* Leeser's translation does not correspond.

five incisions for one dead body, as in either case he is liable for five negatives. For rounding his hair he is also liable for two (one for one corner on one side, and another for the other corner on the other side; and for his beard five, for there are five corners.*

R. Eliezer, however, maintains that if he took off the whole beard at one time he is culpable only for one. The culpability arises only, then, when he took it off with a razor. R. Eliezer, however, maintains that the same is the case if he took it off with snuffers or a scraper (an instrument with which the hairs are removed singly).

GEMARA: The rabbis taught [Lev. xxi. 5]: "They shall not make any baldness," lest one say that if one made several baldnesses in his head he is culpable only for one, therefore it reads, "any baldness" (*i.e.*, culpable for each one). And to what purpose is it written "upon their head"? Because [Deut. xiv. 1]: "Ye shall not cut yourselves, nor make any baldness between your eyes for the dead." Lest one say that he is culpable only when he did so between the eyes, therefore "their head" to include any place of the head. From here, however, we know that priests only are forbidden to do so, as they are subject to many commands which do not apply to a common Israelite; whence do we know that the same is the case with the latter? From the analogy of expression "baldness" in both verses; as in the first he is culpable for each baldness in the head as for that between the eyes, the same is the case with an Israelite. And as in [Deut. xiv.] it says plainly "for the dead," so also in [Lev.] it means for the dead only.

What should be the size of the bald spot which would make him culpable? The size of a bean according to R. Jehanan in the name of R. Eliezer b. R. Simeon. R. Huna, however, said: Such a size which could be discerned. R. Jehudah b. 'Habibah said: In this three Tanaim differ. According to one it is the size of a bean, according to the other it is a discernible size, and the third, however, maintains that he is culpable even for two hairs. Some, however, say: Instead of two hairs, it must be of the size of a lentil.

"*He who rounds*," etc. The rabbis taught [Lev. xix. 27]: "Ye shall not cut round the corners of your head" means the end of his head, *i.e.*, who makes his temple as hairless as the

* For an illustration of the five corners, see Rashi, as we do not deem it necessary to illustrate them for the English reader.

spot back of his ears to the nape of his neck. A disciple taught before R. Hisda: Both are culpable, he who rounds, and the rounded one. To which R. Hisda answered: Should he who eats dates from a sieve be culpable? Your Boraitha is in accordance with R. Jehudah, who holds that to a negative which does not contain manual labor, stripes apply (with whom the Halakha does not prevail). Rabha, however, says: It speaks that he himself has rounded his hair, which case all agree that he is culpable. And R. Ashi said: Even if he only assists the one who rounds his hair.

"And he who destroys the corners of his beard." The rabbis taught: "The corners of his beard," means the end of it; and what is meant by the end? The Shibboleth (sheaves).

"Incisions," etc. The rabbis taught [Lev. xix. 28]: "For the dead . . . any incision," lest one say that he made such because of the fall of his house or because the ship sank, therefore "for the dead," to teach that he is culpable only if he did so for a dead. And whence do we know that if he made five incisions for one dead he is culpable for each one? From "any incision" which makes him culpable for each of them. R. Jose said: Whence do we know that if he made one incision for five dead he is culpable for five? From the expression "l'Nefesh" * (soul) *i.e.*, he is culpable for each soul. But does not the same passage exclude the case when he did so for "his house" or "ship," etc.?

R. Jose holds that "cut" in Deut. iv. and incision is one and the same, and there also reads "for the dead," hence this also may be inferred.

Samuel said: If one made an incision with an instrument he is culpable. An objection was raised from the following: Incision and cutting is one and the same (but incision means with the hand and cutting with an instrument), hence for an incision with an instrument he should not be culpable? Samuel holds in this respect with R. Jose that there is no difference at all.

A disciple taught before R. Jehanan: For dead he is culpable at all courts whether by hand or instrument, but if for an idol, by an instrument he is culpable, but not by hand; as it reads [I Kings, xviii. 28]: "And cut themselves after their custom with knives."

"Culpable only for one," because he holds that he transgressed only one negative command.

* The term "for dead" is "l'Nefesh," which means for a dead soul.

"*With a razor.*" The rabbis taught [Lev. xxi. 5]: "The corner of their beard shall they not shave off," *i.e.*, with a razor. But lest one say even with scissors he shall be culpable, therefore it reads [ibid. xix.], "thou shalt not destroy." But if so let him be culpable for destroying it even with snuffers or scrapers? therefore the expression "shave off," and destroying by shaving is brought about by a razor.

"*R. Eliezer,*" etc. From whatever opinion he start: if he cares for the analogy of expression, then it is with a razor only; and if he does not, let him be culpable even if he did it with scissors? He cares for the analogy, but to his opinion snuffers and scrapers are equivalent to a razor.

MISHNA IV.: The culpability for etching-in [Lev. xix. 28] arises only when he has done both, wrote and etched-in with dye or any other indelible thing, but to one of them no culpability attaches. R. Simeon b. Jehudah in the name of R. Simeon said: He is not culpable unless he etched-in the holy name; as the above-cited verse reads, "and any etched-in writing shall you not fix on yourselves: I am the Lord."

GEMARA: Said R. Aha b. Rabha to R. Ashi: Does it mean unless he etch-in the words "I am the Lord"? And he answered, Nay! It is as Bar Kapara taught: "He is not culpable unless he writes the name of an idol, as the words "I am the Lord" mean *I* am the Lord, but not another one.

R. Malkhiya in the name of R. Ada b. Ahaba said: One is forbidden to put ashes upon his wound in the flesh, because it looks like a tattooing. [Said R. Papa: Throughout both Mishna and Boraitha, the name Malkhiya when mentioned is Malkhiyah, but in Halakhas it is Malkhiyoo]. R. Ashi, however, said: It does not matter, as the wound shows there is no tattooing.

MISHNA V.: A Nazarite who was drinking wine the whole day, is culpable only for one negative. If, however, he was warned, Do not drink, do not drink! he is culpable for each time he does not listen to. The same is the case if he had defiled himself by touching dead the whole day, he is culpable for one only; but if he was warned, You must not do so! etc., he is culpable for each one. The same is also the case with shaving himself. If he did so the whole day without warning he is culpable for one only, if with warning, for each time warned. A similar case this: If one was dressed with Kelaim, he is culpable for the whole day only once; but if he was told not to dress himself with it, and he undresses and redresses, he is liable for

each time. There is an instance that one may plough only one bed and shall be culpable for eight negatives—viz: If he ploughs with an ox and an ass both of which were from the sanctuary, if there was Kelaim in a vineyard, if that occurs in the Sabbatical year and on a legal holiday, and, finally, if he is a priest or a Nazarite in a legally unclean place. Hanania b. 'Hakhinai said: It can be added to that "who at the same time was dressed with Kelaim." And he was answered: This is not under the category of ploughing. Rejoined he: Does, then, a Nazarite belong to this category?

GEMARA: Said R. Bibi in the name of Rabh Assi: Not only when he undresses and redresses himself entirely, but even when he put his sleeve in and out. And R. Aha b. R. Aika has shown that he puts in the sleeve and puts it out. But R. Ashi maintains that it means the time during which he could put in and out.

"*Ploughing one bed*," etc. Said R. Yanai: At a meeting there was voted and resolved that he who protects Kelaim is liable to stripes. Said R. Jehanan to him: Is this not explained in our Mishna, which mentions that there was Kelaim in the vineyard? And if one were not culpable for protection what would have the ploughing to do with it? You must, then, say that while ploughing he protects it, and the Mishna makes him culpable. Rejoined R. Yanai: If I had not uncovered for you the broken clay pot, you would surely not have the pearl which was lying under it. Said Resh Lakish to R. Jehanan: Would not such a great man praise your statement? I would say that our Mishna is in accordance with R. Aqiba, who holds that one is liable even for keeping it. Said Ula to R. Na'hman: After it was decided that protecting is the same transgression as sowing, let him also be culpable for sowing on a legal holiday? And he answered: It was left out by the Tana of the Mishna. Rejoined he (Ula): It numbers eight, consequently nothing was left. Said Rabha: The different kinds of labor in one article are considered with respect to Sabbath only, but not to holidays. And Ula said: (I also think) so it is.

MISHNA VI.: The number of stripes is forty less one, as it reads [Deut. xxv. 2, 3]: "By a number, forty," *i.e.*, near forty. R. Jehudah, however, said: Forty in full, and the fortieth is between his shoulders. The examination (by the physicians of the court) as to the number of stripes he can receive and remain alive, must be such that can be equally divided by three. If

the decision was that he is able to receive forty, but after receiving a part of them they saw he cannot stand any more, he is free. However, if the decision was, he can stand eighteen only, and after he was stricken they saw he is able to receive more, he is nevertheless free.

GEMARA: The reason of the statement of the Mishna is the expression "number," which is before the word "forty," and is to be interpreted "about" forty; for if it meant forty in full, it would state forty in number. Said Rabha: How foolish are those who arise before the Holy Scrolls, but do not do so before a great man. We see that in the Holy Scrolls it reads forty, and the rabbis came and reduced one.

"*R. Jehudah said,*" etc. What is his reason? Said R. Itz'hak [Zech. xiii. 6]: "What are these wounds between thy hands," etc. The rabbis, however, maintain that this passage speaks of school-children.

"*After he was stricken,*" etc. Is that so? Does not a Boraitha state that if the first decision of the physicians was that he can receive forty and thereafter they decided again that he can not, or the first decision was for eighteen, and the second states that he is able to receive forty, he is free. (Hence we see that even if he was not stricken but only examined, he is free.) Said R. Shesheth: This presents no difficulty. Our Mishna speaks of the decision rendered on the very same day on which he ought to be beaten, and by acting accordingly it was found that they erred; hence in the first instance he is freed because he cannot stand, and in the second, because he was already disgraced and freed we do not care to disgrace him again. The Boraitha, however, speaks that the examination was several days before, and when the day of punishment came, the decision was changed because of his health.

MISHNA VII.: If one commits a sin to which two negatives apply, if the decision was rendered once for both negatives, he is punished once only, but if for one negative, he is punished again after he has recovered.

GEMARA: Is there not a Boraitha that one must not be appraised for two negatives? Said R. Shesheth: It presents no difficulty. Our Mishna speaks, if he was appraised for forty-one, *i.e.*, for two negatives, and because it cannot be divided into three, their appraisement is annulled, and he receives only thirty-nine for both; and the Boraitha speaks of the case when he was appraised to receive forty-two for two negatives, and as

it can be divided into three, the three over the thirty-nine are counted for the second negative. Hence he is beaten once, and after recovery is to be appraised again and beaten accordingly.

MISHNA *VIII.*: How is the punishment with stripes to be performed? He ties his both hands to the pillar, and the messenger of the court takes hold of his clothes, without care whether they tear or disjoin, until he uncovers the breast. The stone on which the messenger is to stand is placed behind him, upon which he stands with a strap of calf leather compounded of two, which, folded again, constitutes four, with two small stripes attached to it.

The size of its handle was a span, and of the same size was the width of it, and the top of it reaches his belly. He strikes him one-third in front and two-thirds on the back. He is not beaten while standing nor sitting, but while bending; as it reads [Deut. xxv. 2]: "The judge shall cause him to lie down," and the striker strikes him with one hand with all his force. And the reader reads from [ibid. xxviii. 58-59]: "If thou wilt not. . . . Then will the Lord render peculiar thy plagues," etc., to the end of the verse. And if the striker has not finished yet, he begins [ibid. xxix. 8]: "Keep ye therefore," etc., and finishes with [Psalm lxxviii. 38]: "But he, being merciful, forgave the iniquity." And if the act was not finished as yet, he returns to the beginning. If it happens that he dies under the messenger's hand, the latter is free. If, however, he added one stripe which caused death, he is exiled. If while beaten he collapsed and became incontinent of urine or excrement, he is freed. R. Jehudah maintains: A male, when incontinent of feces; and a female, of urine.

GEMARA: What is the reason that he shall be freed if he collapsed, etc.? His having been already disgraced.

R. Shesheth said in the name of R. Eliezer b. Azaria: Whence do we know that the strap must be of calf leather? Because immediately after "forty stripes" it reads, "thou shalt muzzle the ox." (See appendix.)

"*Two small stripes*," etc. In a Boraitha it is written from ass leather, and it is as a certain Galilean preached in the presence of R. Hisda [Isaiah, i. 3]: "The ox knoweth his owner and the ass his master's crib: Israel doth not," etc. The Holy One, blessed be He, said: "He that knoweth the master's crib shall take revenge from him who does not want to know it."

"*One-third in front*," etc. Whence is this deduced? Said

R. Kahana: From "to be beaten before his face according to the degree of his fault," which means for one fault in the front and for two in the back.

"*The striker strikes him with one hand,*" etc. The rabbis taught: The court appoints messengers who are weak in force but strong in wisdom. R. Jehudah, however, said: Even *vice versa*. Said Rabha: It seems to me that R. Jehudah is correct, because it reads "not more"; now if the messenger were weak in wisdom he must be warned, but if strong in wisdom, why warning? The rabbis, however, maintain the contrary, that warning is of consequence only to him who is learned to be careful. There is a Boraitha: When he lifts up, he does it with both hands, but strikes with one hand, so that the strokes shall become weaker.

"*And the reader reads,*" etc. The rabbis taught: The chief of the judges reads; the second numbers, and the third says, strike! When the stripes are many he prolongs, and when less he shortens. But does not the Mishna state "he returns to the beginning of the passage"? It is better that the reading should be finished with the stripes; but if it was not, he returns. The rabbis taught: It reads [Deut. xxv. 3]: "Too many stripes"; but lest one say that one or two does not matter? Therefore "not more"—not even one. But if so, to what purpose "too many stripes"? To teach that if it happen so, even the stripes which were given rightly are to be considered too many (in force).

"*Collapsed,*" etc. The rabbis taught: A male as well as a female "in feces," but not "in urine." So R. Mair. R. Jehuda said: A male "in feces" and a female "in urine." The sages, however, maintain: There is no difference between male and female, and between feces and urine; at all events the beaten is to be freed. But is there not a Boraitha: R. Jehudah said: Male and female in feces? He meant to say that in such a case all agree, but concerning incontinence of urine there is a difference of opinion.

Samuel said: If after he has been tied, he succeeds to run away from the court, he is free. An objection was raised from the following: Collapsing frees one whether it happen at the first stroke or the second, but if the strap broke he is free only if it happened at the second, but not at the first. Now, why should this not be equivalent to running away, which frees even before the first strike? This is no objection, when he runs away

he could not be beaten (and as he was already disgraced, he is not taken to be disgraced again), but here he is still present.

The rabbis taught: If it was concluded by the examination that he will collapse in case he is beaten, he is to be freed; but if the conclusion is that he will collapse after having been beaten, it does not free him. Furthermore, if it happen that he collapse before he was taken to be beaten, it does not prevent after recovery; because it reads [Deut. xxv. 2, 3]: "And to be beaten . . . and . . . thus rendered vile," but not rendered vile before beaten.

MISHNA IX.: All who are liable to Korath, if beaten, are freed from it, as it reads [ibid., ibid. 3]: "Thy brother rendered vile," *i.e.*, as soon as he was rendered vile, he is thy brother. So R. Hananye b. Gamaliel; the same also said: If one loses his soul for one sin, so much the more his soul should be saved because of one meritorious act! Said R. Simeon: This may be inferred from the very place which treats of Korath [Lev. xviii. 29]: "Even the souls that commit them shall be cut off," and [ibid., ibid. 5]: "Ordinances, which, if a man do, he shall live in them." As the whole portion is of negative commands, it is to be inferred that if one only abstains from committing a crime, he is rewarded as if he acted meritoriously. R. Simeon b. Rabbi said: It reads [Deut. xii. 23]: "Be firm so as not to eat the blood; for the blood is the life." Now, for rejecting blood which is disgusting to one, he is rewarded; from money and women, to which the nature of man is inclined, so much the more should he be rewarded if he separates himself; and not only he, but all his descendants to the end of the generations, may be rewarded. R. Hanania b. Akasiha said: The Holy One, blessed be He, wanted to make Israel blissful and therefore he multiplied to them his commands in the Torah, as it reads [Isaiah, xlii. 21]: "The Lord willed (to do this) for the sake of his righteousness: (therefore) he magnifieth the law, and maketh it honorable."

GEMARA: Said R. Jehanan: The colleagues of R. 'Hananye differ with him (as according to them stripes do not substitute Korath). Said R. Ada b. A'haba in the name of Rabh: The Halakha nevertheless prevails with R. Hananye. Said R. Joseph: Who, then, ascended to heaven, returned, saying that the Halakha prevails with him? Said Abayi to him: According to you, that which was said by R. Jehoshua b. Levi, "three things were done by the human court, and the heavenly court

agreed with it," is also to be questioned: who ascended to heaven and convinced himself that it was so? but such is inferred from the Scripture; well, the same is here, too. What are the three things in question? The following: The reading of the Book of Esther on Purim, greeting with the Holy Name, and placing the tithe belonging to the Levites in the treasury of the sanctuary. The first (Book of Esther) from [Esther, ix. 27]: "The Jews took it upon themselves as a duty and accepted," means, they took upon themselves in their human court, and it was accepted in the heavenly court. "Greeting" from [Ruth, ii. 4]: "And he said unto the reapers, the Lord be with you," and also [Judges, vi. 12]: "The Lord is with thee." To what purpose is the second quotation? Lest one say that Boas did it according to his own opinion and without the admission by heaven, therefore the other quotation which was said by an angel. And concerning tithe from [Malachi, iii. 10]: "Bring ye all the tithes into the storehouse, that there may be provision in my house, and prove me but herewith, saith the Lord of hosts, if I will not open for you the windows of heaven, and pour out for you a blessing, until it be more than enough."

R. Elazar said: At three places the Holy Spirit appeared: At the court of Shem, of the prophet Samuel, and in the court of King Solomon. At the court of Shem [Gen. xxxviii. 26]: "And Judah acknowledged them and said, She hath been more righteous than I." And whence did he know it? Perhaps as he was with her, so was some one else? Therefore a heavenly voice was heard: I have decided that so is it to be. In the court of Samuel [I Samuel, xii. 5]: "And he * answered, He is witness." He? *they* ought to be! Hence a heavenly voice was heard, I witness that so it is. And [I Kings, iii. 27]: "The king then answered and said, Give her the living child and do not slay it: she is its mother." And whence do we know it is so; perhaps she nevertheless deceived him? Hence the last words, "she is its mother," were said by a heavenly voice. Said Rabha: If it were inferred from the Scripture only, all of them could be objected to, but this is known by tradition.

R. Simlayi lectured: Six hundred and thirteen commands were said to Moses; three hundred and sixty-five of them negatives, corresponding to the number of days in a year counting according to sunrise; and two hundred and forty-eight positives,

* Leeser's translation does not correspond.

corresponding to the members of a man's body. Said R. Ham-nunah: Where is there an allusion thereto in the Scripture? [Deut. xxxiii. 4]: "The Torah which Moses commanded us." The letters of the word Torah number six hundred and eleven (Tav is 400; Vov, 6; Reish, 200, and Hei, 5), and the two first commandments, however, of the ten, we ourselves have heard from Heaven. However, David came and reduced their number to eleven [Psalm xv. 2-5]: "He that walketh uprightly" means Abraham, to whom such an expression was said in [Gen. xvii. 1]: "Worketh righteously" means Aba A'helqiah (see Tainith, p. 66-68). "Speaketh the truth" as, *e.g.*, R. Saphra. "Uttereth no calumny," *i.e.*, Jacob, our father. "That doth no evil to his neighbor," *i.e.*, he who takes care not to compete with his neighbor's business. "No reproach on his fellow man" means him who approaches his relatives. "Despicable is despised" means the king, who carried his father's bones on a bed of ropes. "Honoreth those who fear the Lord" means King Jehoshofath, who used to arise from his throne on seeing a scholar, kissed him, and called him, my father, my master, etc. "That sweareth to his own injury, and changeth not," *i.e.*, as R. Jehanan said: If one says I will fast until I will come home, it is to be considered. "Money for interest," *i.e.*, him who does not accept usury even from an idolator. "Taketh no bribe" means, *e.g.*, R. Ismael b. Jose, who does not accept even his own goods from his gardener for the purpose that he shall try his case. "He that doth these things shall not be moved to eternity." [When R. Gamaliel used to come to this passage, he used to weep, saying: Who performed *all* this shall not be moved, but one of them does not suffice (see Sanhedrin, p. 237).]

Isaiah, then came and reduced them (the 613 commands) to six [xxxiii. 15]: "He that (*a*) walketh in righteousness, (*b*) speaketh uprightly, (*c*) despiseth the gain of oppressions, (*d*) shaketh his hands against taking hold of bribes, (*e*) stoppeth his ears against hearing of blood, and (*f*) shutteth his eyes against looking on evil." (*a*) Means Abraham, of whom it reads [Gen. xviii. 19]: "For I know him, that he will command," etc. (*b*) Means him who does not anger his colleague in public. (*c*) Means R. Ishmael b. Elisha. (*d*) R. Ishmael b. Jose. (*e*) R. Eliezar b. Simeon, and (*f*) means as R. Hiya b. Aba said: Who does not look on women washing near the bank of the river. (See last gate, p. 137.)

Michah came and reduced them to three [vi. 8]: "He hath told thee, O man, what is good; and what the Lord doth require of thee: (nothing) but to do justice, and to love kindness, and to walk humbly with thy God." "To do justice" means judgment; "love kindness" bestowing of favors; and "walk humbly," providing for burial of the dead and marriage of poor maidens.

Isaiah (the second) again reduced them to two [lvi. 1]: "Thus hath said the Lord, Keep ye justice and do equity."

Amos then came and reduced them to one [v. 4]: "Seek ye for me, and ye shall live."

R. Na'hman b. Itz'hak opposed: Perhaps he means seek for me to perform everything that is written in the Law? Therefore Habakkuk was the one who reduced them to one [ii. 4]: "The righteous should live with his faith." Said R. Jose b. Hanina: Four decrees Moses has decreed upon Israel, and four prophets came and abolished them. Moses said [Deut. xxxiii. 28]: "And then dwelt Israel in safety, alone," etc. Amos abolished it [vii. 5]: "How should Jacob be able to endure," then immediately in (6) "The Lord bethought . . . this shall not be." Moses said [Deut. xxviii. 65]: "And among these nations shalt thou find no ease." Jeremiah abolished it, saying [xxxix. 2]: "He is going to give rest to Israel." * Moses said [Ex. xxxiv. 7]: "Visiting the iniquity of the fathers upon the children." Ezekiel abolished it by saying [xviii. 4]: "The soul which sinneth, that alone shall die." Moses said [Lev. xxvi. 38]: "And ye shall be lost among the nations." Isaiah abolished it by saying [xxvii. 13]: "The great cornet shall be blown," etc. Said Rabh, I am nevertheless afraid of the passage "ye shall be lost among the nations," and of the end of same, "the land of your enemies shall consume you." Mar-zutraha opposed, relating the following: It happened with Rabban Gamaliel, R. Elazar b. Azariah, R. Jehoshua, and R. Aqiba, who were on the road, and heard the noise of the city of Rome at Patlus, a distance of 120 miles, and they began to weep; but R. Aqiba smiled. And to the question, Why are you smiling, he returned the question, Why do you weep; rejoined they: Those idolators who bow themselves to images and smoke frankincense to the idols are resting in peace, the contrary is with us, that even our holy Temple is burned by fire,

* Leeser's translation does not correspond.

and we should not weep? Rejoined he: For the same reason I am smiling. If such is done to them who act against His will so much the more will be done in the future to them who act in accordance with His will. It happened again that the same were going to Jerusalem, when they arrived to the Mount Zephim, they tore their garments; and when they approached the Mount of the Temple and saw a fox running from the place where the Holy of Holies had been situated, they began to weep; but R. Aqiba smiled. To their question why he smiled, he answered: It reads [Isaiah, viii. 2]: "Witnesses, Uriyah the priest, and Zecharyahu," etc. Why is Uriyah conjoined with Zecharyahu? Was not the former at the first Temple and the latter at the second? It was because the passage bases the prophecy of Zecharyahu upon the prophecy of Uriyah. Uriyah said [Micha iii. 12]: "Therefore for your sake shall Zion be ploughed up as a field," etc. Zechariah said [viii. 4]: "Again, shall there sit old men and old women in the streets of Jerusalem," etc. Until the prophecy of Uriyah was not fulfilled I feared lest the prophecy of Zechariah will come to be realized but now since I see that Uriyah's prophecy is fulfilled I am sure that Zechariah's prophecy will also be fulfilled in the near future. Upon this version they said to him: Aqiba, thou hast condoled us, thou hast condoled us!

APPENDIX TO PAGE 50.

R. Shesheth said in the name of R. Eliezer b. Azariah: He who disgraces the festivals is regarded as if he worshipped idols, as it reads [Exod. xxxiv. 17]: "Thou shall not make unto thyself any molten gods," and immediately follows the verse "The feast," etc. The same said again in the name of the said authority: He who speaks evil of his neighbor, he who listens to such evil-speaking, finally he who bears false testimony deserves to be thrown to the dogs, as [ibid. xxii. 30] "to the dogs shall ye cast it," is immediately followed by [xxiii. 1] "Ye shall not spread (thisso) false report," which should be read also thassi, *i.e.*, ye shall not excite one against the other.

TRACT SHEBUOTH (OATHS).

CONTENTS.

	PAGE
SYNOPSIS OF SUBJECTS OF TRACT SHEBUOTH (OATHS) . . .	v

CHAPTER I.

RULES AND REGULATIONS CONCERNING OATHS TO WHICH IS ATTACHED THE LIABILITY OF A SIN-OFFERING OR STRIPES.—THE CONDITIONS OF LIABILITY AS DETERMINED BY THE TIME OF REMEMBERING OR FORGETTING THE OATH.—WHICH OATHS ARE OR ARE NOT ATONED FOR BY PRIVATE AND CONGREGATIONAL SACRIFICES AND ALSO BY THE DAY OF ATONEMENT.—ILLUSTRATIONS OF THE TWO KINDS OF OATHS SUBDIVIDED INTO FOUR	3
---	---

CHAPTER II.

RULES AND REGULATIONS CONCERNING THE COGNITION OF DEFILEMENT ; ITS TWO KINDS, SUBDIVIDED INTO FOUR, AND THEIR ILLUSTRATIONS.—THE CEREMONIAL ACCOMPANYING THE CONSECRATION OF THE EXTENSIONS BUILT IN THE COURT-YARD OF THE TEMPLE, AND IN JERUSALEM IN GENERAL.—ILLUSTRATIONS OF POSITIVE COMMANDMENTS THAT DO OR DO NOT ENTAIL LIABILITY	17
--	----

CHAPTER III.

RULES AND REGULATIONS CONCERNING THE OATH-TRANSGRESSION CONSIDERED AS REFERRING TO BOTH PAST AND FUTURE.—THE DETERMINATION OF THE SIZE OR QUANTITY OF THE OBJECT REGARDING WHICH THE OATH IS MADE.—THE WORDING OF THE OATH.—IS OR IS NOT DRINKING INCLUDED IN EATING (TO WHICH THE OATH REFERS) AND <i>vice versa</i>?—DOES OR DOES NOT THE REPEATED STATING OF THE OATH ENTAIL A SEPARATE LIABILITY.—TO WHAT ACTS OR WORDS THE OATH RELATES.—OATHS MADE BY COMPULSION.—OATHS CONCERNING THE FULFILLING OR IGNORING OF A COMMANDMENT.	27
--	----

CHAPTER IV.

RULES AND REGULATIONS CONCERNING THE WITNESS-OATH : WHO IS OR IS NOT RESPONSIBLE THEREFOR ; HOW THE PLACE WHERE SUCH IS MADE (WITHIN OR WITHOUT THE	
--	--

COURT) DETERMINES ITS LIABILITY ; IF MADE INTENTIONALLY.—THE LAWS OF ADJURATION.—TWO PARTIES OF WITNESSES CONTRADICTING EACH OTHER.—FOR WHICH OF THE DIVINE NAMES AND ATTRIBUTES (WHEN USED IN AN OATH) ONE IS CULPABLE	PAGE 47
---	------------

CHAPTER V.

RULES AND REGULATIONS CONCERNING THE DEPOSITORY-OATH : WHO IS OR IS NOT FIT TO TAKE IT ; WHERE THE DENIAL OF THE DEPOSIT BY OATH MUST TAKE PLACE ; THE CONDITIONS DETERMINING THE LIABILITY TO BE EITHER ONE OR FOR EACH ARTICLE SEPARATELY ; IN WHICH RESPECT SUCH OATH IS MORE RIGOROUS THAN THE WITNESS OATH	67
---	----

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE CIRCUMSTANCES UNDER WHICH THE COURT GIVES AN OATH TO ONE OF THE CONTESTANTS.—THE NATURE OF THE CLAIM AND OF ITS PARTIAL ADMISSION.—WHICH ADMISSION IS OR IS NOT REGARDED AS CORRESPONDING WITH THE CLAIM.—THE CASES WHERE THE CLAIM IS FOR MOVABLES AND THE ADMISSION FOR IMMOVABLES, OR <i>vice versa</i> .—WHO ARE OR ARE NOT FIT TO ENTER A CLAIM WHICH ENTAILS AN OATH.—THE FORM OF THE OATH AND THE INTRODUCTION THERETO USED BY THE COURT, AS WELL AS THE KIND OF SACRED OBJECT ONE MUST HOLD WHEN TAKING THE OATH.—ARTICLES THE CLAIM TO WHICH ENTAILS NO OATH.—THE CONDITIONS UNDER WHICH EITHER AN OATH MUST BE TAKEN FOR A LOST PLEDGE OR THE VALUE THEREOF MUST BE PAID	75
---	----

CHAPTER VII.

RULES AND REGULATIONS CONCERNING THE CONDITIONS UNDER WHICH THE OATH IS GIVEN TO THE PLAINTIFF OR TO THE DEFENDANT.—REGARDING A SUSPECT OF PERJURY.—THE DIFFERENCE BETWEEN A BIBLICAL AND A RABBINICAL OATH.—IS OR IS NOT A RABBINICAL OATH TRANSFERABLE ? —THE OATH OF ORPHANS (PLAINTIFF OR DEFENDANT), PARTNERS, GARDENERS.—THE CASES WHEN THE SABBATHIC YEAR RELEASES ONE FROM AN OATH	93
--	----

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING THE FOUR KINDS OF BAILEES : THE CONDITIONS UNDER WHICH THEY ARE TO PAY OR TO TAKE AN OATH.—WHAT IS AN UTTERED OATH, A VAIN OATH, A FALSE OATH.—CASES ILLUSTRATING THE VARIOUS CLAIMS REGARDING THE FOUR KINDS OF BAILEES	106
---	-----

SYNOPSIS OF SUBJECTS

OF

TRACT SHEBUOTH (OATHS).

CHAPTER I.

MISHNA I. There are two kinds of oaths which are subdivided into four. The he-goat makes it pending. How is this to be understood? If it does not atone, what is the use of making it pending? It means, *i.e.*, if the transgressor dies then it may be considered that if he dies before he becomes aware of it, this sin is not reckoned to him any more. Said Rabha to him: "In case he dies, the death itself completes the atonement; it is the he-goat that saves him from chastisement before he becomes aware by making it pending. All the above-mentioned persons are atoned for by the exported he-goats for all other transgressions without any difference, etc. Such is the custom of the divine attribute of justice, that the righteous atone for the wicked and not that the wicked atone for another wicked, . . . 1-16

CHAPTER II.

MISHNA I. The cognition of uncleanness is of two kinds subdivided into four. The courtyard was sanctified with the remains of a meal-offering only, in order to make it equal to the City of Jerusalem itself, etc. The orchestra of the thanks-offering consisted of violins, fifes, trumpets on every corner as well as on every elevated stone in Jerusalem, and used to play, etc. It was taught, R. Huna says: "All the details in the Mishna were essential in the construction, etc. If one enters a leprous house backwards, although all his body was already in the house except his nose, he remains clean. And ye shall separate the children of Israel from their uncleanness," whence you derive the warning that the children of Israel should separate themselves from their wives near the period of menstruation, etc. If there were two paths one of which was unclean (but it was not certain which one), and one passed through one of them entering, etc. . . . 17-26

CHAPTER III.

MISHNA I. TO VII. There are two kinds of oaths subdivided into four. I swear that I will eat, or I will not eat, etc. Where do we find that one must bring an offering for mere talk, as this one does talk and brings an offering. What is Issor mentioned in the Torah? If one says: "I take upon myself not to eat meat," etc. Vain (*Shakve*) and false (*Shekker*) are identical. Stripes apply to all negatives of the Torah implying manual labor, but not to those without manual labor, excepting, however, an oath. There is a moth, which is but a minimum in size, and yet one is liable for

v

consuming it. I swear that I will not eat, and thereafter eats and drinks, he is guilty but once. I will drink neither wine, oil nor honey, and then drinks, he is guilty for each severally. If he swore not to eat and thereafter ate carcasses or illegal cattle, reptiles and vermin, he is guilty. R. Simeon declares him free. The reason of him who holds that one is liable for an inclusion is that he compares it to an additional prohibition. It is immaterial whether the things sworn off concern himself or others, whether they are or are not of some essential nature. One is guilty only for an oath made with reference to the future, etc. I swear that I know something to testify for you, and it is found hereafter that he knows nothing, etc. There is a rule that, if to something that was included in the general a new law be applied, only by the new one must guide one's self, etc. To exclude compulsion what could illustrate this? As it happened to R. Kahana and R. Assi after the lectures at Rabh's college, etc. Suppose one swear not to eat this bread, and then he is in danger if he does not eat it, how is it, etc.? If one swears to ignore some commandment and does not carry out his oath, etc. If one says I swear not to eat *this* bread, in case I eat the other, etc. Which is false swearing? If one swears that something is different from what it is known by everybody to be. The provisions regarding uttered swearing apply to males, females, to kindred, non-kindred, etc. 27-46

CHAPTER IV.

MISHNA I. TO VI. The witness-oath applies to men but not to women, to unrelated but not to kindred, etc. If a scholar was aware of a case, but it was a humiliation to him to go to that particular court he may remain at home, etc., concerning civil cases only. The many things inferred from Exod. xxiii. 7. Keep thyself far from a false speech. How does a witness-oath come about? If some one said to two, etc. If there were two parties of witnesses and both denied successively, etc. There is also a case concerning a witness who refuses to testify to the death of a husband, etc. If one of them denies and the other confesses, etc. I adjure you that you come and bear me witness, that I have in the possession of so and so, etc. I adjure you to testify that so and so has spread abroad an evil name on my daughter, etc. We swear that we know nothing for you, while in reality they do know, etc. I adjure you, I impose upon you, I bind you (by oath) so they are guilty, etc. If one writes Aleph Lamed (the first letters from Eloim), etc. It must not be erased, etc. All the divine names found in the Torah in connection with Abraham are holy, etc. Amen embraces oath, acceptance and confidence, etc. Nay means oath and yea means also an oath, etc. R. Kama, while sitting before R. Jehudah, repeated the Mishna in its own language, and he said to him: "Change the language and use it in the third person, 46-65

CHAPTER V.

MISHNA I. TO VI. The depository oath concerns men and women non-kindred and kindred, those fit to testify and those unfit, etc. What is the law, when one has intentionally made a depository oath in spite of a warning, is he liable to a sin-offering or not? If the depository claims that the

deposit has been stolen from him, swears, but thereafter confesses, etc. If one denies money when there are witnesses, he is subject to an oath, but is free from such if there is a document. How is it if five persons claim the four articles and he says to one of them I swear that thou hast not with me a deposit, etc., and not thou and not thou, etc. . . . 66-74

CHAPTER VI.

MISHNA I. TO III. In the case of an oath before court, the claim must amount to two silver, and the confession to one peruta, etc. If one requires movables and real estate, and the other admits movables but denies real estate or *vice versa*, he is free, etc. One must stand when taking the oath; a scholar, however, may do it while sitting. An oath taken by one before the court must be uttered in a language he understands, and the court must say to him the following introduction. Be aware that the whole world was trembling when the Lord spake on the Mount Sinai: "Thou shalt not bear the name of the Lord thy God falsely." I have with you a gold dinar in gold. Nay you have with me only a silver dinar, he is liable. If one was about to claim wheat, and the defendant hastened to confess barley, etc. What is the difference between a biblical and a rabbinical oath. I have a mana with you. Yea, you shall not return it to me without the presence of witnesses, etc. In another case one demanded a hundred zuz, etc. A borrower said to the lender: "You are trusted so long as you will say that I have not paid you"; thereafter he paid him in the presence of witnesses, etc. One does not swear to the following: To slaves written documents, etc. One swears but to things capable of being measured, weighed and counted. How so? If one lends to his neighbor on a pledge, and the pledge got lost, etc. If one lends to his neighbor 1,000 zuz, and pledges them the handle of a scythe only, etc. . . . 75-93

CHAPTER VII.

MISHNA I. All those who are subject to a biblical oath swear and do not pay, etc. Give me change for a dinar. Give the dinar. I have given it to you already, etc. You have hired me for two zuz to repair something, while the employer says that he hired him only for one zuz, etc. If witnesses saw one concealing utensils under his garments when coming out from a house, and he claims that he had bought them, etc. The oath returns to its place—the Mount Sinai. If there were two parties of witnesses contradicting each other, each party may appear and testify for itself. Let the master conjoin with us in nullifying the statement of Rabh and Samuel. It once happened that *B*, who had borrowed money of *A* through a surety and on a document died, etc. . . . 93-105

CHAPTER VIII.

MISHNA I. There are four kinds of bailees, gratuitous, on hire, borrower and hirer, etc. This is the rule: "Whoever tends to commutate, by his oath liability to liability, unliability to unliability, or inability to liability is free, etc. . . . Appendix, 106-108

TRACT SHEBUOTH (OATHS).

CHAPTER I.

RULES AND REGULATIONS CONCERNING OATHS TO WHICH IS ATTACHED THE LIABILITY OF A SIN-OFFERING OR STRIPES.—THE CONDITIONS OF LIABILITY AS DETERMINED BY THE TIME OF REMEMBERING OR FORGETTING THE OATH.—WHICH OATHS ARE OR ARE NOT ATONED FOR BY PRIVATE AND CONGREGATIONAL SACRIFICES AND ALSO BY THE DAY OF ATONEMENT.—ILLUSTRATIONS OF THE TWO KINDS OF OATHS SUBDIVIDED INTO FOUR.

MISHNA I.: There are two kinds of oaths which are subdivided into four. The cognition of uncleanness is of two kinds subdivided into four. The carrying in and out on the Sabbath day is of two kinds subdivided into four, and also aspects of leprosy are in kind two and subdivided into four.

If one was originally cognizant of his being unclean, and (after he had consumed of the holy food or entered the sanctuary) presently became aware of this fact anew (that he committed this or that while being unclean), but was not conscious of it during the act, so he is obliged to bring a rich or poor offering. If, however, he had the knowledge at the start but not at the end of the act, so the he-goat, the blood of which is interiorly to be sprinkled on the day of atonement as well as the day itself, will effect a delay of the punishment until he gets to know his transgression, and then he is to bring the above-mentioned offering.

If there was no antecedent knowledge, but he became conscious of it after, his expiation is effected by the he-goat sacrificed exteriorly on the day of atonement as well as that day itself; for it reads: "Except the sin-offering of the atonement," *i.e.*, what this atones for the other one does, too; just as the exterior he-goat propitiates only where there was *one* knowing, so propitiates the interior one, only where *one* knowing took

place. But where there was no knowledge either before or after, the propitiation is effected by the he-goats sacrificed on (the) holidays and new-moon days. So R. Jehudah; R. Simeon, however, says: The he-goats of the holidays atone, but not those of the new-moon days, which propitiate only him who ate something polluted while being himself clean. R. Mair says: All goat sacrifices are equivalent as to propitiating (the) pollution of the holy temple and its holy sacrifice. R. Simeon would say: The he-goats of the new-moon days propitiate for the clean who ate something polluted; those of the holidays, for cases where there was no knowing either before or after; and that of the day of atonement, for cases where there is no antecedent but a subsequent knowing. And when he was asked: May one of them be sacrificed instead of the other? he answered: Aye! Whereupon they retorted: Since they are not all equivalent as to their capacity of propitiating, how can they substitute one another? To which he replied: They all possess this in common that they propitiate for polluting the holy temple and its offerings. R. Simeon b. Jehudah, however, said in his name: The he-goats of the new-moon days propitiate for a clean one who has eaten defiled food; those of the holidays possess a greater power, as they propitiate for the clean who has eaten defiled, and for the case of polluting where there was neither antecedent nor subsequent knowledge; those of the day of atonement are superior to the others in that they propitiate not only for the clean one who has received defiled food and for the case of neither antecedent nor subsequent knowledge, but also for the case where there is no antecedent but a subsequent knowledge. Hereupon he was questioned: May the one he-goat be offered as substitute for the other? And he answered: Yea. To which the others rejoined: It may be admitted that the goats of the day of atonement be offered on the new-moon days, but how can the reverse take place, *i.e.*, that the goats of the new-moon days propitiate for what they are not capable of doing? And his answer was: They all have this in common that they propitiate defilement of the holy temple and of its holy viands.

For wanton pollution of the holy temple and of its holy offerings the interior he-goat of the day of atonement as well as this day itself atones for all other transgressions of the Law both lenient and rigorous, intentional and unintentional, the foreknown and unforeknown, the positive and negative commandments, those entailing *koreth* or judicial death-punishment, for

all these the exported goat atones. Herein are equal Israelites, priests, and the anointed high-priest. What difference does, then, exist between Israelite and priest and anointed high-priest? That the blood of the bullock propitiates for the pollution of the sanctuary and of the holy viands by the priests. R. Simeon, however, says: Even as the blood of the goat prepared in the interior propitiates for the Israelites, so does the blood of the bullock for the priest; even as the confession of sins over the kid to be exported propitiates for the Israelite, so does the confession of sins over the bullock propitiate for the priest.

GEMARA: Let us see in accordance with whom is our Mishna's statement. It is not in accordance with R. Ismael and also not with R. Aqiba, as according to the former, one is not liable to a sin-offering, only if the oath concerns the future (this is explained in Chap. III. of this tract), and according to the latter, one is liable only for forgetting that the object is defiled, but not if he forgot that this is the sanctuary? The Mishna can be explained in accordance with both. With R. Ismael, as he may say that the expression of the Mishna, two subdivided into four, means that for some of them one is liable, and for some of them one is not. The same can be said concerning R. Aqiba. But how can R. Aqiba's statement be explained so? Does not the Mishna include leprosy in which there is not a single case for which one is not liable to a sin-offering, consequently all the cases mentioned in the Mishna are of the same kind? We must, therefore, say that it is in accordance with R. Ismael only, and to the question that R. Ismael does not make one liable for the past, it may be answered that he frees him from the liability of a sin-offering only, but not from the punishment of stripes, as he holds that stripes apply even to such a negative command in which there is no manual labor, and this is, as Rabha explained elsewhere (Chap. III.), that such is R. Ismael's opinion. But if so, then R. Johanan's statements would contradict each other—namely, at one place he declared that the Halakha prevails according to an anonymous Mishna (our Mishna, which is anonymous, and is in accordance with R. Ismael), and elsewhere it was thought if one says: I swear to eat this loaf of bread to-day, the day, however, has passed and he did not eat it, according to both Johanan and Resh Lakish stripes do not apply. However, their reasons are different. The reason of the former is that there is no manual act, and the reason of the latter is that the warning to this trans-

gression could not be of a certain, but of a doubtful kind (as perhaps he will still keep to his oath), hence, we see that R. Johanan's decision is that there are no stripes to a non-manual act, though contrary to the decision of the Mishna? R. Johanan's above decision is in accordance with his rule, for it is in accordance with another anonymous Mishna, as follows: "I swear that I will not eat this loaf, I swear again that I will not eat it," and thereafter he did eat, he is liable only for the oath first which had made this bread illegal to him. (The second oath, however, is considered but an oath to keep his word according to the law, and such an oath is not subject to punishment.) This is an utterance oath, to whose intentional transgression stripes apply, and to an unintentional, a rich or poor offering. Now, the expression of the Mishna, *this* is, means that only to such a transgression which is of a past nature stripes apply, but not to a transgression of a future nature, *e.g.*, I will eat, etc., hence this Mishna, which is also anonymous, is in accordance with R. Johanan's opinion.

But let us see; both Mishnaioth are anonymous, why, then, should R. Johanan choose the last one and not the first? According to this question, you also may ask: Why did Rabbi (editor of the Mishna) insert such two contradictory Mishnaioth? You must say, then, that formerly, Rabbi's opinion was that a negative command of non-manual act is under the category of stripes, but after reconsideration he came to the conclusion that it is not, and therefore inserted the last, but did not care to strike out the first.

Let us see; after all, you have explained the Mishna in accordance with R. Ismael and as concerning stripes, but does not the Mishna mention four kinds of leprosy, to all of which stripes by no means apply? Nay; there is a case to which stripes do apply—viz.: when cuts off the leprosy (before the priest saw it), and this is in accordance with R. Abin in the name of R. Elai, who said that wherever the Scripture uses one of these expressions, "Take heed to thyself, lest *ahl*" (the negative particle of the imperative mood) is a negative commandment. But does not the Mishna mention the violation of Sabbath to which also stripes do not apply, for, it is under the category of capital punishment, to which stripes cannot apply? R. Ismael holds that even to such, stripes do apply, and therefore the Mishna is explained in accordance with him.

R. Joseph, however, says: Our Mishna is in accordance with

Rabi's own opinion, and he composed it in accordance with different Tanaim, concerning knowing and not knowing, he took R. Ismael's opinion, and concerning oaths he took R. Aqiba's.

Said R. Ashi: I have related this explanation before R. Kahana, and he said to me: Do not say that Rabi inserted the above Mishna in accordance with the above Tanaim, and he himself did not approve of them, for in reality, in this Mishna he explains his own opinion, as we find he did so in the following: Whence do we know that one is not culpable for a transgression of which he was aware both at the start and at the end, but unaware during the act? From [Lev. v. 2-3]: "Escaped his recollection," two times repeated. So R. Aqiba. Rabbi, however, maintains it to be unnecessary, as from the expression "escaped" it is self-evident that he *was* once aware of it, and further on it reads, "he becometh aware," *i.e.*, twice aware, once at the start and again at the end. But should you ask to what purpose "escaped" is written twice (I say) once to make one liable for the forgetting the defilement, and the second for the forgetting the sanctuary.

(Says the Gemara): From this we find that Rabbi has declared his own opinion concerning known and unknown. Where is such to be found concerning oaths? It is common sense. Why, then, does R. Aqiba make one liable for the transgression of a past oath? Because he considers *extensions* and *limitations* (mentioned in the Scripture), and the same did also Rabbi, as we have learned in the following Boraitha. Rabbi said: Our first-born male may be redeemed with everything but documents; the rabbis, however, maintain that slaves and real estate are also excluded (and the reasons are there given thus: Rabbi considers extensions and limitations, and the rabbis consider generals and particulars in the Scripture).

Said Rabina to Amamar: Does indeed Rabbi consider extensions, etc., and not generals, etc.? In the following Boraitha we find the reverse; it reads [Deut. xv. 17]: "Then shalt thou take an awl," but whence do we know that one may do it with a thorn, prick, borer, needle or pencil? Therefore it reads: "Shalt thou take," *i.e.*, everything that is to be taken in hand for this purpose. So R. Jose b. Jehudah. Rabbi, however, maintains that since an awl is of metal, so must every instrument for this purpose be of metal. And to the question, what is the point of their difference, we answered that Rabbi considers *generals* and *particulars* (awl is of metal, etc.), and the R. Jose con-

siders *extensions*, etc., hence, we see that Rabbi considers *generals* and not *extensions*? Yea; in all other cases Rabbi considers *generals*, but here he considers also *extensions* for the reason explained in the following: The disciples of R. Ismael taught [Lev. xi. 9]. In the "water" is mentioned twice; this is not to be taken as a *general* and a *particular*, but as an *extension* and a *limitation* (this paragraph will be explained in the following tracts). But do not the rabbis hold the above theory? Said Rabina: In the west it was said in every place in the Scripture where the expression of two *generals* are to be found near each other, one may put a *particular* between them, and derive the law of *general* and *particular*.

But now that we come to the conclusion that Rabbi considers extensions, etc., there will remain a difficulty concerning oaths; we must, therefore, say that Rabbi inserted in this Mishna the opinion of R. Aqiba, with which he himself does not agree.

The text said: From the expression "escaped" it is self-evident that he was aware. Why is it self-evident? We find elsewhere the same expression, and no awareness is therein implied. Said Abayi: Rabbi holds that elementary knowledge is considered, *i.e.*, the knowledge one learns in school when yet a child (*e.g.*, he learned that he who toucheth an unclean thing becomes defiled). Said R. Papa to him: According to this theory, how can we find a case in which he was unaware before? And he answered: It may be found with him who was captured by heathens while he was still an infant, and was brought up by them.*

"*Originally cognisant.*" The rabbis taught: Whence do we know that the verse speaks of the defilement of the temple and its holy offerings? This may be learned from an inference. The Scripture warns: One shall not make himself unclean, and he who does so shall be punished, and is liable to a sin-offering (for unintentional), and both the warning and the punishment speak about the temple and its holiness. The same is the case when it makes him liable to a sin-offering, it is only in case of entering the temple. But perhaps it means heave-offering, to which there is also warning and punishment? Nay; we do not find a transgression which is under the category of capital punish-

* The text repeats here what is already translated in tract Sabbath about carrying on Sabbath which is two divided into four, and also about leprosy, therefore we omit it.

ment, to which the liability of a sin-offering attaches, when done unintentionally. However, such is the case with a special offering; but let him bring a rich and poor offering which is to be brought for utterance or witness oath? It reads [Lev. v. 3]: *Boh*, literally *in it** to exclude all other things. But perhaps it means to exclude the sanctuary to which a rich or poor offering does not suffice, and only a special is needed? Said Rabha: I apply to Rabbi the saying, "He draws water from very deep wells," as we have learned in the following Boraitha. Rabbi said: I read in the Scripture (in concern with a rich or poor offering) a beast; to what purpose, then, is also written a cow? (Is it not included in the term beast?) It is for an analogy of expressions. Here it reads, "an unclean cattle," and further on [ibid. vii. 22] the very same expression, which speaks particularly about the defilement of the holy offerings; hence, as here it speaks of the holy offerings, so does the former expression, too. But this concerns the holy offerings only; whence do we know that the same is the case with the sanctuary itself? From [ibid. xii. 4]: "Anything hallow shall she not touch, and into the sanctuary," etc.; we see, then, that the sanctuary is compared to its holiness.

The sages of Nahardea said in the name of Rabha: There is mentioned in relation to peace-offerings three times, defilement. And why? One for a general, one for a particular, and one for the expression defilement with regard to a rich or poor offering, but it does not explain the kind of a defilement; and not knowing what it means, we assumed it to mean the defilement of holiness; but now as Rabbi above inferred this from another place, we apply this defilement to the sanctuary itself.

"*Originally cognisant . . . became aware anew.*" The rabbis taught [Lev. xvi. 16]: "Shall make an atonement for the holy place because of the uncleanness," etc. In this case there can be three kinds of defilement: by idolatry, licentiousness, and bloodshed, for we find, in regard to idolatry [ibid. xx. 3]: "In order to defile my sanctuary"; concerning licentiousness [ibid. xviii. 30]: "Ye shall not defile yourselves therewith"; finally, concerning bloodshed [Numb. xxxv. 34]: "Ye shall not render unclean." Lest one say that for all these three defilements the he-goat atones, therefore [Lev. xvi. 16]: "*Mitumoth*," literally, from the uncleanness of the children of Israel, but not all of

* Leaser's translation does not correspond.

them; and as we saw elsewhere that the Scripture has separated the defilement of the sanctuary and its holiness from all other defilements, we must say that here, also, it means the sanctuary, etc. So R. Jehudah. R. Simeon, however, maintains that this theory is inferred from the very same place, as it reads, "he shall make an atonement for the holy place from the uncleanness (*mitumoth*)," consequently it means from the uncleanness of the holy place. But lest one say that for every defilement which happens to be in the sanctuary the he-goat atones, therefore, further on, "because in all their transgressions, in all their sins," it compares intentional transgressions to sin. As to the former, offerings do not apply, so, also, does it not to sins, which are not under the category of offerings (and which of them are under this category? That of which he was aware at the start and at the end, but forgot during the act). And whence do we know that in a case of which he was aware at the start, but not at the end, that the same he-goat makes it pending? From "in all their sin," *i.e.*, all sins which are under the category of a sin-offering.

The master said: There are three kinds of defilement, etc. Let us see how was the case; *e.g.*, idolatry, if intentional, is under capital punishment; if unintentional, then the transgressor is liable to a sin-offering. The same is the case with licentiousness: for intentional, capital punishment, and unintentional, a sin-offering; and the same with bloodshed: intentional, by capital punishment; unintentional is punished with exile. It may be said that in the first two it means that it was done intentionally but without warning; and concerning bloodshed, if committed unintentionally by such a person who cannot be exiled, *e.g.*, a high-priest of whom it is said in tract Sanhedrin that he cannot be exiled.

The master said: The he-goat makes it pending. How is this to be understood? If it does not atone, what is the use of making it pending? Said R. Zera: It means, *i.e.*, if the transgressor dies then it may be considered that if he dies before he becomes aware of it, this sin is not reckoned to him any more. Said Rabha to him: In case he dies, the death itself completes the atonement; it is the he-goat that saves him from chastisement before he becomes aware by making it pending.

"If he had no antecedent knowledge . . . by the he-goat sacrifice exteriorly," etc. Let us see; both he-goats are considered equal. Why, then, should the inner he-goat not atone also for

the things the exterior one atones for? And the difference would be that if the exterior happened not to be sacrificed at all, the interior would do also his atoning? It reads [Exod. xxx. 10]: "Upon its horns once," *i.e.*, it atones only one atonement, but not two. Why should not the exterior atone for itself and for the interior also, and the difference would be that a defilement happened during the time between the sacrifice of the interior and that of the exterior? The verse says "once in a year," *i.e.*, once, and not twice in a year. But according to R. Ismael, who said that to such a case offerings apply, what then does the exterior he-goat atone for? For such a case in which there was no knowledge at either start or the end, but does not for such atone the festival and the new-moon goats? He holds with R. Mair, who said that the atonement of all the goats are equivalent, as they atone for defilements in the sanctuary and its holiness, and the equality of the interior and exterior goats lies that both do not atone for other transgressions outside of the sanctuary with its holiness.

"*So R. Jehudah.*" Said Jehudah in the name of Samuel: The reason why R. Jehudah of the Mishna so maintains is [Numb. xxviii. 15]: "And one he-goat for a sin-offering unto the Lord," *i.e.*, for such a sin of which none is aware but the Lord, this he-goat atones.

The schoolmen propounded a question: Does R. Jehudah speak only of such a case which could never be known, but not such which must come to knowledge at the end (*e.g.*, if there were witnesses who saw him entering the sanctuary while he was defiled, of which they are bound to inform him thereafter) and which is atoned by the exterior he-goat on the day of atonement; or even of such a case which so long as it is not known to him at the present time, is considered that nobody knows of it but the Lord? Come and hear the following: For such a case in which there was no knowledge at the start and the end, and also for such a transgression that finally the transgressor must be informed of, the festival and new-moon he-goats atone; such is the decree of R. Jehudah.

"*But not of the new-moon.*" Said R. Elazar in the name of R. Oshia: The reason of R. Simeon's theory is thus [Lev. x. 17]: "And he had given it to you to bear the iniquity," etc., which applies to the new-moon he-goat, and by an analogy of the expression "iniquity," which is also found concerning the golden plate on the forehead of the high-priest [Exod. xxviii.

38], it may be said that as the latter atones only for bodily defilement, so also the he-goat in question does. And lest one say that as the golden plate of the high-priest atones only for such things which come on the altar, so also should the he-goat in question; it reads here, "the iniquity of the congregation,"* but not of the things of the altar.

"*R. Meier says: All goat-sacrifices are equivalent,*" etc. Said R. Hama b. R. Hanina: The reason of R. Meier's theory is that in some places it is written "the he-goat," and in others "*and the he-goat*" (the letter *vahve*, prefixed to he-goat, means and), and this intends to signify all the he-goats with regard to their atoning power. But this is correct only where the *vahve* is written, but how is it concerning the day of Pentecost and the day of atonement where the word he-goat is not written with a *vahve*? Therefore said R. Jonah, it reads [Numb. xxix. 39]: "These shall ye prepare unto the Lord on your appointed festivals," whence all the festivals on which a he-goat is sacrificed are equal to one another. But is not there the he-goat on new-moon, which is not a festival? In reality the new-moon is also called festival, as Aabayi said elsewhere: The month of Thamuz in the year when the temple was destroyed, was a full month of thirty days, as it reads [Lament. i. 15]: "He hath called an assembly (*moëd*)," which *moëd* means literally festival (and the thirtieth day of the month is new-moon).†

R. Johanan said: R. Mair admits that the interior he-goat does not atone for what all other he-goats do, nor do the latter atone for what it does; it does not atone for what the others do, because it is written "once," which signifies that it atones but for one sin and not for two; on the other hand, they do not atone for what it does, as it reads "once a year," which signifies that such an atonement takes place only once a year. There is a Boraitha in support to this: For the case where there was no knowledge at either start or end, and for that where there was none at the start but at the end, also for that where a clean one has consumed defiled food, the he-goats of the festivals, of the new-moons, and the exterior he-goat of the day of atonement atone; so R. Meier. We see here that he left out the interior he-goat and also what it atones for.

* The text discusses again, why should not the golden plate atone also for that which the he-goat does, and *vice versa*? and as it is almost the same which was said above, we omit it.

† See Taanith, p. 86.

"*R. Simeon used to say: He-goats of the new-moons,*" etc. It is correct that the new-moon's he-goat does not atone for what the festival's do, as it reads "a sin," which means one sin, but not two, but why should not that of the festivals atone for what the new-moon's does? Because of the expression "its," which signifies its iniquity but not that of another. Furthermore, the festival's (goats) do not atone for what that of the day of atonement does, because it reads "once a year," which means such be only once; nor does that of the day of atonement atone for what the festivals' do, because it is written "once," which means it atones once but not twice; and although this is written but concerning the interior he-goat, yet there is another place where it is called the sin-offering of the day of atonement in which the interior is included; and it has been already said above that in this respect the exterior is equalled to the interior. And R. Simeon b. Jehudah, who said that the he-goat of the festivals does atone for what the new-moon's atones, does not hold the extension "it" mentioned above.

Ula said in the name of R. Johanan: Daily offerings which were not necessary for the congregation any more, may be redeemed, although they have no blemish; Rabba sat down and repeated this Halakha. Said R. 'Hisda to him: Who will listen to you and to R. Johanan your master, for, whereto vanished their sanctity? And his answer was: Where, indeed, do you think it went to? Is not there a Mishna (Shekalim, 4, e): The sanctification of the incense on hand was then transferred to money, etc., and there was no question raised as to where the sanctity went to? Whereupon R. 'Hisda rejoined: Incense is incomparable, as it was not sanctified in a holy vessel, but by the money paid. (See Appendix.)

"*For intentional defiling,*" etc. Whence is this deduced? From what the rabbis taught [Lev. xvi. 16]: "And he shall make an atonement for the holy place, because of the uncleanness of the children of Israel, and because of their transgressions in all their sins." Transgressions (*P'shaim*) imply intention, as [II Kings, iii. 7]: "King of Moab hath rebelled (*Pasha*) against me," and [ibid. viii. 22]: "Then did Libnah revolt"; on the other hand, sin implies unintention, as [Lev. iv. 7]: "If any person do sin (*Tekhtah*) through ignorance."

"*For other transgressions, etc. . . . lenient and rigorous.*" Let us see; does not lenient mean positive and negative commandments, while rigorous, such to which *korath* and capital

punishment apply? And again, "known" means intentional, unknown, erroneous; why then the repetition? Said R. Jehudah: It intends to say that for all other transgressions found in the Torah, be they lenient or rigorous, be they committed intentionally or unintentionally and in latter case with knowledge or ignorance thereof, atonement is effected by the he-goat. And lenient are the positive and negative commandments, and the rigorous are those to which Korath and capital punishment apply. But again, how can there be a transgression of a positive commandment? If the transgressor has not repented [Prov. xxi. 27]: "The sacrifice of the wicked is an abomination"; and if he has, why the specific on the day of atonement, when any day is good, as the Boraitha teaches: When one transgresses a positive commandment and repents it, he is atoned for before yet leaving the place. Hereupon said R. Zera: It speaks of no repentance, and our Mishna is in accordance with Rabbi, who holds that the day of atonement atones for each of the transgressions found in the Torah, regardless of antecedent repentance; except him who shakes off the yoke, explains the Torah not according to its real meaning and destroys the covenant in his flesh; as for him, the day of atonement atones, provided he first repented, otherwise it does not. Rabbi bases this, his opinion, on [Numb. xv. 31]: "Because the word of the Lord hath he despised," which means, he who has shaken off the yoke of, and misinterpreted, the Torah, "and His commandments hath he broken," which means, he who has destroyed the covenant in his flesh [ibid. 30]: "Hicoreth Ticoreth," meaning literally "cut off, shall be cut off," *i.e.*, cut off before, shall be cut off after, the day of atonement; but lest one say the same is the case with him who has repented, it reads "the iniquity is therein," whence it is to infer that only in case the iniquity is upon him (but not after the repentance when the iniquity is gone). The rabbis, however, explain this verse thus: "Cut off" in this world and "shall be cut off" in the world to come; and as to the iniquity, it means if he die upon repenting, the death completes the atonement.

But how can this Mishna be in accordance with Rabbi, when the second part, "There is no difference between the Israelite, priest and anointed high-priest," is only the view of R. Jehudah; hence, the first part should, too, rather be in accordance with the latter? Said R. Joseph: The whole Mishna is the opinion of Rabbi who agrees with R. Jehudah concerning the

latter part only. Said Abayi to him: Does the master mean to say that Rabbi agrees with R. Jehudah, while R. Jehudah does not agree with Rabbi, or he does agree, and that you say the former is only because it is customary that the disciple agrees with his master? And he answered: I am very specific in this expression; Rabbi upholds R. Jehudah, while R. Jehudah does not agree with him with regard to the first part of the Boraitha; as we have learned in the following Boraitha: Lest one say that the day of atonement atones for both repenters and non-repenters, there is an analogy in the following. A sin and trespass offerings atone as well as the day of atonement, and as the former atones for but them who repent, so does also the day of atonement; but lest one say there is a considerable difference between them, as the said offerings atone only for sinning by error, while the day of atonement atones even for an intentional act, whence it might atone also for non-repenters, therefore it reads [Lev. xxiii. 27]: "But . . . it," which excludes non-repenters. Now, this Boraitha is found in Siphrah, and according to tradition all the anonymous Boraithas of Siphrah are in accordance with R. Jehudah.*

"*No difference between an Israelite,*" etc. Does not the Mishna contradict itself by saying here there is no difference, etc., and immediately hereafter asking what is the difference between, etc.? Said R. Jehudah: It is to be explained thus, all the above-mentioned persons are atoned for by the exported he-goats for all other transgressions without any difference; a difference between person and person arises, however, with regard to the bullock that atones only for the priests in the case of defilement of the temple and its holiness; and this is only in accordance with R. Jehudah of the following Boraitha; it reads [Lev. xvi. 31]: "And he shall make an atonement for the *sanctum sanctissimum*" means the innermost holy chamber; "and for the tabernacle of the congregation" means the whole temple; "and for the altar," literally; "shall he make an atonement" means the courtyards of the temple; "and also for the priests," literally; "and for all the people of the congregation" means Israelite; "shall he make the atonement" means the Levites; hence, they all are equally atoned for by the exported he-goat for all transgressions but that of defilement. Such is the

* There is a contradiction in the Boraithas of Siphrah, which will be treated of in Tract Krithoth.

dictum of R. Jehudah; R. Simeon, however, maintains that as the blood of the interior he-goat atones for the defilement of the temple by the Israelites, so does the blood of the bullock atone for the defilement of the temple by the priests; likewise, as the confession of sins over the exported he-goat atones for all other transgressions by Israelites, so does the confession over the bullock atone for the priests in all other transgressions. And as to the above deduction that all are equally atoned for, it means that they are equal, in as much as the category of atonement is concerned.

Who is the Tana of the following Boraitha? It reads [ibid. xvi. 15]: "He shall kill the goat of the sin-offering of the people," which means that which does not atone for the priests; but what does atone for them? Aaron's own bullock, because it is assigned to atone for his house also. And lest one say that they should not be atoned for even thereby, as the phrase "of him" is used concerning Aaron's bullock, then the priests who must be atoned for would remain without all atonement, we say it is better they should be atoned for by Aaron's bullock, which, atoning for all the house of Aaron, is *eo facto* no longer "of him" individually, than to be atoned for by the interior he-goat, which does not include any other thing. As to the possible objection that "his house" is meant to exclude other priests, there is a verse [Ps. cxxxv. 19, 20]: "O house of Aaron, bless the Lord; O house of Levi, . . . ye that fear the Lord, bless the Lord," and this includes all the priesthood. There is a Boraitha relating that the disciples of R. Ismael taught: Such is the custom of the divine attribute of justice that the righteous atone for the wicked and not that the wicked atone for another wicked.

CHAPTER II.

RULES AND REGULATIONS CONCERNING THE COGNITION OF DEFILEMENT; ITS TWO KINDS, SUBDIVIDED INTO FOUR, AND THEIR ILLUSTRATIONS.—THE CEREMONIAL ACCOMPANYING THE CONSECRATION OF THE EXTENSIONS BUILT IN THE COURT-YARD OF THE TEMPLE, AND IN JERUSALEM IN GENERAL.—ILLUSTRATIONS OF POSITIVE COMMANDMENTS THAT DO OR DO NOT ENTAIL LIABILITY.

MISHNA I.: The cognition of uncleanness is of two kinds subdivided into four—viz.: when one after having become unclean perceives it and then forgets all about it, knowing, however, that what he eats is holy; or when he was ignorant of the fact that the food is holy, being, however, aware of his uncleanness; or, finally, when both facts having escaped his memory he ate from the holy food without being cognizant thereof, but learning it after he had eaten, he is to bring a rich or poor offering. If he became unclean and knew it, forgot it afterward, but was fully conscious that he was in the sanctuary or he forgot that it was the sanctuary but knew his uncleanness; or, both facts having escaped his cognition, he enters the sanctuary without knowing it to be such and learns this fact only after he has gone out, he is to bring a foregoing offering.

It is immaterial whether the unclean one enters the courtyard (of the temple) or its extension, since extensions are added to both city and courtyard (of the temple) only in the presence of a king, prophet, *Urim* and *Tumim*, and of the grand Sanhedrim consisting of seventy-one, two thanks-offerings and the chorus; the whole court of justice steps forth, followed by the two thanks-offerings and then all Israel; the inner bread is consumed, the outer one is burnt. But whatever has not been constructed in this manner, does not entail guilt upon him who being unclean enters it.

If one having become unclean in the courtyard of the temple forgot it, remembering, however, that he is in the holy temple; or forgot that he is in the temple but was aware of his uncleanness; or, both facts having escaped his cognition, he made a

bow or was lingering there for an interval taken up by the making of a bow, or went out by the longer way, he is guilty; but if by the short way, he is not guilty. This is a positive command concerning the holy temple, for disobeying of which one is not guilty.

And which is the positive command concerning menstruation that entails guilt? If one being in relation with a clean woman is told by her: I have just become unclean, and thereupon immediately interrupts his relation with her, he is guilty, for separation from her affords him as much pleasure as his coming to her. R. Eliezar says: One is guilty for forgetting the cause of his uncleanness to have been a reptile, but is not guilty for forgetting (that he is in) the holy temple. R. Aquiba says (it reads): If he has become ignorant of being unclean, whence it follows that he is guilty of obliviousness as regards uncleanness but not as regards the holy temple. R. Ismael says: The phrase "it will escape his memory" is repeated twice to declare one guilty in both cases: for forgetting his uncleanness as well as for forgetting the sanctuary.

GEMARA: Said R. Papa to Abayi: It states "two divided into four," whereas it ought to be "into six"—viz.: the cognition of defilement of the holy food, and of the sanctuary, in each case antecedent and subsequent. Answered Abayi: According to your theory there ought to be eight subdivisions, as cognition of defilement may be accompanied with ignorance of holy food and of the sanctuary. Rejoined R. Papa: In reality there are eight; the Mishna, however, does not count the first four, which are not at all found in the Scripture (*i.e.*, the Scripture finds one liable, *e.g.*, for eating illegal fat irrespective of his antecedent cognition or ignorance of its being illegal; he must then bring a sin-offering after becoming aware of the fact, hence, of the preceding cognition there is no mention in the Scripture).

"*It is immaterial . . . enters the courtyard,*" etc. Whence is this ceremony attending the extension of courtyards deduced? Said R. Shimi b. Hyie, from [Exod. xxv. 9]: "In accordance with all that I show thee, the pattern of the tabernacle, and the pattern of all the instruments thereof, even so shall ye make it," which last phrase means for the future generations (otherwise this phrase would be superfluous).*

"*When two thanks-offerings,*" etc. There is a Boraita that

* Rabba's objection thereto is already translated in Sanhedrim.

the two thanks-offerings mean their bread and not flesh. Whence is this deduced? Said R. 'Hisda, from [Neh. xii. 31]: "And I have prepared two large thanks-offerings." Now, what signifies the attribute "large"? Shall we assume that it means literally, then it should read bullocks! Or should it indicate merely that of their kind they were the large ones; now, does it make a difference before heaven? Does not a Boraitha state: Concerning a cattle burnt-offering it reads [Lev. i. 13]: "Sweet savor unto the Lord"; the same expression concerns a fowl burnt-offering [ibid., ibid. 17]; likewise concerning a meal offering the same term is used [ibid. ii. 2], which is intended to teach that before heaven all offerings, liberal as well as poor, are equal, provided they are offered to gratify the heavenly Father? It remains, therefore, to assume that the attribute, large, means simply the greater part of the thanks-offerings, *i.e.*, the leaven bread, as there is a Mishna teaching that the thanks-offering was five Jerusalem saahs large, which are equal to six country saahs, making two eiphas each of three saahs, altogether twenty tens, ten of which were leaven and the other ten of matzah. The matzah, however, consisted of three kinds: cakes, wafers, and of what was sodden (hence, the leaven cakes were threefold those of the matzah).

Rami b. 'Hama said: The courtyard was sanctified with the remains of a meal-offering only, in order to make it equal to the City of Jerusalem itself—*viz.*: as the rule about the things eatable within the city renders them invalid if carried outside the city, so also with things eatable within the courtyard, they become invalid out side of this yard (and a meal-offering was to be eaten only within the courtyard). Now, lest one say that as the city is to be sanctified with the leaven cakes of the thanks-offering, so also the remains of the meal offering sanctifying the courtyard be of leaven, the answer would be that there can be no meal offering of leaven, since it reads [Lev. vi. 10]: "It shall not be baked leaven, as their portion," etc., which Resh Lakish interprets to mean that not even a portion thereof be baked leaven; hence, the above supposition is impossible. But again, why not sanctify with the two breads of Pentecost which are leaven? Nay; this cannot be admitted either; because how can this be carried out? Supposing the courtyard to be built before Pentecost, then the breads becoming holy only upon the slaughtering of the two lambs, are not yet capable of sanctifying; furthermore, the sanctification must take place on the day of

completing the building, hence, the sanctification on the holiday is out of question; nor can it be supposed that the temple be finished on the holiday, since there is a rule that the temple must not violate holidays; finally, to leave the two breads for the morrow of the holiday is not feasible, for they would become invalid in being left over night. But why not leave the finishing until sunset, when the lambs are slaughtered and the breads become holy, so that the sanctification could be carried out? There is a tradition that building the temple must not take place in the night time; as Abayi said: We know that the building of the temple must not be completed in the night, from [Numb. ix. 15]: "And on *the day* that tabernacle," etc., hence *on the day*, but not on the night.

"*By the chorus*," etc. The rabbis taught: The orchestra of the thanks-offering consisted of violins, fifes, trumpets on every corner as well as on every elevated stone in Jerusalem and used to play [Psalm xxx. 2]: "I will extol thee, O Lord, for thou hast lifted me," etc., and also [ibid., 91]. Some call this latter song *Negaim* (plagues) because of verse [ibid., 10] in which it reads, "Nor shall any plague," etc; others call it *Pegaim*, because of verse [ibid., 7]: "There shall fall at thy side a thousand." They used to sing this song from verse 1 to 10 inclusive, and also the whole of Chap. III. of Psalms.

R. Jehoshua b. Levi used to say all the verses mentioned above before going to bed. But this seems hardly credible, as he himself said somewhere that none should cure one's self with the verses of the Torah. The answer is that protecting and curing are two different things, and he prohibited to say such verses over a wound.*

"*Followed by the two thanks-offerings*," etc. Shall we assume that the thanks-offerings follow the court, when we read [Ne'hem. xii. 31, 32]: "Two thanks-offerings . . . after them walked Hosha'yah," etc.? Nay; it means thus: They were all walking, the court being behind the offerings. In what order were the two offerings carried? R. 'Hyie and R. Simeon b. Rabbi differ concerning this: according to one they were one opposite the other, while according to the other they were placed one behind the other. According to the former opinion the one offering that was to be sacrificed on the inner altar was brought near the wall, while according to the latter opinion the one that

* See Sanhedrim.

was near to the people of the court was sacrificed. R. Johanan, however, said: It was left to the prophet to decide which of the offerings was to be burnt and which to be eaten.

"But whatever has not been constructed," etc. It was taught: R. Huna says: *All* the details were essential in the construction, while R. Na'hman said: Whatever was not constructed with one of them, etc. R. Huna bases his theory on the fact that the first sanctification sanctified for the future, too, while Ezra's sanctification was but a kind of memorial. On the other hand R. Na'hman holds that the first sanctification was confined only to the present and Ezra sanctified for his time although there were no Urim and Tumim. Rabha objected to R. Na'hman from our Mishna which plainly states, "in this manner," *i.e.*, with all the details specified there; whereupon he answered: Read there "whatever was not constructed with one of them."

Come and hear another objection: Aba Saul said, there were two Bitzin on the olive mountain, an upper and a lower one; the lower one was sanctified strictly in the manner prescribed by the Mishna, while the upper one was sanctified only by the ascendants from the exile, in the absence of both king and Urim and Tumim. The lower one, whose sanctification was complete, common people used to enter and consume there their lenient holy food, but not second tithe; scholars, however, used to consume there both. In the upper one of the incomplete sanctification the common people used to consume the lenient holiness, while the scholars did not partake there of anything. But why did not they sanctify it completely? Because the complete sanctification needs a king, etc., as prescribed by the Mishna, and such were not at that time. But why, then, was it at all considered a part of Jerusalem? Because being a suburb of Jerusalem it was easily accessible (hence, it is obvious that sanctification cannot be complete unless performed in the manner prescribed by the Mishna)? Concerning this matter the Tanaim of the following Boraitha differ. Ismael b. Josh said: To what purpose did the rabbis enumerate all the cities surrounded by walls from the time of Jehoshua b. Nun? Because the ascendants of the exile being placed in these cities, sanctified them; the first sanctification, however, was abolished when the land ceased to be that of Israel. R. Ismael thus holds that the first sanctification was good only for the present, but not for the future, and this would meet with a contradiction in the following. R. Ismael b. Josh said: Were, then, only these cities?

Is it not written [Deut. vi. 4, 5]: "Sixty cities . . . all these were fortified cities," why, then, had the sages enumerated them? Because the ascendants of the exile were placed in them; and not only to these cities, but also to all cities which were, according to tradition, surrounded with walls at the time of Jehoshua, apply all the commandments imposed upon such cities; for the first sanctification has sanctified them for the future also; whence it is evident that R. Ismael contradicts himself. The answer is that one of these Boraithas was said not by R. Ismael, but by R. Elazar b. Josh, as the following Boraitha states, it reads [Levit. xxv. 30]: "Lo choma," meaning literally no wall; but according to the traditional reading it is Lo-choma, meaning "it has a wall," *i.e.*, though it has no wall now but was walled at the time Israel entered Palestine.

"*In the courtyard and forgot it,*" etc. Whence is this deduced? Said R. Elazar [Numb. xix. 20]: "Because the sanctuary of the Lord hath he defiled," and [ibid., 13]: "Hath defiled the tabernacle of the Lord"; now, as there is so necessity of two verses for the inner defilement, one should be applied to the outer one. But are, indeed, the two verses superfluous? Are they not both needed for what we have learned in the following Boraitha in the name of R. Elazar: Why have two verses to mention both sanctuary and tabernacle, was not one sufficient? The answer is: If only tabernacle were mentioned, it could be accounted for by the fact of its being annointed with the holy oil, which was not the case with the temple, and therefore no liability is attached to defilement of latter, on the other hand, if only the holy temple were mentioned, the reason would be that it was sanctified once forever, which was not the case with the tabernacle; hence, the necessity of both the verses? R. Elazar found difficulty to see the reason for using two names, sanctuary and tabernacle, since elsewhere these two names are used synonymously; he, therefore, infers therefrom his two foregoing conclusions. His statement, however, that the temple is called tabernacle is correct, from [Lev. xxv. 11]: "And will set my tabernacle (*mishkoni*) among you"; but where is it found that tabernacle is called temple? In [Exod. xxv. 8]: "And they shall make me a sanctuary and I will dwell in it"; and verse 9 says: "I show thee the pattern of the tabernacle."

"*He made a bow or was lingering,*" etc. From this it may be said that the bowing must also take a certain time. Said Rabha: This is so only when, while bowing, he turned his face

to the outside, but not if to the inside of the temple; and the Mishna is to be interpreted thus: if he made the bow toward the inside or turned his face toward the outside for a certain interval; and here is an illustration: Suppose he kneels only, then no time is needed; but if he bows, *i.e.*, falls down and stretches his hands and feet, then a certain time must be taken up. And how long is this time interval? R. Itz'hak b. Na'hmeni, with whom was Simeon b. Pazi, according to others *vice versa*, or Simeon b. Na'hmeni, one says, it is so long as would take to say this verse [II Chron. vii. 3]: "And all the children of Israel were looking on as the fire came down, and the glory of the Lord was resting upon the house; and they kneeled down with their faces to the ground upon the pavement, and prostrated themselves, and gave thanks unto the Lord for he is good; because unto everlasting endureth his kindness"; while the other says: Only from "they kneeled" until the end of the verse. The rabbis taught: *Kidah* is bowing to the ground face to the earth, as [I Kings, i. 31]: "Then did Bath-sheba bow," etc.; kneeling is to stand upon the knees, as [ibid. viii. 54]: "From kneeling on his knees"; finally, bowing is prostrating one's self, as [Gen. xxxvii. 10]: "To bow down ourselves to thee to the earth."

"*If by the short way he is not guilty.*" Rabha said: On the short way even if he kept on going the whole day the toe of one foot touching the heel of the other, he is free. He, however, propounded a question: If his walk was interrupted every time, must these intervals be added and counted or not? Now, why does not Rabha decide his question by his own doctrine from above? Because above he treats of the case done without interruption. Abayi asked Rabba: If he walked through the long way so quickly, as it takes no longer than by the short way, what then? Is the time essential and then he is free, or is the way essential and then he is liable? He answered: The long way cannot be made shorter by contracting the time of walking it.

R. Oshia said: I would like to say something, but am afraid of my colleagues; if one enters a leprous house backwards, although all his body was already in the house except his nose, he remains clean, as [Lev. xiv. 46]: "And he who goeth into the house," etc., means going in in the ordinary way, but not backwards; now, the reason of my hesitating is that my colleagues may, on the basis of the latter quotation, say that even when all his body, nose, too, is already in the house he is clean.

Said Rabba: If the *whole* body was in, he should not be worse than vessels in such a house, of which it reads [ibid. 36]: "That all shall not be made unclean." There is a Boraitha supporting R. Oshia: On the roofs of the temple no holy of holy food must be consumed, no lenient holies must be slaughtered there, and he who, while unclean, enters the temple by these roofs is not culpable, as [ibid. xii. 4]: "And into the sanctuary shall she not come" means the coming in in the ordinary way.

"*This is a positive command concerning the holy temple,*" etc. What is the standpoint of the Tana from which he says "*this is*"? He refers to a statement in the Mishna in Horiath (Mishna, I.): There is no liability attached to a positive and negative commandment, etc., regarding which our Tana says: *This* is the positive commandment to which liability is not attached; but where, then, is a positive command entailing liability? It is "the having of intercourse with a woman" mentioned in the Mishna.

It was taught: Abayi said in the name of R. Hyya b. Rabh, in this last case the transgressor is liable to twice stripes: one for the intercourse, and one for the separation. So also said Rabha in the name of Samuel b. Shila, quoting R. Huna. Rabba, however, deliberating on this point, said: Let us see how was the case; if it treats of a scholar who had relation with his wife at the time she usually gets her menses, then he is justly culpable for the intercourse as for an unintentional offence, as he thought he will finish before, and for the separation, which act is with him as a scholar an intentional one, he is not liable to stripes (as such an act entails Korath); on the other hand, if it treats of an ignorant, why should he be liable twice? Is this not a case analogous to that where one consumed twice illegal fat the size of an olive in one forgetfulness, when he is culpable only once? And should you say that the transgressor acted so not at the usual time of menstruation, then, if he be a scholar he is not liable at all, since the intercourse was had innocently, while as regards separation it is here, too, an intentional act; if, however, he be an ignorant, he is culpable only once, *i.e.*, for the separation! Said Rabha: It treats of a time near to the menstruation, and of him who is a scholar and is aware that one must not have intercourse at such a time, but not that separation is prohibited (he is culpable twice: for the intercourse, because though aware that he must not have, he may none the less have thought that he will finish it before the menses ensue;

and for the separation, the prohibition of which was unknown to him). Rabha said further: Both the acts we find treated of in Mishnaioth; concerning separation in our Mishna, and concerning the intercourse in Tract Nidah, as follows: If blood be found on his shirt the two are unclean and liable to a sin-offering.

The master says: Immediate separation entails culpability. How then should he behave? Said R. Huna in the name of Rabh: He should support himself on the tips of his fingers until *phallus moretur* and then separate himself.

It was taught: R. Jonathan b. Lequnia asked his brother, R. Simeon, where is the warning against having intercourse with a menstruant woman? In answer he took some dry mud and threw it upon him, saying: Is it not plainly stated in [Lev. xviii. 19]? Whereupon he rejoined: I mean to ask where is the warning against separating one's self from her who gets her menses in the time of intercourse? Said 'Hiskia, from [ibid. xv. 24]: "And if any man should lie with her, and the uncleanness of her separation come upon him," etc., which means even when he separates from her when the menses ensue during the intercourse. But again, here we find only the positive command: "He shall be unclean seven days" [ibid.]; where, then, is the negative command against separating one's self? Said R. Papa: The above-cited verse [ibid. xviii. 19]: "Shalt thou not approach (*Tikrab*)" means also thou shalt not separate thyself, as [Isa. lxv. 5] uses the word *K'rab* to mean separating, so does there *tikrab* mean separate.

The rabbis taught [Lev. v. 31]: "And ye shall separate the children of Israel from their uncleanness," whence you derive the warning that the children of Israel should separate themselves from their wives near the period of menstruation; so R. Jashia. And for how long? Said Rabha: For twelve hours. R. Johanan said in the name of R. Simeon b. Jo'hai: He who does not separate from his wife at the said period, his children even if equal to the sons of Aaron, will die; as after the above-cited verse and verse 33 follows the mention of the death of Aaron's children. R. 'Hyia b. Aha said in the name of R. Johanan: He who does separate himself for that period will be rewarded with male children, as [ibid. xi. 47]: "To distinguish between the clean and unclean," is followed by [ibid. xii. 2]: "If a woman . . . and born a male child." R. Jehoshua b. Levi added: He will be rewarded with sons who will be fit to

decide law questions, as it reads [ibid. x. 10, 11]: "So that ye may be able to distinguish, . . . to teach." R. Benjamin b. Japheth said in the name of R. Elazar: He who sanctifies himself during the intercourse will be rewarded with male children, as [ibid. xi. 44]: "Ye shall sanctify yourselves," etc., which chapter is followed by verse [ibid. xii. 2].

"*A reptile*," etc. What is the point of their difference? Said 'Hiskia: A reptile and a carcass; according to R. Eliezer he must exactly know the cause of his defilement, whether reptile or carcass, while R. Aqiba maintains that the knowledge, and not the exact cause, of his defilement is necessary. And so also was this point explained by Ula.

The rabbis taught: "If there were two paths one of which was unclean (but it was not certain which one), and one passed through one of them entering, however, the temple after passing through the other path, too, he is liable; if, however, after passing the first path he entered the temple by forgetting and on becoming aware thereof he performed the sprinkling and took a legal bath, and then passed the other path and again entered the sanctuary by forgetting, he is liable. R. Simeon, however, declares him free. On the other hand, R. Simeon b. Jehudah holds him, in the name of R. Simeon, free even in the first case." How is this last decision to be understood? In the first case where he passes the *two* paths there is no doubt that he passed an unclean one, how, then, can he be free? Said Rabha: The decision concerns a case where he, having passed both paths, forgets, enters the temple, and thereafter recollects his passing through but one of the paths; and the point of difference here is that the first Tana quotes R. Simeon as holding that partial cognition is considered as the whole, which R. b. Jehudah in his name denies. But why does the Boraitha hold liable him who has performed sprinkling, etc.? Is not here the cognition concerning a *doubtful* case and hence he should not be liable? Said R. Johanan: Here the Tana regards the doubtful cognition as a certain one. Resh Lakish, however, said: This Boraitha is in accordance with R. Ismael, who holds that antecedent cognition is not requisite.*

* The further discussion will appear in Tract Kerithoth.

CHAPTER III.

RULES AND REGULATIONS CONCERNING THE OATH-TRANSGRESSION
CONSIDERED AS REFERRING TO BOTH PAST AND FUTURE.—THE
DETERMINATION OF THE SIZE OR QUANTITY OF THE OBJECT
REGARDING WHICH THE OATH IS MADE.—THE WORDING OF THE
OATH.—IS OR IS NOT DRINKING INCLUDED IN EATING (TO WHICH
THE OATH REFERS) AND *vice versa*.—DOES OR DOES NOT THE
REPEATED STATING OF THE OATH ENTAIL A SEPARATE LIABILITY.
—TO WHAT ACTS OR WORDS THE OATH RELATES.—OATHS MADE
BY COMPULSION.—OATHS CONCERNING THE FULFILLING OR IGNOR-
ING OF A COMMANDMENT.

MISHNA I.: There are two kinds of oaths subdivided into four—viz.: I swear that I will eat or will not eat; that I did or did not eat. If upon making the oath, I will not eat, he does eat, and be it but a minimum, he is guilty; so R. Aqiba. Whereupon he was questioned: Where do we find a similar case that one be guilty for a minimum, so that this one be declared guilty? He replied: Where do we find that one must bring an offering for mere talk, as this one does talk and brings an offering?

GEMARA: The rabbis taught: "The expression *Mib'ta* of [Numb. xxxvii.] is considered an oath, and also the word *Issor* is considered such; and what prohibition attaches to this last form of an oath? If you decide that *Issor* is an oath, liability is attached to its transgression." Now, how is this to be understood? Does not the Boraitha state expressly that *Issor* is an oath? Said Abayi: It means to say thus: The expression *Mib'ta* is an oath, and if one says: This object is *Issor* to me as the first, and this third object be to me as the second, it is in such a case that, if it be decided that the making of an oath on a thing by comparing it to the first one is an oath, the second one is prohibited (e.g., if one says: I swear not to eat this meat, then pointing to a bread he says: This bread be for me equal to the said meat; and then again: This fish be equal to this bread. In

such a case if swearing by *comparing* one object to another is an oath, each thing is prohibited).*

But whence do we know that the expression *Mib'ta* is an oath? From [Lev. v. 4]: "Or if any person swear, by pronouncing with his lips (*Leb'ata*); now, it reads [Numb. xxx. 3]: "Or he swear an oath to bind his soul with an *Issor* (obligation)," hence, *Issor* is *obviously* also an oath? Therefore said Abayi: That *Mib'ta* is an oath, is inferred from [ibid., ibid. 7]: "Or what she may have uttered (*Mib'ta*), wherewith she hath bound (*Assro*)"; from here we see that "she has bound," not sworn, and it is with *Mib'ta* that she has bound herself. Rabha, however, said: There is no necessity of Abayi's explanation, as swearing by comparing is not considered; and as to the above Boraitha, it may be simply explained, as follows: *Mib'ta* is an oath, *Issor* is also an oath; however, *Issor* is found used between vow and oath, and this is what the Boraitha says: If one expresses *Issor* as a vow, it is a vow, and if as an oath, it is an oath. And where is it found in such connection? [Ibid., ibid. 11]: "And if she had vowed in her husband's house, or had bound her soul by an obligation (*Issor*) with an oath." And the explanations of Abayi and Rabha are respectively in accordance with their theories elsewhere; as it was taught: If one swears by comparing, it is, according to Abayi, the same as swearing directly with the word oath, while according to Rabha it is not so.

An objection was raised from the following: What is *Issor* mentioned in the Torah? If one says, I take upon myself not to eat meat, not to drink wine just as on the day of the death of my father or of a certain man, *e.g.*, Gedaliuhu b. Achikom, or as on the day when I have seen Jerusalem destroyed, it is an *Issor*; and Samuel adds: Provided he has previously *vowed* already not to consume these objects on those days. Now, according to this, Abayi's theory is correct, as we see here that one may make a vow by comparing, hence, he may also make an oath by comparing; but Rabha's theory remains open to objection? Nay; Rabha may say that the cited Boraitha should read thus: "What is an *Issor of a vow* mentioned in the Torah"? "If one says," etc.; and to this Samuel makes his addition, by reason of [ibid., ibid. 3]: "If a man vows a vow," which means:

* This illustration is taken from 'Hanannel, as Rashi's illustration here is too complicated.

He vows on a thing on which he has already vowed. Moreover, Gedaliuh's day is specifically mentioned in the Boraitha in order to teach that, notwithstanding that it is a general fast-day, one's vow is only then a vow if he has previously vowed especially for this day; and again, lest one say, this being a general fast-day a vow referring thereto is not considered at all, consequently such a vow is not even one by comparing, and hence should be wholly disregarded, it comes to teach us that it is not so.

R. Johanan, too, upholds Rabha's theory, as Rabin, on coming from Palestine, said in his name: If one says, *Mib'ta*, I will not eat, or *Issor*, I will not eat, it is considered an oath. However, when R. Dimi came from Palestine, he said in the name of the same authority: The oath for a future, *e.g.*, I will or will not eat, is considered *false*, and the warning against it is in [Lev. xix. 12]: "And ye shall not swear by my name falsely." Furthermore, the oath for the past, *e.g.*, I have or have not eaten, is considered *vain*, and the warning against it is in [Exod. xx. 7]: "Thou shalt not take the name of the Lord thy God in vain," and against a vow the warning is found in [Numb. xxx. 3]: "He shall not profane his word."

An objection was raised from the following: Vain (*Shakve*) and false (*Shekker*) are identical. Does not this mean that just as *vain* refers to a past, so does false, too, refer to the past? Why, vain and false are identical in respect of another point, but each of them has its signification as above; as there is a Boraitha: *Zachor*, ye shall remember (in the first ten commandments) and *Shamar*, ye shall observe the Sabbath (in the last ten commandments) were uttered by the Lord in one word, which transcends the power of the human mouth and ear.* But what does this Boraitha teach us thereby? The following: Just as stripes are applied to a false, so they are also to a vain oath. But is not this self-evident, as both are negatives? Lest one say that it is as R. Papa said to Abayi (further on), it comes to teach us that the Halakha prevails with Abayi.

When Rabin came, he said in the name of R. Jeremiah that R. Abuhu said in the name of R. Johanan that an oath for the past is a false one, and the warning against it is as cited above; and an oath for the future is merely a transgression of "He shall not profane his word," as above; and a vain oath is when one swears, *e.g.*, that a man is a woman. Said R. Papa: R. Abuhu's

* The continuation of this will be translated in Tract Benedictions.

statement was not explicitly stated, but inferred from the following: It was taught, Aidi b. Abin said in the name of Amram that R. Itz'hak said in the name of R. Johanan that R. Jehudah, quoting R. Jose the Galilean said: Stripes apply to all negatives of the Torah implying manual labor, but not to those without manual labor; excepting, however, an oath, an exchange and a curse upon one's neighbor by the holy name, to which three, though not implying manual labor, stripes apply. And whence do we know that it is so concerning an oath? Said R. Johanan in the name of R. Simeon b. Jo'hai, it reads [Exod. xx. 7]: "For the Lord will not hold guiltless," etc., which means only the heavenly court, but the worldly court will make him guiltless by punishing him with stripes.

Said R. Papa to Abayi: But maybe it means that no one can make him guiltless? And he answered: It would be so if it were not predicated of the Lord; but as it is, it can but mean that not the Lord but the earthly court will. All this concerns a vain oath, but whence do we know that the same is the case with a false one? Said R. Johanan, his own opinion: In the cited verse "vain" is mentioned twice, and as the second is not needed for itself, apply it to a false oath. R. Abuhu, however, deliberated as to how should be the case? If one swears, I will not eat and did eat, then there is an act done, hence it is in the category of negatives with manual act; again, if he swears, I will eat but did not eat, it is a case to which stripes do not apply according to both R. Johanan and Resh Lakish? (above p. 25). Upon due deliberation, however, R. Abuhu decided that it means an oath referring to the past, *e.g.*, I swear that I have eaten, and he did not eat, or *vice versa*; and though there is no manual labor here stripes apply, as Rabha said: The Torah has expressly extended the provision of the vain oath to the false one, to teach that just as a vain refers to the past, so also a false oath.

"*And be it a minimum*," etc. The schoolmen questioned: Does R. Aqiba hold with R. Simeon who declares one liable for a minimum with regard to all biblical transgressions? As we have learned in the following: Stripes apply even to a minimum, and the size of an olive is prescribed only concerning an offering. And why does R. Aqiba differ here, when he does not differ in any other places? Is it in order to let you know the power of his opponents, the rabbis, who say that if one swears not to eat even a minimum and did eat such, he is nevertheless

not liable! Or, in all other cases he agrees with the rabbis, while here he differs; because if one swore not to eat a minimum he would certainly be liable if he did eat, hence he is also liable if he swore generally, without mentioning the word minimum? Come and hear. R. Aqiba said: A Nazarite who has soaked his bread in wine and consumed it, is liable provided wine of the size of an olive entered the bread; now, should he hold with R. Simeon, why does he require the size of an olive? And also from the next Mishna, concerning reptiles which the Gemara explains in accordance with R. Aqiba, that a man may impose upon one's self the prohibition of even a minimum, it is inferred that he agrees with the rabbis in all cases.

"*Where do we find,*" etc. But is there not a moth, which is but a minimum in size, and yet one is liable for consuming it? It is different with living creatures. Again, is not one liable in the case of the sanctuary? Here also there must be no less than the value of a *Peruta*. But does not he himself say that if one expresses a "minimum" he is liable? The expression raises it to the value of a creature. But is there not a case regarding earth, where no definite quantity is requisite? And should you say that it is, then solve the following question propounded by Rabha: If one swore that he will not eat, and thereafter ate earth, what quantity thereof makes him liable, by saying that the quantity of an olive is required! Nay; because earth is not eatable, you cannot very well assign to it a definite quantity. But is not such the case with vows? A vow is equivalent to the expressions "minimum" used in an oath.

"*As this one does talk and brings an offering,*" etc. But is not such the case with the blasphemer who is liable for mere talk? Here a case is looked for where one imposes upon one's self a prohibition by talk, while the blasphemer *sins* with his talk. But is not the case of a Nazarite, who brings an offering for mere talk, analogous? Nay; the Nazarite brings the offering, that wine become allowed to him. But does one not impose a prohibition by saying: "This should be sanctified?" We look for a case where one imposes the prohibition only upon one's self, while in this case the prohibition is general. But does not one prohibit a thing to one's self by saying: "This is a vow for me?" (And if he uses the thing unintentionally he must bring an offering.) The Tana of the Mishna holds that to this case an offering does not apply. Said Rabha: They differ only regarding the case where he did not express the word "minimum,"

but if he did, the expression raises it to the value of a creature. He said again: They differ only when he said, "I will not eat," but if he said, I will not taste, all agree that he is liable. And Rabha says this lest one say that with the expression "taste" one intended to mean "eat." Said R. Papa: They differ only concerning vows, while as regards oaths all agree that liability attaches even to a minimum, because by saying "this is a vow for me" he does not mention eating.

MISHNA II.: (If one says): I swear that I will not eat, and thereafter eats and drinks, he is guilty but once. But if he says: I swear that I will neither eat nor drink and did both, he is guilty twice. If he says: I swear not to eat and then eats wheat bread, barley bread and rye bread, he is guilty but once; if he swears: I will not eat either wheat bread, barley bread or rye bread and then eats, he is guilty for each one severally. I swear that I will not drink, and thereafter drinks varied beverages, he is guilty but once; I swear I will drink neither wine, oil, nor honey, and then drinks, he is guilty for each severally. I swear not to eat, and then ate things not suitable to eat, and drank something not suitable as a drink, he is free. If he swore not to eat and thereafter ate carcasses or illegal cattle, reptiles and vermin, he is guilty. R. Simeon declares him free. If one said: I swear to abstain from deriving any benefit from my wife if I have eaten to-day, and he did eat carcasses, etc., his wife is prohibited to him for all benefit.

GEMARA: R. Hyya b. Abin said in the name of Samuel: If one swears not to eat and thereafter drank, he is guilty. If you wish, this is mere common sense, since ordinarily a man inviting the other one to have a bite, the two go in and eat *and* drink: or if you wish, it is found in the Scripture that the expression eat includes also drinking—viz.: in [Deut. xiv. 16]: "In cattle, sheep, wine . . . and thou shalt *eat* these." But perhaps it means there an *aino garum* (a dish in which wine is mixed)? The verse says further *Shechor** (old wine), which means an intoxicating beverage. Neither can it here be spoken of a date of the City of Kehilla, which when eaten intoxicates and regarding which a Boraitha says that one who had eaten it and then entered the sanctuary is culpable, as the word *shechor* here is analogous with the same word used concerning a Nazarite where it surely means only wine for which he is culpable. Said

* *Shechor* is old wine and *Shiccor* from the same stem means intoxicated.

Rabha: This is implied also in our Mishna: If one swears not to eat, and then eats and drinks, he is culpable but once, which signifies that the drinking is included in the eating; for if this were not the case, to what purpose would the express teaching be? Would it be necessary, *e.g.*, for the Tana to teach expressly that the oath regarding eating makes one culpable only for the eating and not for performed labor? Said Abayi to him: According to your doctrine that eating includes drinking, how is the second part of the Mishna "I will neither eat nor drink" to be understood? As eating includes drinking, why is he culpable twice? And he answered: Because of the expression; the addition "nor drink" shows clearly that his "I will neither eat" was not yet in *his mind* including drinking. Said R. Ashi: It seems to me, too, that the teaching of the Mishna implies drinking in eating, hence, "I swear not to *eat* and then ate things not eatable and *drank* things not suitable to drink," which implies that if the things he drank were suitable, he would be liable, hence we see that drinking is included in eating. However, this is hardly evidence, as the Mishna here may mean that he said in his oath both eat and drink.

"*I will not eat either wheat bread . . . he is guilty for each.*" But perhaps he intends by mentioning expressly bread merely to exclude other things which to eat he shall be free? If such were the case, he would not repeat the word bread with each kind separately. But again, maybe he uses repeatedly the word bread in order to prevent the belief that he swears with regard to wheat bread not to *eat*, while with regard to the others not to *chew*? If this were his intention, he would say: I will not eat wheat bread, nor barley, nor rye, without repeating bread each time. But if he said so, his oath could be understood to concern a mixture of all these, but not each singly and severally? Then let him say: I will not eat bread of wheat, of barley, or of rye, without repeating *bread*. Hence, the repetition must have been intended to emphasize that he makes an oath for each severally.

"*I will drink neither wine, oil . . . he is guilty,*" etc. Here again the question arises, maybe he intends to exclude other beverages, as here the above argumentation cannot be advanced, since the beverages are here specified. Said R. Papa: It speaks of a case where all these liquids were standing before him, so that he could by pointing to them swear not to drink them; why, then, are they specified? To indicate that he makes an

oath for each one. But if so, it could be said that he must not partake only of these before him, but of other wine, etc., he may? Let him then say: I will not drink of these before me, nor of their kind in general. Hence, it must be said that the specification is intended to make the oath for each severally. R. Aha b. R. Aika said: The Mishna speaks of one invited by his neighbor to drink with him wine, oil and honey, to which he could answer: I will not drink with you (without repeating wine, oil and honey); hence, his repeating the liquids makes him liable for each one separately.

"I will not eat and then ate things not eatable," etc. Does not the Mishna contradict itself? It states that on eating an unsuitable thing he is free, and hereafter it declares him culpable for eating carcass? What are the reasons to account for these two parts respectively? This presents no difficulty. The first part speaks of the case when he says in general: I will not eat; while the second part speaks of the case when he expressly says: I will not eat *anything*. But even if this be so, why should the oath hold regarding reptiles, where an oath (not to eat such) lies on him already from the Mount Sinai? Rabh, Samuel and R. Johanan all three said: It speaks of the case when one includes in his oath the permissible with the forbidden—viz.: I will not eat legal and illegal things. Resh Lakish, however, says: A case like that of the Mishna cannot take place, unless he stated plainly not to eat even a half of the prescribed quantity; in which case according to the rabbis, who hold one liable only for the whole quantity, the oath concerns a half-quantity, and according to R. Aqiba, who says that liability attaches even to a minimum, the oath here concerns a half-quantity provided he has not plainly specified anything.

But why does not Resh Lakish agree with R. Johanan? He may say that R. Johanan's theory of inclusion can be applied only to prohibitions in themselves, such as, eating carcasses on the day of atonement, where the carcass is prohibited even if not on the day of atonement, nevertheless the rabbis make him liable also for the day of atonement, because as one is prohibited from eating legal food on that day, he is likewise prohibited from eating carcass, for the prohibition to eat includes legal as well as illegal food; however, where a prohibition is imposed by man upon one's self, no one can make him liable for inclusion. Said Rabha: The reason of him who holds that one is liable for an inclusion is that he compares it to an additional prohibition;

while the reason of him who holds that such is not the case is that an additional prohibition holds good when concerning one and the same piece, but not when concerning separate pieces; *i.e.*, an inclusive prohibition is, *e.g.*, a carcass on the day of atonement, where the day itself adds nothing to the prohibition of the carcass as such, but does add a prohibition upon the man (*viz* : that he must not eat it on that day); while if, *e.g.*, illegal fat, which is prohibited to eat, but allowed for the altar, remains over night, it is prohibited also for the altar, hence, there is on *it* an *additional* prohibition (for its having remained over night), but this additional prohibition can be only on one and the same piece, but not on separate pieces.

Rabha said further that to him who holds the theory of inclusive prohibition, he who swears not to eat figs and hereafter swears not to eat figs and grapes, is liable for the figs twice; for the second oath resting upon the grapes, rests again upon the figs, too. But is not this self-evident? Lest one say that this theory applies only to prohibitions in themselves, and not to such made by man upon himself, he comes to teach us that there is no difference between the two cases.*

MISHNA III.: It is immaterial whether the things sworn off concern himself or others; whether they are or are not of some essential nature. *E.g.*, he says: I swear that I will or will not give something to this or that person; that I did or did not give him something; that I will or will not sleep; that I did or did not sleep; that I will or will not throw a stone into the sea; that I did or did not throw it. R. Ismael says: One is guilty only for an oath made with reference to the future, for it is written: To do evil or to do good. Said to him R. Aqiba: According to this view I know but about oaths concerning things that are intrinsically either evil or good, but whence do I learn about those regarding things that entail neither evil nor good doing? Retorted the former: From the addition in the Scripture; to this rejoined the latter: If the Scripture widens the notion in this respect, it does it likewise in the other (case).

GEMARA: The rabbis taught: In some respects vows are more rigorous than oaths, in others oaths are more rigorous than vows. Vows are more rigorous in that their liability attaches even to commandments, *e.g.*: If one says, I vow not to make a

* The discussion following here, being but repeated from its proper place, is here omitted.

sukkah, and hereafter he makes one, he is liable for transgressing the vow; which is not the case with an oath (as an oath rests upon him from the Mount Sinai). On the other hand, oaths are more rigorous than vows in that their liability attaches also to things not essential, which is not the case with vows.

"*I will or will not give*," etc. What does it mean, "*I will give*"? If charity to the poor, it is obligatory for him by oath on the Mount Sinai? Nay; it means a present to a rich man.

"*I will or will not sleep*," etc. But has not R. Johanan said that if one swears not to sleep for three days in succession, he gets stripes and is put to sleep immediately (because one cannot keep from sleeping for three days)? This is no difficulty, as in the case of the Mishna no number of days is specified.

"*I will throw a stone*," etc. It was taught: If one said, I swear that so and so has or has not thrown a stone into the sea, according to Rabh he is culpable, as he transgressed a negative; according to Samuel he is not, for such an oath can not be made with reference to the future. Shall we assume that the above differ in the same in which R. Aqiba and R. Ismael differ in our Mishna: R. Ismael said, one is liable only for the future, as it reads: To do evil or to do good; whereupon said R. Aqiba: If it were as you say, the liability would apply but to things that are intrinsically either evil or good; and he answered: From the addition in the Scripture: To every thing uttered with his lips; whereto R. Aqiba rejoined, etc. Whence it would appear that Rabh is in accordance with Aqiba, and Samuel in accordance with R. Ismael? Nay; according to R. Ismael, who frees one for the past even in a case where a future is possible, there can be no doubt that in the case illustrated above, one should be culpable; but where they do differ is concerning the interpretation of R. Aqiba's view. According to Rabh, R. Aqiba holds one liable for transgressing a negative immaterial whether such an oath can or can not apply to a future; while Samuel maintains that R. Aqiba's view applies only to a case where an oath for the future is possible, but not to other cases.

Said Abayi: Rabh admits that if one says, I swear that I know something to testify for you, and it is found hereafter that he knows nothing, there is no liability in this case because the negative, I swear that I do not know, etc., is not possible here (as this is not considered an utterance, but belongs to the category of testimony). But regarding the oath, I was or was not aware of testimony in your case, or, I have or have not testified,

Rabh and Samuel still differ. (Says the Gemara): According to Samuel's theory it is correct that the law has excluded the witness-oath from the category of uttered oaths, as there is a rule that where there is no future possible, no liability attaches to the past; but according to Rabh who disregards this rule, why were the witness-oaths excluded? Said the rabbis before Abayi: In order to make one liable twice (*i.e.*, if one is fit to testify, knows the case, and nevertheless denied it before the court, he is liable twice, for the witness-oath and for an uttered oath). Said Abayi to them: It is impossible to make one liable twice, as it reads plainly [Lev. v. 4]: "That he hath incurred guilt by *one** of these," which means, he can be punished once but not twice. But, then, to what other purpose have the witness-oaths been excluded, according to Abayi? To what we have learned in the following: Concerning all oaths it reads "escaped his memory," except the oath of a witness, to make him liable (to a sin-offering) for an intentional oath just as for an unintentional one. Said the rabbis to Abayi: Say, then, that for an intentional he is liable to one, and for an unintentional he should be liable to two, *viz.*: for a witness and an uttered oath? And he answered: Have I not said that the above-cited verse prevents it from making one liable to two? And as to an intentional, the liability of an uttered oath does not exist there.

Rabha, however, said: The reason why there can be no two liabilities is this: There is a rule that, if to something that was included in the general a new law be applied, only by the new one must guide one's self (*i.e.*, the witness-oath as an oath is included in the general uttered oaths, and when the Scripture makes for it a new special law of liability, you cannot any more apply to it also the liability attached to the uttered oath). But how is it according to Abayi? Does he hold that there is such an oath at all? Has he not declared above that Rabh admits that if one swears: I know testimony for you, etc., there is no liability here, as such oath cannot be made in the negative, whence it would seem that such in the negative does not exist at all? He has retracted his above statement, or, if you wish, one of the above statements was not said by Abayi but by R. Papa.

* Here the word *l'achath* (to one) is taken by the text literally: one; while further on it is explained to mean 'to anyone'.

"*One is guilty only . . . with reference to the future.*" The rabbis taught, it reads [Lev. v. 4]: "To do evil, or to do good," whence we infer only those that are in themselves either good or evil; but whence do we know about oaths concerning other things? From [ibid., ibid.]: "Pronouncing with his lips," etc. But all this is concerning the future; whence do we know the same concerning the past? From [ibid., ibid.]: "In *whatsoever* it be"; so R. Aqiba. R. Ismael, however, says: "To do evil, or to do good" means only oaths for the future. Said to him R. Aqiba: If such be the case, we know only about oaths concerning things intrinsically good or evil, but whence do we know about those regarding other things? Retorted the former: From the addition in the Scripture ("whatsoever"), whereupon rejoined R. Aqiba: If the Scripture widens the notion in this respect, it does it likewise in all other respects. Now, is not R. Aqiba's statement perfectly correct? Said R. Johanan: R. Ismael, who was a disciple of R. Ne'hunia b. Hakana, who was in the habit of interpreting the Scripture by generals and particulars, proceeds in the same manner as his master; while R. Aqiba, who was the disciple of Na'hum of Gimzu, whose method of interpretation was extensions and limitations, follows his master's method. And this is as stated in the following Boraitha: "If any person swear" is an extension; "To do evil or good" is a limitation; "In whatsoever it be" is again an extension, and there is a rule that such an extension includes everything, while a limitation is excluding a commandment. This is in accordance with R. Aqiba; while R. Ismael, whose method is the generals and particulars, interprets the verse thus: "If any person," etc., is a general; "To do evil or good" is a particular; "In whatsoever" is again a general, and there is a rule that wherever there is a particular between two generals, the latter must be interpreted in the sense of the particular; now, as the particular here refers expressly to the future, so also everything relates to the future; the generals, however, affect in the same way all other things relating to the future, but not implying either good or evil, while the particular affects things relating to the past, that they be excluded. (Says the Gemara): And why not the reverse? Said R. Itz'hak: They must be similar to the particular (of to do evil, etc.), which is prohibited because of the above-cited [Numb. xxx.]: "He shall not profane his word," excluded the past to which the prohibition is "He shall not lie." R. Itz'hak b. Abin, however, said: This is inferred from the cited verse,

"If any person swear by pronouncing," which signifies that the oath was before the act, but not the past where the act was before the oath.

The rabbis taught: "If any person swear," etc., intends to exclude compulsion; "Escaped" to exclude intention; "From his memory" to signify that the oath escaped his memory but not the thing in question; hence, one is culpable only for forgetting the oath, but not for forgetting the object.

The master says: "To exclude compulsion," what could illustrate this? As it happened to R. Kahana and R. Assi after the lectures at Rabh's college had ceased; one would say, I swear that Rabh said so and so, and the other would say, I swear that Rabh said the contrary, and when they came to ask Rabh on the point, he certainly said as one of them; and to the question of the other, Have I sworn false, Rabh answered: You were compelled by your conscience and the verse "Escaped (from) his memory" means the oath but not the object.

This statement was ridiculed in the west. An oath and not the object is to be found, *e.g.*, in: I swear not to eat wheat bread, and thereafter he thinks that he swore to eat, and accordingly eats it, hence, he forgot the oath but not the object; but where do you find a case where the object is forgotten and not the oath? As, *e.g.*, in: I will not eat wheat bread, and thereafter ate it thinking it to be of barley, hence, he has the oath in mind and not the object; but as he forgot the object, is it not as if he forgot the oath? Therefore, decided R. Elazar that it makes no difference what one forgets. R. Joseph opposed: Is it indeed so, that the object cannot be forgotten without the oath? May it not happen that one swear not to eat wheat bread, and then stretch his hand to the basket where there was both barley and wheat bread with the intention to take that of barley, but takes that of wheat, and eats it up in the belief that it is of barley? In this case he had the oath clearly in mind, but he did not recognize the object. -Said Abayi to him: But when he brings the offering, why does he bring it, for the bread he has eaten? Surely because of the oath (hence, they were right in the west). R. Joseph, however, insists on his statement for the reason that if he actually recognized that this is wheat bread, he would certainly abstain from it, hence, here is the ignorance of the object.

Rabha questioned R. Na'hman: How is it if he forgot both? And he answered: As soon as he became ignorant of the oath

he is culpable. Rejoined Rabha: Why not the contrary? Here is the ignorance of the object, and hence he should be free? Said R. Ashi: In such a case we have to examine the nature of the case; if he abstained from the object by recollecting the oath, then the ignorance of the oath is the main thing, and he is culpable; but if he abstained by recollecting the object, then the ignorance of the object is the main point, and he is free. Said Rabina to him: I do not see any difference here; if his abstention is caused by the recollection of the oath, is not here also the recollection of the object brought about? And the same may be asked *vice versa*; hence, there can be no difference here.

Rabha questioned again R. Na'hman: How can an unintentional uttered oath take place for the past? If he (who swears) is while swearing aware that it is false, then it is intentional; and if he is not aware, then it is a case of compulsion. And he answered: Take the case where he is aware that such an oath is prohibited, but is not aware that the liability of a sin-offering is attached thereto. Is this in accordance with Munbaz, who holds that such an ignorance be considered, and not in accordance with the rabbis, his opponents? Nay; this may even accord with the latter, as they differ with him only in all other cases of the Torah, but not in this case, for it is a novelty, as we do not find anywhere in the Scripture that one should be liable to a sin-offering for a negative except in this case, in which, therefore, the rabbis, too, agree with Munbaz.

Rabina (the elder) questioned Rabha: Suppose one swear not to eat this bread, and then he is in danger if he does not eat it, how is it? In danger! then he is certainly allowed to eat it! Said Rabina: I mean to say that suppose he ate this bread while impelled by hunger and having forgotten his oath not to eat it. And Rabha answered: Concerning this we have learned elsewhere, a sin-offering applies only to such a case where he would abstain from eating if he recollected his oath, but not otherwise; while here, being, as he is, impelled by hunger, he would not abstain, it cannot be considered unintentional.*

Samuel said: It is not sufficient that one make up his mind, he must pronounce it with his lips, as it reads "By pronouncing with his lips." †

* The explanation here is that of Hanannell's second version, Rashi not being clear on the point.

† This statement is objected to by many, but the objections are overthrown; and as all this discussion is both complicated and unimportant, we omit it.

MISHNA IV.: If one swears to ignore some commandment and does not carry out his oath, he is free; if he swears to fulfill a commandment and fails to realize his oath, he is free. It appears on the first glance that he should rather be guilty, as R. Jehudah b. Battina argues thus: Since one is guilty for oaths regarding voluntary acts not provided for from the Mount Sinai, so much the more is it so in the case of oaths regarding commandments, to which he is sworn in from the Mount Sinai. Whereupon he was retorted: If you declare him guilty in voluntary acts where affirmation and negation are both alike indifferent, you can by means do the same in oaths concerning commandments where affirmation and negation are not equivalent; since one is free, if he swears to, but does not, violate a commandment.

GEMARA: The rabbis taught: Lest one say that one who swore to ignore a commandment and did not, should be culpable, it reads, "To do evil or good"; just as to do good unto one's self is a voluntary act, so also an evil act must be voluntary, and this excludes him who swore to ignore a commandment. Furthermore, lest one say that he who swore to fulfill a commandment and did not, should be culpable for the oath, we again compare the good to the evil act: just as latter is voluntary in this case, so must former be voluntary, and this excludes the case of an oath to fulfill a commandment. Again, lest one say that if one swore to do evil unto himself and did not, he should be free, we again compare evil to good; just as the latter means voluntary, so also the former, hence, it includes the case where one swore to do evil to himself, which he was at liberty to do, and he is culpable. Finally, lest one say that the same is the case if he swore to do evil to others and did not, we compare evil to good, which latter is voluntary, while in the case of strangers he is not at liberty to do evil, hence he is free. But whence do we know that he who swore to do good to others and did not, is culpable? From "or to do good." What is an evil doing to others? *E.g.*, one says: I will strike so and so, and split his head.

(Says the Gemara): But whence is it known that the above-cited verse treats of a voluntary act, perhaps it has in view a meritorious act? This cannot be borne in mind, as the two, the evil and the good, must be compared with each other; and as doing good cannot be spoken of concerning the ignoring of a commandment, so also doing evil cannot treat of ignoring a com-

mandment, hence, this expression of doing evil would be in this respect good, as it does not apply to the ignoring of commandments; on the other hand, the good-doing is compared to the evil-doing: just as the former cannot treat of the fulfilling of a commandment, so also the latter cannot; hence, in this respect the good-doing would be evil (therefore, the expression in question cannot treat of meritorious acts). But in the light of these considerations, this expression cannot treat of voluntary acts, either, where good and evil means to do good and evil unto one's self respectively, hence, here, too, good would in some respects be evil (as, *e.g.*, the oath not to eat a harmful thing) and *vice versa*?* Therefore we must say that, because it was needful to the Scripture to use the disjunction "or" in order to indicate doing good to others, it must treat of voluntary acts; since if it treated of commandments, the "or" would not be necessary, as it would be self-evident, for as the doing evil to others is included here, so much the more the doing good!

"*R. Jehudah b. Bathira*," etc. Is not the argument of the rabbis against *R. Jehudah b. Bathira* correct? He may say thus: Let us see; was it then necessary for the Scripture to add that if one swore to do good to others and did not, he is culpable; is this not self-evident, since one is not culpable for an oath to do evil to others, being as he is not free to do so, he is culpable when he *is free* to do so; and nevertheless the Scripture did add, hence, the same is the case with the oath to fulfill a commandment, where, although it is self-evident that he is culpable in this case because he is not culpable when he swore to ignore a commandment, yet the Scripture adds it. To all which the rabbis might say: These two cases are by no means analogous, as when one swears not to do good to so and so, he is culpable, while if one swears not to fulfill a commandment, and thereafter he does fulfill, he cannot be culpable.

MISHNA *V.*: If one swears, I will not eat this loaf of bread, I swear I will not eat it, I swear I will not eat it, and eats it nevertheless, he is guilty but once. This is an uttered oath for the intentional violation of which one is subject to stripes, and for whose unintentional violation to a poor or rich offering. Vain swearing, if wilfully done, is punished with stripes, but if committed unintentionally, is free from punishment.

* The commentaries on the point are in great perplexity.

† The discussion here on the disjunction "or" is omitted, for it is already given in *Sanhedrin*.

GEMARA: To what purpose does the Mishna vary the language? It comes to teach us that only when making the oath in such expressions he is culpable but once; but if he said first: I will not eat it, and then, I will not eat this loaf, he would be culpable twice; as Rabha explains elsewhere that the expression "I will not eat this bread" makes one culpable when he ate of it the size of an olive; but if one says, "I will not eat it," he is not culpable unless he has consumed the whole of it; hence, if the Mishna stated first "I will not eat it, and then "I will not eat this loaf of bread" he would be culpable twice (as here were two *distinct* oaths: the former on the *whole* bread, the latter on the size of an olive; and the latter does not do away with the former, while the former if stated last would do away with the latter).

"*I will not eat it, and eats it none the less,*" etc. For what purpose is this repetition, since one oath does not rest upon the other, as we have seen it to be the case with the second one, and it is surely so with the third one, too? It comes to teach us that, though there is no liability, yet the oath is not ignored, and that in case there will be place for it, it may rest; this illustration is as Rabha said: In case he asked a sage to nullify the first oath, the next comes to take its place.

Rabha said: If one says, I swear not to eat *this* bread in case I eat the other, and it happened that he ate the first ^{*(1)} erroneously and the second intentionally, he is free (2); if *vice versa*, he is culpable (3); furthermore, if he ate both unintentionally, he is free (4); if both intentionally, it depends on the following: if he had eaten the conditional one first and thereafter the one he prohibited to himself, he is liable (5), and if *vice versa* it is under the category of cases concerning which R. Johanan and Resh Lakish differ; according to him who holds that a doubtful

* (1) The first, *i.e.* the conditioned *A*, the second, *i.e.* the conditioning one *B*.

(2) Because when he eats *A* he forgot all about *B* and the oath has not yet rested upon him, since *B* was not yet consumed by him; hence, he is free from both stripes and sin offering. (3) Because while eating *A* he was aware of his oath, and when consuming *B* he forgot the oath; hence he is liable to an offering for breaking an oath by forgetting. (4) Because he had forgotten the oath already when he ate *A* hence there was no oath at all resting upon him. (5) To stripes, since after having consumed *A* he was aware that *B* was forbidden to him, and the warning was a certain one. (6) Because if he was warned with regard to either *A* or *B*, he has broken his oath intentionally. (7) Even when warned while eating *A*, because the liability to stripes is originally attached only to *B*, hence the warning does not effect. (8) Because one of the breads was necessarily consumed intentionally.

warning is considered, he is culpable (6), while according to the other, who holds that such is not considered, he is free (7). If, however, continues Rabha, he made the two breads dependent on each other—viz.: I will not eat the one if I eat the other, I will not eat the other if I eat this, and thereafter he consumed one intentionally (*i.e.*, he has in mind the oath that he must not eat this in case he eats the other one, but he forgot that he swore the same with regard to the other bread) then he consumed the other one also intentionally (the same as before, but he forgot that he has already consumed the first one), he is free; if, however, he has consumed the first unintentionally (*i.e.*, he forgot that the conditional oath is on *this* bread, though aware of the oath itself and therefore he consumes the second one in the same manner, he is culpable (8); but if he consumed both unintentionally (having forgotten all about the oath), he is free; both intentionally, he is, all agree, culpable for the second one; the first, however, falls into the foregoing category concerning which R. Johanan and Resh Lakish differ. Said R. Mari: there are vows by error and vows by compulsion; how so? If one says: I vow this object if I have eaten or drunk such and such, and then recollects that he did; in like manner if he vows for the future and on forgetting the vow eats or drinks, to such a vow no liability attaches; and there is a Boraitha that just as there are vows by error, there are also oaths by error.

Eipha taught the Tract Sheb'noth at Rabba's college, and Abimi, his brother, asked him: How is it if one swears twice, I have not eaten, I have not eaten, while he did eat? He answered: He is culpable but once; whereupon he said: You are mistaken, since the first oath was already a lie, and the second one is again a lie. He asked further: How is it if one swears not to eat nine and ten (articles), and thereafter he eats ten, without recollecting his oath in between? And he answered: He is culpable for each one severally. Said the other: You are again mistaken, for the oath for the ten does not rest at all, as ten presupposes nine and for the nine he has made a separate oath; but how is it if he swear not to eat ten, and then not to eat nine? Here he is culpable only once. The other rejoined: You are again mistaken, for as soon as he ate nine he broke one oath, and by eating the tenth he breaks the other oath. Said Abayi: In this last case, then, may be a case that Eipha is right—viz.: if one swear not to eat ten, and thereafter not to eat nine; then he ate nine and recollects his transgression, brought

a sin-offering and then consumed the tenth; the tenth is then considered but a half-quantity, and for such one is not liable.

MISHNA VI.: Which is false swearing? If one swears that something is different from what it is known by everybody to be, *e.g.*, that a stone column is of gold, that a man is a woman, that a woman is a man; or if he swears to an impossibility—viz.: If I have not seen a camel flying in the air; If I did not see a serpent of the shape of an oil-press; so! . . . If one asks some witnesses: Come to testify for me, and they answer, We swear that we shall not bear you witness; or if someone swears to ignore a commandment, as, *e.g.*, not to make a Sukka, not to take Lulab'be, or not to put on phylacteries; so it is a false swearing punishable with stripes if committed intentionally, and unpunishable if made by error. If he swears, to one and the same loaf of bread, I will not eat it, then, I will not eat it, the former is a vain oath, and the latter an uttered oath; so that by eating it he is liable for uttered swearing; by not eating it he is liable for a vain oath.

GEMARA: Said Ula: Provided it was acknowledged by three persons that this pillar was of stone.

"*If he swore to an impossibility,*" etc. Why does the Mishna use a negative and not a positive expression? Said Abayi: Read it in the positive, if you prefer. Rabha, however, said: It speaks thus: If he says, all the fruit in the world be forbidden to me, if I have not,* etc.

"*I will eat, I will not eat,*" etc. Let us see: since he is liable for the uttered oath, shall he not be liable for the vain one? He *has* pronounced such and why shall he not be liable? Said R. Jeremiah: Read in the Mishna, he is liable for the uttered oath *also*.

MISHNA VII.: The provisions regarding uttered swearing apply to males, females; to kindred, non-kindred; to those legally fit to testify as well as to those unfit; to cases before as well as outside the court. The oath, however, must come forth from his own mouth, and its intentional violation is punished with stripes, and its unintentional with a poor and rich-offering. Vain swearing takes place by men as well as by women; by kindred and non-kindred; by those fit to testify and by those unfit; before and outside the court, and the oath must issue from one's own mouth; its intentional violation is attended with stripes,

* The further development of this discussion will appear in its place in N'dairm.

while its unintentional is unpunishable. In both cases one is guilty if made to swear by others, thus: If he says, I ate nothing to-day, I put on no phylacteries, and another interposes: I adjure you, to which he answers: Amen, he is guilty.

GEMARA: Said Samuel: He who answers amen after an oath is considered as if he pronounced the oath with his lips, as it reads [Numb. v. 22]: "And the women say amen, amen." Said R. Papa in the name of Rabha: There are a Mishna and a Boraitha which seem to teach the same. The Mishna is the next following (viii.): The witness-oath . . . unless they deny before the court; such is R. Mair's view. Then the illustration in the Boraitha: If one said to the witnesses, Come and testify for me, and they answer: We swear that we know of not testimony for you, or, We do not know any testimony, whereto he says, I adjure you, and they answered: Amen, they are liable when they deny it, immaterial in the presence or absence of the court; so R. Mair. Hence, the Boraitha apparently contradicts the Mishna; however, as we said, the Mishna means that they did not answer amen, while in the Boraitha he did so, hence, the answer, amen, is equivalent to pronouncing with one's lips.

Said Rabina in the name of Rabha: From our own Mishna we may infer the same; as in the first part it requires that he must utter it himself, whence it is to be inferred that not through others, and in its last part it states that in both cases if sworn through another, he is liable; does the last part contradict the first? Nay; the last part means when they answered Amen, while the first part does not mean so. But if so, what comes Samuel to tell us? He comes to teach that the Mishna is particular in its statements concerning an uttered oath—viz.: if made by himself, he must pronounce it with his lips, and if by others, he must also utter with his lips Amen.

CHAPTER IV.

RULES AND REGULATIONS CONCERNING THE WITNESS-OATH : WHO IS OR IS NOT RESPONSIBLE THEREFOR; HOW THE PLACE WHERE SUCH IS MADE (WITHIN OR WITHOUT THE COURT) DETERMINES ITS LIABILITY ; IF MADE INTENTIONALLY.—THE LAWS OF ADJURATION.—TWO PARTIES OF WITNESSES CONTRADICTING EACH OTHER.—FOR WHICH OF THE DIVINE NAMES AND ATTRIBUTES (WHEN USED IN AN OATH) ONE IS CULPABLE.

MISHNA I. : The witness-oath applies to men but not to women, to unrelated but not to kindred, to legally fit to testify but not to those unfit, as such an oath is given only to those fit to testify in the presence as well as in the absence of the court; provided it comes forth from one's own lips, but if from the mouth of others, they are liable only when they deny it before the court; such is R. Mair's view; the sages, however, maintain: Whether it comes forth from one's own mouth or from that of others, they are not liable unless they deny it before the court. Again, the witnesses are liable for an intentional oath, and for an error *in* the oath made while intentionally testifying, but are not guilty when made in error. And what is their fine for intentional swearing? A poor and rich offering.

GEMARA: Whence is this deduced? From what the rabbis taught, it reads [Deut. xix. 17]: "Then shall the two men, who have the controversy, stand before the Lord," etc.; this means the witnesses; but perhaps it means the contending parties themselves? As it reads: "Who have the controversy," hence, the parties are already indicated, consequently, "the men" indicate the witnesses. And should you like to object to this deduction, then we may refer to the analogy of expression "two" mentioned here, and also found in [ibid. 15]: "Upon the evidence of two," where it *expressly* means witnesses, hence, also here witnesses are meant. [And what would be the objection? Lest one say that because it is not written "*and* who have the controversy," the whole verse speaks only of the parties, hence, the analogy of expression.]

There is another Boraitha: "The two men shall stand"

means the witnesses; but perhaps it means the parties? This cannot be, for do only men and not women come to court? And should you like to object, we may refer you to an analogy of expression; as there "two" means witnesses, so also here [and what would be the objection? Lest one say that it is not customary for a woman to go to court, as it reads [Psalm, xlv. 14]: "Awaiteth the king's daughter in the inner chamber"; wherefore, the analogy of expression].

The rabbis taught: "The two men shall stand" signifies that it is a meritorious act that both parties declare their grievances standing. Said R. Jehudah: I have heard that if the court allows both parties to sit, they may do so, since it is forbidden only that one stand and the other sit; or that one party be allowed freedom in speaking, and the other he asked to speak briefly.

The rabbis taught, it reads [Lev. xix. 15]: "In righteousness thou shalt judge thy neighbor," which means no preference is to be given to either party, as said above. Another explanation of the just-cited verse is: Try always to judge everybody from his better side. R. Joseph taught: This verse signifies that him who is your equal in wisdom and deeds, you shall try to judge fairly.

It happened that Ula b. Eilai had a case in the court of R. Na'hman, and R. Joseph sent word to R. Na'hman: Ula, our colleague, is equal to us in wisdom and deeds; and R. Na'hman wondered what the purpose of the message was; does he mean: I shall flatter him? After some deliberation he said: He must mean I shall give preference to Ula's case over some other cases, or if in his case the evidence will be equally balanced on the two sides, and the opinion of the judges will be decisive.

Ula said: The point of difference above concerns only the contending parties, while concerning the witnesses all agree that they must stand, as the above-cited verse, "The two men shall stand," signifies; and R. Huna said: The difference concerns only the time of the trial, while at its conclusion the judges, all agree, should sit and the parties stand, as the conclusion is equalled to witnesses and as they are standing according to the above-cited verse, so also must the parties stand.

The wife of R. Huna had once a case before R. Na'hman, and the latter deliberated with himself as to how to proceed. Shall I rise to honor her, then her opponent will remain stupefied, and should I not rise, there is a rule that the wife of a

scholar must be treated in the same manner as the scholar himself. He then helped himself out of the difficulty by instructing his servant, thus: Throw a duckling upon my head as soon as the wife Huna enters, so that I will have to rise anyhow. But did not the master say that at the conclusion of the trial the judges, all agree, are to sit while the parties must stand? (And how could R. Na'hman remain standing when she enters to hear the conclusion)? The answer is: He then sits halfway, as though untying his shoe-laces, and pronounces the verdict.

Rabba b. R. Huna said: If a scholar has a case with one of the common people, the court may invite both to sit down, and if the common man remain standing, it is not necessary to repeat the invitation.

Rabh b. R. Shrabia had a case with an Amharetz (a common) before R. Papa, and the latter invited both to sit down; the messenger of the court, however, came and made the Amharetz to stand up, to which R. Papa said nothing. But why was R. Papa indifferent, could not this stupefy the opposing party? R. Papa thought: I, myself, invited the two to sit, and the act of the messenger the Amharetz may explain as due to the fact that he has not gratified him (the messenger).

Rabba b. Huna said again: If a young scholar has a case with an Amharetz, the former must not sit down before the judge appears, in order that the Amharetz should not think that the scholar came there to prepare his own case and send it to the judge; provided, however, the scholar was not usually appointed to sit in court for some other purpose, but if he was, he may sit down, as his opponent will think that he is there for a purpose other than the case.

The same said again in the name of the same authority: If a scholar was aware of a case to which he could be a witness, but it was a humiliation to him to go to that particular court where the judge was inferior to him, he may remain at home. Said R. Sheshah b. R. Idi: This we have also learned in a Mishna, if one finds a sack or a basket on the way and it is a humiliation to him to carry it, he may leave it (in spite of the commandment to return a loss to its owner); but all this, he says, concerns civil cases; as to criminal cases, it reads [Prov. xxi. 30]: "There is no wisdom nor understanding, nor counsel against the Lord," which means wherever there is a case of profaning the holy name, no distinction or honor must be given to any rabbi.

R. Yenai was witness to a case where Mar Zutra was one of the contending parties, in the court of Amemar; and latter invited all, parties and witnesses, to sit down. Said R. Ashi to him: Did not Ula say that only concerning the parties there is a difference of opinion, but concerning the witnesses all agree that they must stand? And he answered: This is a positive commandment; and to honor a scholar is also a positive commandment (inferred by R. Aqiba from the particle *Eth*, the sign of the accusations, written in "*Eth* the Lord thy God thou shalt fear," which means to add the scholar) and the latter commandment is to me of greater value.

The rabbis taught, it reads [Exod. xxiii. 7]: "Keep thyself far from a false speech"; this signifies that the judge must not with his speech advocate either party, furthermore that he shall not enter discussion with an ignorant disciple in a case (so that he might not be mislead by the latter); again, that the judge, being aware that the party is a robber and there being only one witness, must not conjoin with the latter, for in this case the robber may be right; nor must this (conjoining) be done by any other person; that, if the judge notices the witnesses to testify falsely, he shall not say to himself: I will decide the case in accordance with their evidence according to the law and the "collar remain on their neck."

From this verse is further to infer: That if a disciple saw his master err in his judgment, he must not say, "I will wait until he issues his verdict and then I will disclose the error, thereby causing the issue of another verdict, which will have to be done with the acknowledgement of my authority" (but must call his attention immediately). That the master shall not tell to his disciple: It is known to all that I will not lie even if offered 100 manas, but there is one who owes me a *mana*, and I have only one witness, it is but right that you appear in court, so that the defendant might think you, too, a witness, and I will thus get my *mana*, although he does not instruct his disciple to tell a lie, but begs him to stand and say nothing, yet the verse reads, "Keep thyself *far* from false." Furthermore, if the plaintiff claims a *mana*, he must not claim two, thinking that thereby he will cause the defendant to confess one, which partial confession will make him liable to a biblical oath, so that there will be possible for the plaintiff to include here in the oath also other claims he may have against the defendant; this, too, is prohibited, because "Keep thyself *far* from false." For the same

reason the defendant must not say: Since the plaintiff claims two, and will therefore not confess even the one I owe him in order to avoid the biblical oath in which the plaintiff may include some other claims. From the said verse is further inferred: That, when three persons claim one *mana* from one party, and there are no witnesses, they shall not institute one of themselves as the plaintiff and the other two as witnesses, thereby recovering the *mana* and dividing it among themselves. Again: If two appear before the court, one richly dressed in a cloak worth 100 *mana*, and the other clad in rags, the court must instruct the former to go and dress like his contestant, or to dress him richly like one's self (this, too, is inferred from the verse, because the contrast between the rich and the poor would stupefy latter and also possibly influence the judge).*

It reads [Ezek. xviii. 18]: "And did that which is not good in the midst of his people," which according to Rabh means him who comes to court with a power of attorney, and according to Samuel, him who buys a field on which there are several claims.

"*Such an oath . . . only to those fit,*" etc. To exclude whom? Said R. Papa: To exclude a king, and R. Aha b. Jacob said: To exclude a gambler. To him who says "a gambler," so much the more a king, and to him who says "a king" a gambler is not excluded, since biblically he is fit, and only the rabbis have declared him unfit.

"*In the presence as well as in the absence of the court.*" What is their point of difference? The rabbis said in the presence of R. Papa: The theory "Deduce from it, and again from it," in case one thing is deduced from another (*i.e.*, any further provision connected with *A* may be transferred to *B*) is the theory of R. Mair (as explained further on). The opponents of R. Mair, however, hold the theory of "Deduce from it, the rest, however, leave in its place" (*i.e.*, after having transferred the main provision of *A* to *B*, we are to let *B* retain its own character); thus the case of witnesses is inferred from the case of a deposit; as in a deposit one is liable only when swearing himself, so also in the case of witness; again, as in the former case it is indifferent the presence or absence of the court, so also with witnesses; and this is R. Mair's theory just men-

* There are still more significations imputed to this verse, and they have appeared already in Sanhedrin and Maccoth.

tioned. The rabbis, however, who uphold the other theory, argue thus: As in a deposit, he is liable when swearing himself, so also in the case of witnesses; but if one is sworn by others which case can take place only in the presence of the court but not otherwise, we have a case that must retain its own characteristics; and the same is the case when he swears himself, it must be in the presence of the court. Said R. Papa to them: If the rabbis of the Mishna inferred this from the case of a deposit, they would certainly adopt also R. Mair's theory above mentioned; the reason, however, why the rabbis do not adopt it is that they proceed by an inference *a fortiori*—viz.: since one is liable when sworn by others, so much the more he is liable, if he himself swore; and concerning this there is a rule: "It is sufficient that the result derived from inference be equivalent to the law from which it is drawn;" and since the case of being sworn by others must take place only in the court, the same is in the case of swearing himself.

"*Guilty for an intentional oath*," etc. Whence is this deduced? From what the rabbis taught: In all other cases (concerning an offering) it reads "Escaped his recollection," except this case; hence, this teaches that one is liable for an intentional oath, just as for an unintentional.

"*For an error in intentional testifying*," etc. What instance could illustrate this? Said R. Jehudah in the name of Rabh: If one says, I know this oath to be prohibited, but I do not know that the liability therefor is an offering.

"*But they are not liable when made in error*." Shall we assume that this Mishna decides the question discussed above by R. Kahana and R. Assi, concerning the saying of Rabh made in the college? Nay; it was necessary for Rabh to teach them that, since otherwise one might say that the decision of the Mishna concerns only that case with regard to which the Scripture does not mention "Escaped," etc. (*i.e.*, the case concerning witnesses), but it does not apply to an uttered oath regarding which "Escaped" is mentioned, so that any error entails liability; therefore he came to teach that even in such case there is no liability.

MISHNA II.: How does a witness-oath come about? If someone said to two: Come and bear witness for me, and they say, We swear that we know no testimony for you; or they said, We know nothing to testify for you, whereupon he answers, Do you swear, and they say, Amen, they are liable. If he repeated

this five times outside of court, and upon coming before the court they confessed and testified, they are free; but if they deny it also here, they are guilty for each time severally. If, however, he repeated his adjuration five times in presence of the court and they denied, they are liable but once. Said R. Simeon: What is the reason? Because they are not able to retract the previous statement and to testify. If the two denied simultaneously, they both are guilty, but if successively, only he who denied first is guilty, while the second one is free. If one of them denies and the other confesses the truth, the denier is guilty. If there were two parties of witnesses and both denied successively, the two are guilty, since the testimony could have been established by either one.

GEMARA: Said Samuel: If the witnesses saw one running after them and said to him: What are you running for, we swear that we know no testimony for you, they are free, as liability attaches only to the case when they heard him adjuring them.

What news does Samuel come to teach us? Is this not plainly stated in the last part of Mishna V.—viz.: "They must hear it from the mouth of the plaintiff"? Samuel finds it necessary to teach the case where he runs after them, lest one say that running he considered equivalent to direct asking. But even this point is already stated in our Mishna—viz.: "If one *said*," which renders it obvious that if he did *not say* it is not considered? Nay; if not for Samuel's statement, it could be said that the expression of the Mishna is merely usual language; and it seems, indeed, to be no more than that, for the same expression is used in the next chapter concerning the oath of a depositary, and there the "said" can be meant *only said*, as it reads [Lev. v. 21]: "If he lie unto his neighbor," where there can be no difference whether one is asked or not; hence, the expression there is not particular (therefore Samuel teaches that in our Mishna the language is particular).

There is a Boraitha in accordance with Samuel: If they, seeing someone coming after them, exclaimed: What are you following us for, we know no testimony for you, they are free; however, when this took place with regard to a deposit, they are liable.

"If he repeated this adjuration five times," etc. Whence is it deduced that liability attaches only to a denial made in the presence of the court? Said Abayi, from [ibid., ibid. 1]: "If he do not tell it, and thus bear iniquity," which implies only

such a place where the telling is effective, so as to make one pay upon it, but not if told in any other place. Said R. Papa to Abayi: According to your theory no oath should be considered if made outside the court! This could not be borne in mind, as there is a Boraitha: From the expression [ibid., ibid. 4]: "To anyone," which makes one liable for each oath; now, if an oath made outside the court be not considered, how could one be liable for each, after it has been stated in our Mishna that even for five times he is liable but once, and R. Simeon gave the reason therefor? Infer then therefrom that an oath is considered even when made outside the court, but a denial—only when in the court.

"*If the two denied simultaneously,*" etc. But how is it possible to ascertain with precision the simultaneity of their minds? Said R. 'Hisda: It is in accordance with R. Jose the Galilean, who says that it is possible. R. Johanan, however, maintains that this may also be in accordance with the rabbis, who hold that such is not possible, but our Mishna treats of the case where the two denied in an interval of a single word. Said R. Aha of Diphti to Rabina: Let us see; the length of an interval of a single word is estimated as the interval it takes a disciple to greet his master, and here they have to say: We swear that we know no testimony for you, which sentence consists of *several* words; and he answered: It means that each of the witnesses begins his testimony yet before his preceding witness has completed his.

"*Both denied successively,*" etc. Our Mishna is not in accordance with the Tana of the following Boraitha: If one adjured *one* witness, he is free; R. Elazar b. R. Simeon, however, holds him liable. Now, shall we assume that the point of difference here is that one holds one witness serves only to cause an oath to the other party, and that the other holds that he can also cause the payment of money? But how can you reason thus? Does not Abayi say further on that all agree that only one witness is necessary in the case where the defendant is suspicious regarding an oath? Therefore, it must be said that all agree that one witness can cause only an oath but not payment, and the point of their difference is as follows: One holds that a thing which causes payment is itself considered as money, and according to the other it is not considered such.

What has Abayi said? He said as follows: All agree concerning *one* witness in the case of a suspected wife; likewise all

agree concerning two witnesses in same; and furthermore there is a difference of opinion concerning the same case. All agree concerning the law of one witness, as well as concerning the law regarding the case where the opposing party is suspicious of perjury. All agree concerning one witness in the case of a suspected wife that he is liable in case he was aware of the fact that the woman has sinned and refused to testify, as here the law trusts him to testify [Numb. v. 13]: "And there be no *witness* against her," hence, his refusal makes the husband pay; and all agree concerning witnesses that they are free, if they refused to testify that he warned his wife against staying alone with so and so; as their testimony would only cause not a direct payment, since apart from their testimony there must be yet another testimony by two witnesses that she has actually stayed with another one. And there is a difference concerning witnesses in such a case; if they were witnesses regarding her staying alone with so and so and they refused to testify; in which case if they did testify, they would only necessitate the drinking by her of the bitter water, when for fear she may confess, and only then the husband would be free from paying her marriage contract; it is regarding this that one holds that a thing causing the payment of money is itself considered as money, and therefore they are liable to pay, while the other does not consider it such, therefore they are free. Furthermore, all agree concerning a case where there is but one witness and one of the parties is suspected of perjury, that the witness is liable; likewise they all agree concerning one witness in a case similar to that, which happened in the court of R. Aha, where one of the parties robbed a piece of metal (Last Gate, p. 93).

(Says the Gemara): Let us see how was the case where one party is suspected of perjury? Who was suspected? If the borrower was so, and the lender says to the witness: If you would testify I should surely get the money, for my opponent is not fit to swear, hence, the oath will return to me so that I would swear and get the money; then the witness could retort: Who is sure that you will swear? Therefore we must say that both the parties were suspected, and the Master said elsewhere that in such a case the oath applies to him who has to swear first, and as he is not fit to swear he must pay.

R. Papa said: There is also a case concerning a witness who refuses to testify to the death of a husband; in one case all agree that he is liable, and in another case all agree that he is

free; the latter is illustrated thus: If he told the fact to the widow, but refused to testify before the court, he is free; because there is a Mishna: If a woman said that her husband is dead, she is trusted and may remarry (hence, his refusal to testify is not harmful to her); while the former case is illustrated: If he refused to tell the fact even to the wife herself. Now, shall we infer from this that he who makes witnesses to swear in a case of real estate, it is considered, and they have to pay (as a marriage contract is collected from real estate only, and there is further on a question concerning this point)? Nay; perhaps in the hands of this woman it was already movable property, in which case she may collect her contract therefrom.

"If one of them denies and the other confesses," etc. To what purpose is this stated? It has been said already above, that even if the second denied after the first he is free, so much the more so if he confessed? It means when both have denied, but one has instantly thereafter retracted and confessed; and it comes to teach us that the confession made in an interval of one word is considered as though no denial was made. But this is correct only according to R. 'Hisda, who has explained our Mishna in accordance with Jose the Galilean; then the first part teaches that exact ascertainment is possible, and the second part teaches that the one-word interval is equivalent to a word. But according to R. Johanan both parts teach the same? It was necessary, as the last case speaks of denial and confession, while the first, only of denial.

"If there were two parties," etc. It is correct that the second party be liable, because it denied after the first had done so (hence, its refusal is a direct harm); but why should the first party be liable, when there is yet a second party who is fit to testify? Said Rabina: It speaks of a case where the witnesses of the second party were related to one another on their wives' lines, and at that time when the first party denied, the wives of the other party were in the agony of death; and lest one say that in such a condition they are considered dead and hence their husbands are fit to be witnesses and consequently the first party is free, it comes to teach us that the agony of death is not to be taken into account, as they may yet recover.

MISHNA III.: If one says: I adjure you that you come and bear me witness that I have in the possession of so and so a deposit, a loan, a stolen or lost object, to which they reply: We swear that we know no testimony to you, they are guilty

but once. But if their reply be: We swear that we are ignorant of your having in the possession of so and so a deposit, etc., they are guilty for each severally. I adjure you that you testify for me that I have deposited by so and so wheat, barley and rye, to which they answer: We swear that we know no testimony for you, so they are guilty but once. But if their answer be: We swear that we are ignorant of your having deposited by so and so wheat, barley and rye, they are guilty for each one severally. I swear you to witness that so and so owes me damages, half damages, double payment, or four and five-fold payment; that so and so insulted my daughter, seduced my daughter; that my son struck me, that my neighbor wounded me; set fire to my stag on the day of atonement, they are guilty (in case they deny).

GEMARA: The schoolmen propounded a question: How is the law, if one adjure witnesses in a case of fine? This question is not according to R. Elazar b. R. Simeon, who says elsewhere that such witnesses are considered even after the defendant has confessed that he was fined; but is according to the rabbis, who declare the defendant free even when, after his confession, witnesses testified; and it seems that the rabbis of that statement are in accordance with the rabbis of the Mishna said above, that a thing causing money is not itself considered money. Now, shall we say that the refusal of the witnesses is not of direct harm, since the defendant has the choice to confess and then he is free; or, as he has not yet confessed, there is a claim of money and their refusal is of direct harm? Come and hear the statement of our Mishna: "To testify half-damages," which is a fine and nevertheless he is liable. But is there not one who says that even half-damages are according to law and not fine? (Hence, nothing can be inferred from here.) But again, does not the Mishna mention double-amount, which is surely fine? Yea; but the fine here is the *doubling*, while the Mishna finds him liable because in the doubling is included the *amount* stolen; and the same may be the case with four and five-fold. But is not the money which a seducer or insulter has to pay, not a fine, and yet the Mishna treats of it? Maybe the Mishna exacts this as indemnity for the shame and loss of value, and this indemnity is not a fine. But if all in the Mishna is money and not mere fine why should it repeat all these cases? The Mishna comes in its first part to teach us by the way that half-damages are considered money, and in its last part that if

one set fire to a stag on the day of atonement, he is liable to pay, although his act is in the category of *Korath*, which is against R. Neheunia b. Hakana (and all the other things are treated of only on account of this connection).

Come and hear the following: I adjure you to testify that so and so has spread abroad an evil name on my daughter [Deut. xxii. 14], they are liable (if they refuse to do so); but if the man who has spread the evil name, confessed before the court that he did so falsely, he is free from paying the 100 shekkels (as according to the law he who confesses in a case subject to fine is free), hence, we see that this money is fine and they are liable none the less? It may be said that this Mishna is in accordance with R. Elazar b. Simeon, quoted above, who holds one liable even when the witnesses testify after his confession. But is not the last part which holds one free if he confessed on his own accord, in accordance with the rabbis? Nay; the whole Mishna is in accordance with R. Elazar, and it means to say that there can be found no case where one be free from payment (of the 100 shekkels) unless there were no witnesses at all and he confessed.

MISHNA IV.: If one says: I adjure you to bear me witness that I am a priest, a Levite, not the son of a divorced woman, nor one who has performed *Chalitzah*; that so and so is a priest, a Levite, not the son of an aforesaid woman; that so and so insulted or seduced someone's daughter; that my son wounded me, that my neighbor wounded me or set fire to my stag on Sabbath, they are free.

GEMARA: They are free because his claim concerns a third person; but how is it if he made them to swear that so and so owes a *mana* to someone, they would be liable? And does not the Mishna state that they are not liable unless made to swear by the plaintiff himself? Said Samuel: It means that he has from the latter a power of attorney. But did not the sages of Nahardea say that a judgment is not given on movables? Yea; but this is in case he denies, but if he does not deny, a judgment is given.

The rabbis taught: Whence do we know that the verse [Lev. v. 1], quoted above, speaks of a money-claim only? Said R. Eliezar: From the analogy of expression "or" and "no" found here, and also in the case of a deposit, and as there it treats of a civil case, so also here. But is not the same expression found in [Numb. xxxv.] concerning a murder, *i.e.*, a criminal and not

a civil case? We infer from these expressions, a case which implies an oath, while in that (of Numb.) there is no oath. But again, are not such expressions used in connection with a suspected woman in which case there is an oath, and yet it is not a civil case? There is used in this last case a priest, wherefor we infer but like cases where there is an oath but not a priest. R. Aqiba, however, said: It is inferred from [Lev. v. 5]: "By any one of *these*," which means for some of them he is, while for others he is not, liable. How so? If it was a civil claim, he is liable, but not for something else. R. Jose the Galilean said, it reads [Lev. v. 1]: "And he is a witness, since he hath either seen or knoweth," which signifies such cases where he may be liable by seeing only or by knowing only; how so? I have lent you a *mana* in the presence of such and such witnesses, who may come and testify, this is a case of seeing only; and by knowing only, as in case one claims that so and so has confessed in the presence of such and such witnesses that he owes me a *mana*. R. Simeon said: We infer this from the case of deposit: as there it is only civil, so also here; furthermore we may draw this by an inference *a fortiori*—viz.: a deposit, with regard to which male and female, relatives and unrelated, fit and unfit to testify, are equal, and there is a liability for each oath, be it made in the presence or absence of the court, is nevertheless but a civil case—the case of witnesses where the foregoing classes are not equal and where the liability attaches to but one oath and only when made in the presence of the court, should so much the more be only civil. And lest one say: The case of witnesses is more rigorous, as there is here a liability for an intentional and for being sworn by others which is not the case concerning a deposit, to this there is an analogy of expression: "Sin" found here and also in the case of a deposit, which justifies the inference that as the latter is civil, so also is the other case.

R. Hamnuna was once in the presence of R. Jehudah, who propounded a question. If one says: I have lent you a *mana* in the presence of so and so and so, and the witnesses saw the parties from the outside without being seen by the defendant, how is the case? Said R. Hamnuna: It depends on the form of the defendant's answer; if he says that such has never occurred, he must be recognized as a liar; but if he says that he did take money but it was his own, then there will be no use in the witnesses' testifying to have seen this! Rejoined R. Jehudah: Your place may be in the college, as you enlighten your master.

There was one claiming: I lent you a *mana* here near this pillar; and the answer was: I have never in my life passed near this pillar. Witnesses, however, came and testified that he once urinated near that pillar; said R. Na'hman: He is then to be regarded a liar. Said Rabha to him: From a thing where one is not particular, his attention may wander away; this may have been the case with this defendant; he paid in that case no attention to the pillar.

R. Simeon said: As in the case of the deposit, etc., this statement was ridiculed in the west. Why? When R. Papa and R. Jehudah b. R. Jehoshua came from college, they said: The people of the west have ridiculed R. Simeon's last statement—viz.: Lest one say that the case of witnesses is more rigorous, etc.; saying: To what purpose did he need this after he had used an analogy of expression? But why should it be ridiculed? Perhaps he had put this point before, but not after, he established the said analogy? * Because it was known that the Scripture has made mention of a witness-oath in connection both with an uttered oath, and with the case of defiling the Temple and its holiness in order to indicate that concerning a witness-oath "Escaped his recollection" is not stated (whereas it is stated regarding the others) in order to make one liable to a sin-offering even for such an *intentional* oath.

MISHNA V.: If one says: I adjure you to bear me witness that so and so has promised to give me (as a present) 200 zuz, and did not, they are free, as they are guilty only in the case when money is required as a deposit. I adjure you that as soon as you become cognisant of testimony for me, you come and testify for me, they are free, since the oath preceded the act of testifying. When one says while standing in synagogue: I adjure you to bear me witness if you are cognizant thereof, so they are free unless he especially address his challenge to them. When one says to two: I adjure you so and so that, if you are cognisant of testimony in my favor, come and do so, to which they say: We swear that we know nothing for you, while in reality they do know, but only indirectly, or one of them is found to be a relative or an unfit, they are free. If one sends his servant to adjure them; or the defendant says to the wit-

* In the text is also repeated what Rabha b. Aithi said above to contradict R. Simeon, which is followed again by a discussion. But it being very complicated and apparently offering nothing new, we omit the few lines.

nesses; I adjure you to testify for him if you know any testimony, they are free, for they must hear it from the mouth of the plaintiff.

GEMARA: The rabbis taught: I adjure you to bear me witness that so and so promised me as a present 100 zuz and did not give them to me, they are free; lest one say that they should be liable, the analogy of expression "sin" used both concerning a deposit and here, teaches that as in the former the deposit was given, so also in this case.

"*As soon as you become cognisant,*" etc. The rabbis taught: Lest one say that in such a case they should be liable, it reads, "If he is a witness, or hath seen or knoweth," which signifies that the act of testifying must precede the oath and not *vice versa*.

"*While standing in synagogue,*" etc. Said Samuel: Even if his witnesses were among them. Is this not self-evident? He means to say: Even if he was standing beside them, and lest one say that in such a case it is considered as though he talked directly to them, he comes to teach us that it is not so.

There is a Boraitha in support of Samuel: If one saw a crowd standing, among whom he recognized his witnesses and said: I adjure you to come and testify for me, lest one say that they are liable, it reads, "And he is a witness," which signifies that the witnesses must be directly addressed, which he did not do. If, however, he said: I adjure you all who are standing here, to testify for me, they are liable, as here he addresses the witnesses directly.

"*When one says to two,*" etc. The rabbis taught: Lest one say that in such a case they should be liable, it read, "He shall bear his iniquity," which signifies that only then when they are fit to tell (on their own knowledge).

"*If one sends his servant,*" etc. The rabbis taught: Lest one say that in such a case they should be liable, therefore the just-cited verse. But how is this to be understood? Said R. Elazar: The word "not" (Hebrew, *Lo*) is spelled here with a redundant *vahve* and *lo* (with a *vahve*) means him (dativus) which is to be interpreted thus: If he will not tell to him, to the party himself, he bears iniquity; but if he will not tell to a stranger, he is free.

MISHNA VI.: If one says: I adjure you, I impose upon you, I bind you (by oath), so they are guilty. If, however, he says: By heaven and earth, they are free; by any of the divine

names, or by some other divine attribute, so they are guilty. Blaspheme applies to them all, according to R. Mair, but not according to the sages. Whoever curses his father or mother by any of the above divine names, is guilty, so holds R. Mair, while the sages declare him free. Whoever curses himself or his neighbor by any of these transgresses a negative command. (If one says to the witness): Smite you God, or: May the Lord God smite you, so is this a biblical swearing. If he says (on your testifying): God smite you not, but bless you, may He bestow but good upon you (and they say: Amen), R. Mair finds them guilty, while the sages declare them free.

GEMARA: "*I adjure you*," etc. How is this to be understood? Said R. Jehudah: Thus, I adjure you with the oath written in the Torah, I impose upon you with the commands of the Torah, I bind you with the bonds of the Torah. Said Abayi to him: According to you, how should be understood the Boraitha of R. Hyya: "For I chain you" they are liable! Do we find "chaining" in the Torah? Therefore, said Abayi, it means to say thus: I adjure you with an oath, I impose upon you with an oath, I bind you with an oath, I chain you with an oath.

"*Adonai*," etc. Shall we assume that *chanun* and *rachum* (mentioned in the Mishna among the names to swear by) are also divine names? If so, then there is a contradiction from the following: There are names that may be erased, and others that must not; the latter are: *Eil*, *Eloëchu*, *Eloïm*, *Eloëchem*, *Eiëh asher Eiëh*, *Aleph Daleth*, *Yah*, *Shadai* and *Zebaoth*; but *Hagodal*, *Hayibor*, *Hanora*, *Haädir*, *Hachazak*, *Haämatz*, *Haäzas*, *Chanun*, *Rachum*, *Erech-apäim*, *Rabh-chessed** may be erased; we see thus that *chanun* and *rachum* are not divine names? Said Abayi: The Mishna means to say, I adjure you by him who is all favor, or: all merciful. Said Rabha to him: If so, let him be liable for adjuring one by heaven and earth, as you could explain it to mean: by him to whom heaven and earth belong? This is no comparison; if you say, "by him who is all favor," etc., so as there is none but the Almighty who is such, it certainly means Him, but heaven and earth as separate existences, cannot be explained as belonging.

The rabbis taught: If one writes *Aleph lamed* (the first letters

* The divine names, from *Eil* till *Zebaoth* inclusive, are known, while those from *Hagodal* till *Rabh-chessed* inclusive, mean in order as follows: The Great, Mighty, Awe-inspiring, Glorious, Strong, Omnipotent, Powerful, Gracious, Merciful, Long-suffering, and Abundant in beneficence.

from *Eloim*), or *Yah* from *Jehova*, it must not be erased; but *Shin daleth* from *Shadai*, or *Aleph daleth* from *Adonai*, *Zadik beth* from *Zebaoth*, may be erased. Said R. Jose: The whole word *Zebaoth* may be erased, for this name applies only to Israel, as it reads [Exod. vii. 4]: "And bring forth my armies (*Zebaothai*), my people, the children of Israel." Said Samuel: The Halakha does not prevail with R. Jose.

The rabbis taught: All the prefixes and suffixes of the divine names may be erased, *e.g.*, in *b'adonai*, *badonai*, *meadonai*, the initial letters (which are prefixes) may be erased; in like manner in *Eloëchu*, *Eloënu* *Eloëem* the last syllables (which are suffixes) may be erased. Anonymous teachers, however, say: They must not be so, for they are already sanctified by the holy name. Said R. Hana: And so the Halakha prevails.

All the divine names found in the Torah in connection with Abraham, are holy, except that of [Gen. xviii. 3]: "And he said, my Lord," which was addressed to an angel. 'Hanina, the nephew of R. Jehoshua, and R. Elazar b. Azaria in the name of Elazar the Madai say that even this name, too, is holy. (Now, what was said in the name of R. Jehudah b. Rabh that hospitality is considered greater than the reception of the glory of the *Shechina*, is in accordance with these two.) Furthermore, all the names found in connection with Lot, are common, except [ibid. xix. 18, 19]: "Oh, not so, my Lord; (*Adonai*) thy servant hath found grace in thy eyes, and thou hast magnified thy kindness," etc., and who but God can save? Again, all names in connection with Nob'oth* are holy, those in connection with Micha [Jud. xvii.] are common. R. Elazar, however, said that the names with Nob'oth are holy, but those with Micha are partly holy and partly common, namely *El* is common and *Yah* is holy, except [ibid., ibid. 31]: "*Eloim*," which though beginning with *El*, is holy. All the names in connection with the Vale of Benjamin [ibid. xx.] are according to R. Eliezar common, and according to R. Jehoshua they are holy. Said R. Eliezar to him: How can they be holy when He has not fulfilled his promise? Said R. Jehoshua: He has fulfilled His promise, but the people there did not understand what was said to them; a proof to this you find in the fact that after they had comprehended it, they conquered, as it reads [ibid., ibid. 28]: "And Phineahas, the son of Elazar . . . stood," etc. The

* I Kings xxi. 3.

name *Shelomah* wherever mentioned in Solomon's Songs is holy [Song, i. 1]: "*Le-Shelomah*" means, to the king to whom peace belongs; except [ibid. vii. 12]: "Thine, O Solomon." According to others [ibid. iii. 7]: "The bed which is Solomon's," is also common. Wherever in Daniel the word king is mentioned, it is common except [Sam. ii. 37]: "Thou, O king, art a king of kings, to whom the God of heaven hath given kingdom, power, and strength, and honor." According to others also [ibid. iv. 16]: "My Lord! . . . for those who hate thee"; for, to whom did Daniel address this? Surely not to Nebuchadnezzar, because by so doing he would curse Israel, who were the haters of the same; hence, he must have addressed it to God. The first Tana, however, maintains that enemies exist only to Israel, but other nations have no enemies.

"*Or by some other attributes*," etc. There is a contradiction [Numb. v. 21]: "The Lord then make thee a curse (*olah*) and an oath"; to what purpose is this repeated, after the beginning of the verse reads: "And the priest shall charge the woman with an oath of imprecation (*olah*)"? Because, it reads [Lev. v. 1]: "The voice of adjuration (*olah*)," where it means an oath, so also here it means an oath; and as there it means "with the holy name," so here, too, it means so. Hence we see that *olah* means an oath, and the Mishna says that "Smite you God" is an *olah* written in the Torah? Said Abayi: This presents no difficulty, the cited discussion is in accordance with R. Hanina b. Aidi, which our Mishna is in accordance with the rabbis, as we have learned in the following Boraitha. R. Hanina b. Aidi said: As it reads "Swear and not swear, curse and not curse," we must compare curse to swearing; just as an oath means by the holy name, so also not to swear means by the holy name, and the same is with curse and not curse. But let us see; what is the reason of the rabbis' view? If they uphold this analogy, then let them require the unique holy name (*i.e.*, *Jehovah*) to any oath; and if they do not uphold this analogy, whence do they deduce that *olah* means an oath? From the following Boraitha: The expression *olah* means an oath, and it likewise reads in the above-cited verse "And the priest shall charge the woman with an oath of *olah*." But as it reads here "with the oath of *olah*," must we not say that *olah* itself is not an oath? It means to say that the word *olah* comes together with an oath only. And whence do we know that oath alone should be treated as if conjoined with *olah*? From [Lev. v. 1]: "The

voice of an *olah*" (which word voice would be superfluous, as *olah* alone means also an oath), therefore it is to be interpreted thus: He hears either a voice alone (without an *olah*), or an *olah* alone (without an oath).

R. Abuhu said: Whence do we know that *olah* means an oath? From [Ezek. xvii. 13]: "And bound him with an oath (*olah*)"; furthermore, it reads [II Chron. xxxvi. 13]: "Who had made him swear by God." There is a Boraitha: The word *orur* embraces ban (*nidui*), curse (*kelabah*), and oath (*sheb'uah*); ban—from [Jud. v. 23]: "Curse (*orur*) ye Meroz," etc., concerning which Ula said: He placed Meroz under ban with 400 trumpets; curse—from [Deut. xxviii. 13]: "And these shall stand for the sake of the curse (*kelabah*)," and [ibid., ibid. 15]: "Cursed (*orur*) be the man"; finally, oath—from [Josh. vi. 26]: "And Joshua adjured . . . saying cursed," etc.; and also from [I Sam. xiv. 24]: "And Saül adjured the people, saying, cursed."

R. Jose b. Hanina said: *Amen* embraces oath, acceptance, and confidence; oath—from [Numb. v. 22]: "And the woman shall say amen, amen"; acceptance—from [Deut. xxvii. 26]: "Cursed be he that accepteth not this law . . . and all the people shall say, amen"; and confidence—from [Jerem. xxviii. 6]: "Said Jeremiah the Prophet, amen, may the Lord do so."

R. Elazar said: *Nay* means an oath, and *yea* means also an oath. (Says the Gemara): It is correct that *Nay* means an oath, as it reads [Gen. ix. 15]: "And the waters shall no more (*V'lo*) become a flood," and [Isa. liv. 9]: "As I have *sworn* that the waters of Noah should no more (*V'lo*)"; but whence do we know that *yea* is an oath? This is merely common sense: if *Nay* is an oath *yea* is one, too. Said Rabha: Provided he says each twice; *nay, nay, or yea, yea*; and this is inferred from the above cited verse [Gen. ix.] where no (*V'lo*) is written twice, and as *Nay* must be said twice to become an oath, so also *yea*.*

"*Curses himself or his neighbor*," etc. Said R. Janai: Concerning this statement, all agree that he transgress thereby a negative commandment; concerning one's self it reads [Deut. iv. 9]: "Only take heed to thyself, and guard thy soul"; and we have seen above that such an expression means a negative commandment; and concerning his neighbor, it reads [Lev. xix. 14]: "Thou shalt not curse the deaf."

* Concerning blasphemy repeated here, see Sanhedrin, Chap. VII., Mish. 8.

"*Smite you God*," etc. R. Kahana, while sitting before R. Jehudah, repeated the Mishna in its own language, and he said to him: Change the language and use it in the third person. It again happened that one of the rabbis while sitting before R. Kahana read [Psalms, lii. 7]: "*God will also destroy thee*," etc., the whole verse, and R. Kahana said to him: Read it in the third person. And the two cases are cited here, lest one say that in a Mishna it is allowed to change the language but not in the Scripture.

"*God smite you not*," etc. But we know that according to R. Mair's theory we do not infer from a negative rule a positive one; reverse then the order of the names in the Mishna. However, when R. Itz'hak came from Palestine he taught the Mishna as it is. Said R. Joseph: Now that we see that in Palestine, too, the Mishna is taught as by us, the foregoing difficulty must be resolved thus: R. Mair's theory that we are not to infer yeas from nays, concerns only civil cases, but concerning criminal cases he, too, holds that we do. But is not the case of a suspected woman a crime, and R. Tan'hum b. 'Hakhinui said: In this case it reads [Numb. v. 19]: "*Then be thou free*" to show that if it were not expressly stated we would not infer? Hence, even in criminal cases we do not infer, wherefor we must say that R. Mair's theory applies also to crimes and the order of the names in the Mishna is to be reversed. Rabina opposed from a Mishna that places under the category of capital punishment him who enters the sanctuary while he is intoxicated, and this is inferred only from the Scripture's prohibiting one to enter in such a condition, and R. Mair does not oppose in this case? Therefore we must say that concerning crime he holds his theory, and the difficulty regarding the suspected woman is to be resolved, thus: it is a case where money, *i.e.*, a civil matter, is also concerned—viz.: in connection with her marriage contract.

CHAPTER V.

RULES AND REGULATIONS CONCERNING THE DEPOSITORY-OATH : WHO IS OR IS NOT FIT TO TAKE IT ; WHERE THE DENIAL OF THE DEPOSIT BY OATH MUST TAKE PLACE ; THE CONDITIONS DETERMINING THE LIABILITY TO BE EITHER ONE OR FOR EACH ARTICLE SEPARATELY ; IN WHICH RESPECT SUCH OATH IS MORE RIGOROUS THAN THE WITNESS OATH.

MISHNA I. : The depository oath concerns men and women, non-kindred and kindred, those fit to testify and those unfit, cases within the court and outside thereof, provided it comes forth from one's own mouth, but if through that of others, he is not liable unless he denies it before the court; such is R. Mair's view, while the sages teach: Regardless of whether it comes from one's own mouth or from that of others, he is guilty so long as he denies it. But one is guilty for willful perjury and willful denial of the deposit when ignorant of the liability; not so, however, if he was mistaken concerning the oath only. And what is the fine attached to a willful oath? A transgression offering in the value of two shekkels. How does the oath concerning deposits take place? When one says: Give me my deposit that I have in your possession, and latter replies thereto: I swear you have nothing with me, or merely: You have nothing with me, whereupon the former says: I adjure you, and this answers: Amen, and so he is guilty. If the plaintiff adjured him five times either before court or outside and he denied it by oath every time, so he is guilty for each time severally. R. Simeon said: The reason is that he had ample possibility to confess the truth. If five people require of him in the same time, saying: Give us the deposit we have in your possession, and he says: I swear ye have nothing with me, so he is guilty but once. But if he says: I swear that thou hast nothing with me, nor thou you, nor thou, so he is guilty for each one severally. R. Eliezar says: Provided he make the oath last. R. Simeon says: Provided he accompany each statement with the words I swear.

If one says: Give me the deposit, the loan, the stolen and

lost, that I have in your possession, he replies: I swear that you have nothing with me, he is guilty but once. If, however, his reply be: I swear that you have nothing with me, either deposit, or loan, or the robbed and lost, so he is guilty for each one severally. The same is the case with wheat, barley, and if he denies all with one oath he is guilty but once, and if he repeated "I swear" with each one, he is liable for each. R. Mair says: Even if he required the things in the singular, the other one is guilty for each one severally. If one says: You have violated or seduced my daughter and he replies: I have done neither the one nor the other, I adjure you whereto he says: Amen, so he is guilty. R. Simeon holds him free, for one does not pay fine on his own confession. To which it was objected: Although upon self-confession one pays no fine, yet he must pay indemnity for shame and loss of value. You have stolen my ox; I have not stolen him; I adjure you, the other one: Amen, so he is guilty. But if the latter says: True, I have stolen your ox, but not slaughtered nor sold him; I adjure you; Amen, so he is free. Your ox has killed mine; He did not; I adjure you; Amen, so he is guilty. Your ox has killed my slave; He did not; I adjure you; Amen, so he is free. You have bruised me and wounded me; I have neither bruised nor wounded you; I adjure you; Amen, so he is guilty. But if the slave says to his master: You have blown out my eye or tooth, and latter replies: I have done to you neither the one nor the other; I adjure you; Amen, so he is free. This is the general rule: Whenever one has to pay damages on self-confession, he is (in case of perjury) guilty, but whenever he has not to pay on self-confession, he is free.

GEMARA: R. A'hra b. Huna, R. Samuel b. Rabba b. b. 'Hana and R. Itz'hak b. R. Jehudah have been learning the Tract Shebaoth at Rabba's college; and when R. Kahana met them he asked: What is the law when one has intentionally made a depository oath in spite of a warning, is he liable to a sin-offering or not? Shall we assume that, as this law to bring a sin-offering for an intentional oath is novel, there is no difference whether there was warning or not, or this law holds good only when there was no warning, and if there was, he is subject to stripes and not to a sin-offering, or to both? And they answered: This we have learned in our Mishna; the depository oath is more rigorous, as stripes apply to it when intentional, and a trespass-offering for two shekkels when unintentional. Now, as

it states stripes, it must be that he was warned, and no offering is mentioned; and concerning the rigorousness it may be said that one is pleased to bring a sin-offering instead of getting stripes. Said Rabba b. Eithi to them: This is in accordance with R. Simeon, who holds that an intentional depository-oath cannot be atoned for, but according to the rabbis who maintain that it can, he must bring an offering also. Said R. Kahana to them: Leave out the Boraitha cited by you, as I taught it Thus; it makes no difference whether it was intentional or unintentional, he is liable to a trespass-offering for two shekkels; and the rigorousness is that for any other oath he may bring a sin-offering in the value of a *δανικος*, while here it must be in the value of two shekkels. But then, why did R. Kahana resolve his question from here? Because this may be a case where there was no warning.

According to another version R. Kahana adduced the following Boraitha: No liability attaches to an unintentional oath; and what is the liability of an intentional? A trespass-offering for two shekkels. Does it not mean a case where there was warning? Nay; it may mean one without warning. Come and hear another Boraitha: The comparison with the offering of a Nazarite cannot be drawn here, as a Nazarite who defiles himself gets stripes in addition, while to a depository-oath stripes do not apply; now, since it states that he does get stripes he must have been warned, and nevertheless it states that to a depository-oath stripes do not apply, whence it is to be understood that an offering is required in this case? Nay; it may be said that it means that stripes do not suffice without an offering. But if such be the case, the Nazarite who gets stripes must not bring an offering any more; is it not expressly written that he is liable to an offering? His offering is not for his transgression, but for enabling him to continue in his state of a Nazarite in purity.

R. Kahana's question from above was recited before Rabba and he said: From this it may be inferred that, if he was not warned by the witnesses, and they testify, he is nevertheless liable to a sin-offering; but if such a case happens in civil law, his denial would count for nothing, and there are witnesses and he must pay; why then shall he in this case be liable to a sin-offering? (Says the Gemara): From Rabba's question we may conclude that his opinion is that he who denies a debt in spite of witnesses is not subject to a biblical oath. Said R. 'Hanina to Rabba: The following Boraitha supports your opinion. It

reads [Lev. v. 22]: "And lie concerning it" to exclude the case when he confesses this to one of the brothers or partners, "swear falsely" to exclude the case where there were documents or witnesses. And he answered: If you have in the Boraitha no other support but this, it is no support to me at all, as this Boraitha is to be interpreted thus: If the defendant says, I have borrowed from you but not in the presence of witnesses, or not on any document (hence, the Boraitha has in view not denial but confession); and this interpretation is necessitated by the expression of this Boraitha "To one of the brothers"; because how was the case? If he confessed the half of the amount, then there is a complete denial of the other half; thus we must say that the confession to one of the brothers means that the denial was not concerning the amount, but springing from his assertion that he made the loan of *one* of the brothers only, so that it is but a denial of words, and as the first part of the Boraitha means a denial of words and not of the amount, so also the second part.

Come and hear. It was said above: He is not liable for its unintentional; and what is the liability for an intentional? A trespass-offering, etc. Shall we not assume that it means a case where there were witnesses warning him? Nay, it means that there were no witnesses. Come and hear another objection. If the depository claims that the deposit has been stolen from him, swears, but thereafter confesses, and there are also witnesses to this effect, it depends on the following: if the witnesses come after he has sworn, he must pay double amount and bring a trespass-offering; but if he has confessed before the appearance of the witnesses he has to pay the amount plus one-fifth of it and bring a trespass-offering. (We see then that he is liable to a trespass-offering in any case)? This may be explained also as Rabina stated above—viz.: At the time he takes the oath the wives of the witnesses find themselves in agony, etc. (see above p. 67), but in case of simple witnesses no offering is necessary. Said Rabina to R. Ashi: Come and hear: a depository oath is more rigorous, since for an intentional he is liable to stripes and for an unintentional to a trespass-offering in shekkels; now, stripes presuppose a warning by witnesses, and nevertheless it says that for an unintentional a trespass-offering (which signifies by implication that no offering applies to an intentional)? Said R. Mordachai: Leave alone this Boraitha, as R. Kahana said. This Boraitha / taught and it states that a trespass-offering must

be brought, immaterial whether for an intentional or unintentional one. Finally, come and hear the following objection: In the discussion (above, p. 69) concerning an inference *a fortiori* it is stated that there is a difference regarding a Nazarite defiling himself, as he gets stripes, which is not the case with a depository oath; now, a Nazarite does not get stripes unless there were witnesses, and as it says that it is not the case with a depository-oath, it signifies that even if here were witnesses stripes do not apply, but an offering does apply, hence Rabba's statement is objected.

R. Johanan, however, said: If one denies money where there are witnesses, he is subject to an oath but is free from such if there is a document. Said R. Papa: The reason of R. Johanan is that witnesses are subject to death (then the denial would be considered, which is not the case with a document. Said R. Huna b. R. Jehoshua to R. Papa: May it not happen also to a document to be lost? Therefore, R. Johanan's reason is that to a document real estate is encumbered, and there is no oath concerning the denying of real estate.

It was taught: If one adjures witnesses in a case of real estate, R. Johanan and R. Elazar differ: according to one they are liable, according to the other they are not; now, from what R. Johanan has said above it is to conclude that he is the one who declares them free, and his reason is that advanced by R. Huna b. Jehoshua.

Said R. Jeremiah to R. Abuhu: Shall we assume that R. Johanan and R. Elazar differ in what R. Eliezar and the rabbis differ (First Gate, Mishna VII. p. 270; see Mishna and Gemara), and he who makes him liable agrees with R. Eliezar of that Mishna, while he who frees him agrees with the rabbis? And he answered: Nay; as he who makes him free may say that in such a case even R. Eliezar admits, since here concerning a false oath it reads [Lev. v. 22]: "In *any one* of all," but not all, which excludes real estate. Said R. Papa in the name of Rabba: It seems to be so also from our Mishna, which illustrates it by the theft of an ox and not by that of a slave, and this is because a slave is considered real estate to which an offering does not apply.

"How does the oath concerning deposits take place," etc. The rabbis taught: "When the oath was made in general, he is liable but for one; but when in particular, he is liable for each severally"; so R. Mair. R. Jehudah, however, said: If he says, I

swear I have it not from thee, and not from thee, and not from thee, he is liable for each one; R. Eliezar, however, maintains that he is liable for each one only then when the words "I swear" were said last; but R. Simeon said that to be liable for each one he must mention "I swear" with each one separately. Said R. Jehudah in the name of Samuel: The general of R. Mair is the particular of R. Jehudah (*i.e.*, "and not from thee, and not from thee," which is considered by R. Mair as a general, R. Jehudah considers a particular), and the general of R. Jehudah (*i.e.*, the same statement but without "and") is the particular of R. Mair. R. Johanan, however, said: Concerning "*and* not from" all agree that it is a particular; where they differ is regarding "not from thee" (without "and"), which is to R. Mair a particular, and to R. Jehudah a general. What then is a general to R. Mair? "I swear that you all have nothing with me." But what is the point they differ in? Samuel bases his view upon the just-cited Boraitha in which R. Jehudah says "and not from thee" is a particular, and this must be taken as an answer to R. Mair, who maintains that such statement is a general. On the other hand, R. Johanan bases his view upon our Mishna in which R. Mair says that for swearing "you all have nothing with" he is guilty but for one, whence it follows that if he states in his swearing "not from thee, not from thee" he is culpable for each. As to the Boraitha, R. Johanan explains it thus: R. Jehudah, answering R. Mair, says: concerning the phrase "*and not* from thee" I agree with you that it is a particular, but I do not agree with you concerning the phrase "not from thee, not from thee" (without *and*); to which Samuel cannot agree, as, he thinks, if this were the case R. Jehudah would state only in what he differs. As to the Mishna, Samuel does not agree with R. Johanan, as according to Samuel the phrase "*and not* from thee" is identical with "not from you all. (Here follow objections to the above, from our Mishna, where in all the cases it is stated with a *vahve* (-and) and the answer is: read it without "and." And to the question: Is it possible that all the "ands" are mistakes, it answers that the whole Mishna is in accordance with Rabbi's view in Tract Zebachim, where he plainly says that there is no difference whether the conjunction "and" was said or not.

"*R. Mair says: Even,*" etc. Said R. A'ha b. R. Aika: It means that even if he says wheat in the singular, it none the less means a measure of the same (as we find in [Exod. ix. 32]

the word for wheat in the singular, and it denotes the whole kind of wheat).

"*Give me the wheat,*" etc. Said R. Johanan: The value of a *Peruta* from all of them counts to make him liable for each severally, and R. A'ha and Rabina differ in their explaining this point. According to one he is liable only for three particulars, but not for the oath as such, which is a general; while the other maintains that he is liable for four: for the three particulars, and for the oath as a general. But has not R. Hyya taught that he is liable to fifteen sin-offerings (if he swore to five persons), so that the Tana of the Boraitha counts only the particulars and not the five generals (for, with the generals it would make up $20: 3 \times 5 = 15$ for the particulars, and five for the oaths in general)? The Tana counts only the particulars, and he does not count the generals, though he holds one liable for a general. But again, there is another Boraitha by the same R. Hyya in which the liability counts twenty? This second Boraitha refers to the previous statement in the Mishna, "*Give me the deposit, the loan,*" etc., which amount to *four* particulars.

Rabha questioned R. Na'hman: How is it if five persons claim the four articles just mentioned, and he says to one of them: I swear that thou hast not with me a deposit, a loan, a robbed, a lost article, and not thou, and not thou, and not thou, and not thou, he is liable with regard to the last four only to one sin-offering (so that all in all he should be liable to eight), or because he said to each one, "*and not thou,*" the particulars must be counted in each case, and hence he is liable to twenty? Come and hear what R. Hyya taught above: Twenty sin-offerings; now, if R. Hyya had in view that all particulars were mentioned in the oath, would it be necessary for him to specify the number of the sin-offerings? Hence, he surely has in view a case illustrated by you, and makes one liable for all the particulars.

"*You violated,*" etc. Said R. Hyya b. Aba in the name of R. Johanan: The reason of R. Simeon is that the main claim in this case is fine. Said Rabha: We may illustrate R. Simeon's view as follows: If one says, "*Give me the wheat, barley and rye which I have with you,*" and the answer is, "*I swear that you have no wheat with me,*" and it was found that he really had no wheat, but had barley and rye, he is free, because the oath for the wheat was true; said Abayi to him: This illustration does not answer the purpose, since when swearing about

wheat he did not deny barley and rye. But R. Simeon's view may be illustrated thus: one answers "I swear you have nothing with me," whereupon it was found that he had no wheat, but barley and rye, in which case he is culpable? Therefore, when Rabin came he said in the name of R. Johanan: Their point of difference is that according to R. Simeon the plaintiff demands only the fine, but not the indemnity for the shame and loss of value which is not fine, while according to the sages he demands also the latter. And their respective reasons are explained by R. Papa thus: According to R. Simeon one would not demand an amount that has to be appraised as yet, while the fine is an amount established in the Scripture; on the other hand, the rabbis maintain that, on the contrary, one would not demand a fine, the admission of which by the offender makes him free, while the indemnity for shame, etc. he must pay at all events.

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE CIRCUMSTANCES UNDER WHICH THE COURT GIVES AN OATH TO ONE OF THE CONTESTANTS. —THE NATURE OF THE CLAIM AND OF ITS PARTIAL ADMISSION. —WHICH ADMISSION IS OR IS NOT REGARDED AS CORRESPONDING WITH THE CLAIM.—THE CASES WHERE THE CLAIM IS FOR MOVABLES AND THE ADMISSION FOR IMMOVABLES, OR *vice versa*.—WHO ARE OR ARE NOT FIT TO ENTER A CLAIM WHICH ENTAILS AN OATH. —THE FORM OF THE OATH AND THE INTRODUCTION THERETO USED BY THE COURT, AS WELL AS THE KIND OF SACRED OBJECT ONE MUST HOLD WHEN TAKING THE OATH.—ARTICLES THE CLAIM TO WHICH ENTAILS NO OATH.—THE CONDITIONS UNDER WHICH EITHER AN OATH MUST BE TAKEN FOR A LOST PLEDGE OR THE VALUE THEREOF MUST BE PAID.

MISHNA I.: In the case of an oath before court, the claim must amount to two silver, and the confession, to one peruta; and if the confession is not of the same kind with the claim, he is free. How so? I have with you two silver. You have by me only one peruta; he is free. I have with you two silver and one peruta. You have by me but one peruta; he is liable. I have with you one mana. You have nothing by me; he is free. I have one mana with you. You have by me only fifty dinar; he is liable. My father has a mana with you. You have by me only fifty dinar; he is free, for he is in this case like to him who returns a thing lost. I have with you a mana. Yea. Next day the plaintiff says: Give it to me. I have given it to you already; he is free; but if his answer be: You have nothing by me, he is liable. I have with you a mana. Yea. Give it to me only in presence of witnesses. Next day he requires the money, whereupon the defendant says: I have given it to you already; he is liable, as he was to pay it before witnesses. I have in your possession a litra of gold. Nay; you have by me only a litra of silver; he is free. But if plaintiff says: I have with you a *gold* dinar. Nay; you have by me only a *silver* dinar, a trecissis, a fundion and a perutah, he is liable, since all the

mentioned coins are of the same kind. I have in your possession a kur of grain. Nay; you have only a lethech of legume; he is free. I have with you a kur of fruit. Nay; you have by me only a lethech of legume; he is liable, since legume is in the category of fruit. If the claim was wheat and the defendant admits barley, he is free. Raban Gamaliel, however, finds him liable. If one requires from another tankards of oil, and latter admits pitchers, he must, according to Admon, take the oath, since it is a case of partial admission; but the sages say: The confession is not of the same kind with the claim. Said R. Gamaliel: Admon's decision appears to me to be correct. If one requires movables and real estate and the other admits movables but denies real estate or *vice versa*, he is free. If he admits but a part of the real estate he is likewise free; but if he admits but a part of the movables, he is liable, for property that is not subject to loss necessitates the taking of the oath with reference to property that is subject thereto. There is no oath to the claim of a deaf-mute, an imbecile, or a minor; nor is a minor to take an oath, but there is an oath to the claim of a minor or of the sanctuary.

GEMARA: How is an oath given? Said R. Jehudah in the name of Rabh: One is made to swear with the oath of the Scripture [Gen. xxiv. 3]: "And he will make thee swear by the Lord, the God of heaven." Said Rabina to R. Ashi: Is this in accordance with R. Hanina b. Aidi, who said that the unique holy name is required? Answered he: Nay; this may be even in accordance with the rabbis, who say that a divine attribute is sufficient, and the difference between the two is that he (who takes the oath) must keep in his hand a holy object; and this is in accordance with Rabha, who said that a judge who gives one the oath in the name of the Lord the God of heaven should be considered as he who erred in what was written plainly in a Mishna, so that the oath must be given again. And R. Papa says that a judge who gives one the oath by making him keep the *Tephilin*, is likewise considered erring, as the object kept must be the holy scrolls. (Says the Gemara): The Halakha prevails with Rabha, as there is no oath made without one's holding some holy object; and not with R. Papa, as after all there was a holy object in the hand of the one who took the oath.

One must stand when taking the oath; a scholar, however, may do it while sitting. Furthermore, the oath must originally

be performed with the holy scrolls; a scholar, however, may take the oath even originally with *Tephilin*.

The rabbis taught: Also an oath taken by one before the court must be uttered in a language he understands, and the court must say to him the following introduction to the oath: Be aware that the whole world was trembling when the Holy One, blessed be He, spake on the Mount Sinai: "Thou shalt not bear the name of the Lord thy God falsely"; likewise concerning all transgressions mentioned in the Torah it reads: "*Venakkei*" (literally, he will forgive), and concerning a false oath it reads further, "*Lo ienakei*" (literally, he will not forgive); again, for all other transgressions only the sinner himself is punished, while here (in case of oath) the punishment extends also to his family, as it reads [Eccl. v. 5]: "Suffer not thy mouth to cause thy flesh to sin," and by the expression "flesh" one's family is meant, as [Isa. lviii. 7]: "From thy own flesh." Furthermore, for all other transgressions the sinner himself is alone punished, while here the whole world is punished, as [Hosea, iv. 2, 3]: "There is false swearing, etc. . . . therefore shall the land mourn." (But perhaps it means that only when the sinner committed *all* the transgressions mentioned here in Hosea? This cannot be borne in mind, as it reads in [Jerem. xxiii. 10]: "For because of false swearing mourneth the land.") Again, the punishment for all other transgression is, because of the merits of the sinner's forefathers, postponed for some two or three generations, but here he is punished immediately, as it reads [Zech. v. 4]: "I bring it forth, saith the Lord of hosts, and it shall enter into the house of the thief, and in to the house of him that sweareth falsely by my name: and it shall remain in the midst of his house, and shall consume it with its timber and its stones"; "I bring it forth" means immediately; "it shall enter into the house of the thief" means who steal the mind of the people, *e.g.*, he who has no money with his neighbor, claims such and makes latter swear; "into the house of him who sweareth falsely" means literally; "it shall remain in the midst of his house," etc., to learn from this that things indestructible by fire or water are destroyed by false swearing. If after having listened to all this introduction, he says: "I will not take the oath," the court sends him away immediately (that he might not reconsider and take it); but if he says: "I will nevertheless swear," the people present say [Numb. xvi. 26]: "Depart, I pray you, from the tents of these wicked."

Again, when he is ready to take the oath, the court says again to him: Be aware that the oath which you take is not according to your own mind, but to the mind of the Omnipotent and of the court, as we find by Moses, our master, when he made the Israelites swear, he said: You shall be aware that your oath is not by your own mind, but by that of the Omnipotent, as it reads [Deut. xxix. 13, 14]: "And not with you alone, etc. . . . But with him that is standing here," etc., and it is not meant only those were at the Mount Sinai, but all future generations, and all proselytes who will embrace Judaism in the future; and not only regarding the commandments given on that Mount, but also regarding all commandments that will be established in the future and be they lenient, such as the reading of the Book of Esther, as it reads there [Est. ix. 27]: "The Jews confirmed it as a duty," etc., which means they confirmed a duty imposed upon them in the past.

The text above states "also an oath," etc. Why also? It is an addition to a Mishna in Tract Benedictions—viz.: the following are uttered in any language: The portion said to a suspected woman, the confession on tithe, the reading of *Shema*, the saying of the prayer, of the benediction after meals, the witness-oath, and the oath of a depository. So that the "also" from here comes to add yet the oath given by the court.

The master says: The whole world was trembling, etc. But why? Was it because it was ordained on Sinai? Then, all the ten commandments were given there; and if because it is more rigorous, is it indeed so? Is there not a Mishna: Lenient means positive and negative, except "Thou shalt not bear the holy name," etc.; rigorous are those under the category of capital punishment and *Korath*, and the commandment "Thou shalt not bear," etc. belongs to these (hence, we see that it belongs to the same category with these)? The answer is that to all other transgressions *Venakkei* applies, while here *Lo ienakkei* applies, as above. But does it not read together *Venakkei lo ienakkei*? This is explained by R. Elazar, who said: It is impossible to say *Venakkei* (he will forgive) as it is followed by *lo ienakkei* (he will not forgive), nor is it possible to say "he will not forgive" after it reads "he will forgive," therefore it must mean, he will forgive the repenters, but not those who do not repent. (The master says there) further: For all transgressions, etc., while here (in the case of oath) the punishment extends also to his family. But does it not read [Lev. xx. 5]: "Then I will set

my face against this man and against his family." And there is a Boraitha: R. Simeon says, If he has sinned, what has his family done; to teach that a family, where there is a contractor or a robber, is all considered robbers because it supports him? There *he* is punished with the punishment attached to his transgression, but the family with a lenient one; while here the family suffers the same punishment with the perjurer. As we have learned in the following Boraitha: Rabbi said, to what purpose is it written in the above-cited verse, "I will cut him off," after it reads "I will set my face," etc.? To teach that only *him* I will cut off but not the whole family.

Concerning the punishment of the whole world (mentioned before), does it not read [ibid. xxvi. 37]: "And they shall stumble one over the other," which is explained elsewhere to mean "one because of the sin of the other," as all the children of Israel are mutually responsible one for the other? The reason then is that they could have prevented the sin by protesting, but did not do so. But is not one's family included in the "whole world"? There is a difference in the nature of the punishment—viz.: his family is punished more rigorously than the rest of the world.

The text says: If he says, "I will swear, the people say: Depart," etc. Why are both the parties called wicked? Let only him who swears have this name. It is in accordance with R. Simeon b. Tarfon, who says in the following Boraitha [Exod. xxii. 10]: "Then shall an oath of the Lord be between them both," infer from this that the oath rests upon them both. It states there further on: "Not according to your own mind." To what purpose is this? Because of a case that happened in Rabha's court (where the defendant put up the money claimed from him in a case and, while going to swear, he gave it to the plaintiff to hold, and swore then that he has returned the money, thus convinced that he had made a true oath).

"*I have with you two silver*," etc. According to Rabh the denial must be for two silver; according to Samuel the claim must amount to two silver, while the denial or the confession may be even for one *peruta*. Said Rabha: Our Mishna seems to be in accordance with Rabh, as it states that the claim must amount to two silver and the confession to one *peruta*, but it does not state the denial to be of one *peruta*; the Scripture, however, seems to be in accordance with Samuel, as it reads [ibid. ibid. 6]: "If a man do deliver unto his neighbor money

or vessels to keep," and as "vessels" is used in the plural, so is money (silvers) here in the plural; and as silver is a valuable, so everything that is a valuable; and [ibid. 8]: "Of which he can say this it is" signifies however little it may be, hence, the confession must be to a claim that is no less than two silver.

There is an objection from the following Mishna: I have with you two silver. Nay; you have only one peruta; he is free from an oath. Now, is it not because the denial here is less than of two silver, and it is an objection to Samuel? Nay; it means particularly: He claims two *silver*, and the answer is *peruta*, which is in *copper*, consequently the confession was not of the same kind with the claim. But if so, how is the second part to be understood—viz.: I have with you two silver and a *peruta*. Nay; you have with me only one *peruta*; he is liable. Now, if the claim was for the *value* of two silver, it is correct that he is liable, for the confession concerned the same kind as the claim; but if it is a claim particular on silver, then the other confessed to what was not claimed, and what this one claimed was not confessed? But is not the objection concerning Samuel, and R. Na'hman said that Samuel holds one liable for confessing one of the articles embraced in the claim; and it seems to be that the Mishna was particular regarding the kind, and not the value, of the metal, as it states in its last part: I have with you a *litra* gold. Nay; you have with me a *litra* silver; he is free. Now, if it is particular with regard to the kind of metal, then it is correct; but if it means the value of the metal, why should he be free, when the value of gold is so many times more than that of the same quantity of silver? Hence, as this last part is indisputably particular with regard to the kind of metal, so also is the first part. But if so, let this be an objection to Rabh? Rabh may say: All the Mishna treats of the value, but in the case of the *litra* gold it is different, as here the main point is the weight; and a support to this view may be found in its concluding part, which states: "I have with you a golden dinar." Nay; you have with me only a silver dinar, a trissis, a pundium and a peruta, he is liable, as they all are coins. Now, if it speaks of value, it is right that he is liable, as the claim was for coins and the confession, too, was for coins; but if it is particular, why should he be liable when he confesses to silver or copper, the claim being for gold? Said R. Elazar: It treats of a claim that is made for coins amounting to the value of a dinar, and this is stated to teach that a peruta is also considered a coin.

And so it seems to be, since it adds that "they all are each a kind of coin." But Rabh reads the Mishna to mean "to them all the law of a coin applies."

Come and hear: "I have with you a gold dinar in gold." Nay; you have with me only a silver dinar; he is liable. Now, we see that only because the claimant added specifically "in gold," the kind of the metal is particular; but if this were not added, the value of the metal would be understood? Said R. Ashi: Nay; the Boraitha intends to teach that if one says "a gold dinar," it means a dinar in gold.

R. Hyya taught a Boraitha in support of Rabh: I have with you a *sela*. Nay; a *sela* less two silver; he is liable. But if the answer is: A *sela* less a *ma'ah* (= $2\frac{1}{2}$ silver), he is free (because the denial was for more than two silver).

Said R. Na'hman b. Itz'hak in the name of Samuel: All that was said hitherto concerns only the claim of the lender and the confession of the borrower, but if there was one witness, the borrower is liable even if the claim amounted only to one peruta; as it reads [Deut. xix. 15]: "There shall not be one witness to any sin or transgression," which signifies that to a transgression one witness shall not be considered, but concerning an oath one witness may be considered; and there is a Boraitha that wherever two witnesses cause the payment of money, one witness causes an oath.

R. Na'hman said again in the name of the same authority: If the claim was for wheat and barley, and the confession was to either one, he is liable. Said R. Itz'hak to him: Thanks, so also said R. Johanan. Was he thanking because someone differed with R. Johanan? Yea; it was Resh Lakish who kept silent when R. Johanan said so, only because he was drinking at that time.

An objection was raised; come and hear: If the claim comprised both personal and real estate, and the confession was to either, he is free; if, however, the confession was regarding but a part of the real estate, he is free; but if to a part of the personal estate, he is liable. We see, then, that only in a case of real estate to which an oath does not apply, he is free; but if the claim were for vessels of two kinds similar to personal and real estate respectively, and he would confess to either kind he would be liable? Nay; he would be free in this case also; and the case of personal and real estate is to teach that, when the confession was only to a part of the personal, he has to swear

even for the real estate, too. But what is there new in this teaching: that one can include in the oath also another claim? This has been already stated in Middle Gate? Here is the main teaching, while in Middle Gate the point is touched on merely by the way. R. Hyya b. Aba, however, said in the name of R. Johanan: If the claim was wheat and barley, and the confession was only to either of them, he is free. But has not R. Itz'hak expressed his thanks to one for quoting R. Johanan as saying the very opposite? The Amoraim differ regarding R. Johanan's statement.

R. Aba b. Mamal objected to R. Hyya: If the claim was for an ox, and the confession was for a lamb or *vice versa*, he is free; but if the claim was for an ox and a lamb, and the confession only for one of them, he is liable? And he answered: This Boraitha is in accordance with Admon; and you shall not take this answer as mere argument, since it is a fact that R. Johanan taught so explicitly.

R. Anan said in the name of Samuel: If one was about to claim wheat and the defendant hastened to confess barley, if it seems to the court that he did so with a view to elude the court, thereby escaping an oath, he is liable; but if only to justify the claim, he is free. He said further in the name of the same authority: If the claim was for two needles, and the confession was to one, he is liable; as for this purpose the Scripture mentions vessels, that they remain what they are. R. Papa said: If the claim was for vessels and a peruta and the confession was for the vessels and the denial for the peruta, he is free; but if *vice versa* he is liable. The one case is in accordance with Rabh, who holds that the denial must be of a claim of two silver, while the other case is in accordance with Samuel, who holds that of the claim comprised two articles and the confession was to but one, he is liable.

"*I have a mana with you*," etc. Said R. Na'hman: He is free from a biblical oath, but he is subject to a rabbinical one. (Here follows a repetition from Middle Gate and also from First Gate concerning the law that he who denies a loan is fit to be a witness, while he who denies a deposit is unfit.) According to others the saying of R. Na'hman concerned the latter part of the Mishna—viz.: *I have a mana with you*. Yea. And the next day when he refuses it, he says: "*I have already given it to you*"; he is free, to which R. Na'hman said: He must, however, take a rabbinical oath. To him who teaches this regarding the

first part of the Mishna, is obvious that it belongs also to its latter part; but he who limits this to the latter part reasons thus: In this latter part money was avowedly involved, but in the first it is doubtful.

What is the difference between a biblical and a rabbinical oath? The reversibility of the oath: a biblical oath we do not transfer from one contestant to the other, while a rabbinical we do. And according to Mar b. R. Ashi, who says that a biblical oath is also reversible, what is the difference between the two oaths? The collecting from the property: where there is a biblical oath, the collection may be made from his property, which is not the case with a rabbinical oath if he refuses to take such. And according to R. Jose who says that a rabbinical oath is also attended with collection, what is the difference between the two? In the case where one of the parties was suspected of an oath: if this was a biblical oath it is transferable to the other party, but if it is a rabbinical oath, which is only an enactment by the sages, it is not transferable, for the transferring is itself but an enactment and we do not impose one enactment upon another.

Now, what is to be done according to the rabbis, the opponents of R. Jose, who hold that in case of a rabbinical oath no collecting from the property takes place? We place him under ban. Said Rabina to R. Ashi: This is like holding one up for his throat till he takes off his clothes (*i.e.*, it is still worse than collecting from his estate, as he remains under ban until he pays)! But what shall be done? Place him under ban for one month, and if he does not come then for absolving he is, as it is customary, punished according to Rabh's practice, after which punishment he is left alone.

R. Papa said: If one holds a document in his hand and the defendant says: the document is already paid up, he is not trusted and must pay. But if he requires that the plaintiff take an oath that it has not been paid, the court is to give him an oath. Said R. A'ha b. Rabha to R. Ashi: Why should this case be different from a marriage contract where she has to take an oath only when she impairs the contract (*i.e.*, she claims that only one mana has been paid on it)? And he answered: In that case where the document is impaired, and the defendant does not require an oath, the court requires such; in this case, however, the court would tell him to pay and not exact an oath, but execute the requirement of the defendant that the plaintiff take

an oath; and if the plaintiff was a scholar no oath is to be given. Said R. Yemer to R. Ashi: Is a young scholar given the liberty to strip men of their clothes? Say only that if he was a scholar, we do not compel him to swear, so that it should not seem that the court suspects him, and on the other hand if he refuses to swear we do not collect his claim from the defendant.

Again: "*I have a mana with you.*" Said R. Jehudah in the name of R. Assi: If one has made a loan in the presence of witnesses, he must also return it in presence of witnesses. And when, he continued, I recited this before Samuel, he told me that the defendant can claim, "I have paid you in the presence of such and such witnesses, who are now away in the sea-countries." An objection was raised from our Mishna: "I have with you a mana. Yea. . . . I have returned it to you," he is free; now, if he required the money in presence of witnesses, it is a case similar to making a loan in the presence of witnesses, and nevertheless he is free, which contradicts R. Assi's statement? R. Assi may say: This is no comparison, as I speak of a case where the plaintiff has never reposed on confidence in the defendant, as he did not trust him without witnesses; but here he trusted him money without witnesses.

R. Joseph taught the same in the name of the above, as follows: If one makes a loan in presence of witnesses, the borrower is not obliged to return it in presence of witnesses, unless he was told not to repay otherwise than in presence of witnesses; and it is to this that Samuel told me: the defendant may none the less claim to have paid the debt in presence of such and such who are now in the sea-countries.

An objection was raised from the following: I have a mana with you. Yea. You shall not return it to me without the presence of witnesses. The next day, on being asked to return the money, he answered: I have returned it, the defendant is liable, for he had to return it as he was told, *i.e.*, in the presence of witnesses; and this contradicts Samuel's statement? Samuel may say that concerning this law Tanaim differ in the following Boraitha: I have given to you my money in presence of witnesses, and you must return it under the same conditions; then the defendant must either pay or adduce evidence that he has paid already; R. Jehudah b. Bathina, however, says: He may claim to have returned the money in presence of witnesses that are now in the sea-countries. R. A'ha (one of the Saburaërs) overthrew all this argument by saying: Whence do we know that

the above Tanaim differ in case he lent him before witnesses, perhaps it means in case of demanding when he says to him: Have I not lent you in presence of witnesses, so that you ought to pay me also in the presence of witnesses; but in case he told him when making the loan that he should return it in presence of witnesses, all agree that he is liable? Said R. Papi in the name of Rabha: The Halakha prevails that he who borrows in the presence of witnesses must pay also in the same manner. R. Papa, however, said in the name of the same authority that he is not obliged to do so, unless he was expressly told not to pay otherwise but in the presence of witnesses; and if the defendant claims to have paid it in the presence of such and such who are now in the sea-countries, he is trusted (Maimanides, however, reads: He is not trusted).

There was one who told his neighbor: When you will pay me my debt, you shall do so in the presence of Rubin and Simon; he, however, has paid it in presence of two other witnesses (and thereafter the plaintiff says that they are false witnesses). Said Abayi: What is the difference, he was told to pay before two witnesses, and so he did? Said Rabha to him: The plaintiff has purposely specified two witnesses by name that the defendant may not be able to say that he paid in presence of some other witnesses!

There was one who said to the borrower: You shall pay me only before two persons who are able to learn Halakhas; he, however, paid him without any witnesses present. It then happened that this money was violently taken away from the plaintiff, and he came to R. Na'hman saying: It is true, I have received the money not as a return of the loan, but as a deposit, until there will happen two witnesses who learn Halakhas and then he will repay me. Said R. Na'hman to him: As soon as you admit to have taken the money it is a repayment, and if you want the defendant to comply with the stipulation regarding the witnesses, go and bring the money here in the presence of myself and R. Sheshith, who are learned not only in Halakhas but also in *Siphra*, *Siphri*, *Tosephtha* and in all the *Gemara*.

In another case one demanded a 100 zuz which he lent to him, to which the defendant answered that such a case has never taken place; the other party, however, brought witnesses that the loan took place, but that it was returned; said Abayi: What is to be done, as the same witnesses who testify that the loan took place, testify also that it has been returned? Said Rabha

to him (follow this rule): If one asserts not to have borrowed, it means he asserts not to have paid (hence, as the statement "that it has never taken place" is false, according to the evidence of these witnesses, we must take his word as though meaning: "I have never paid," which must be taken for granted in spite of all witnesses).

In still another case the plaintiff claimed 100 zuz, and the defendant answered: Have I not paid you in the presence of so and so? And so on so upon being quoted said: They know of no such case; and R. Sheshith was about to say that this defendant must be declared a liar; said Rabha to him: He was not obliged to repay in the presence of witnesses, and therefore he was not heedful enough to know the names of them in whose presence he repaid.

In another case the plaintiff was claiming 600 zuz, and the defendant answered: Have I not repaid this claim with 100 kabs of gall-nut, the value of each kab being six zuz? To which the plaintiff said: Nay; each was worth only four zuz, and brought witnesses to this effect, demanding the remaining 200 zuz. The defendant, however, said: I have paid you all the same, if not with this said stuff, then I gave you 200 zuz in cash. Rabha decided that the defendant in this case be recognized as a liar. Said Rami b. Hama to him: Have you not said that a thing to which one pays little attention, may easily escape one's memory (why not say that he paid him the 600 zuz but did not remember the price)? Whereupon Rabha answered: A fixed price can never be forgotten.

In another case one demanded 100 zuz on a document, where-to the defendant answered: "Have I not paid you"? Whereupon the plaintiff claimed that this payment was made to meet another claim. According to R. Na'hman the document lost its value, according to R. Papa, it did not. But why should R. Papa's decision here differ from what he decided in the following similar case, where the defendant's answer was: Have you not given me that money to buy oxen for slaughtering, and I returned you that money in the slaughter-house? And where the plaintiff asserts that this was for another debt; in which case R. Papa declared the document invalid? In this case R. Papa thus decided, because the money was actually taken to buy oxen and then received in that very place where they were slaughtered; in our case, however, the plaintiff may be right in his claim. But how should such a case be ultimately decided? According

to R. Papi the document is valid, and according to R. Sheshith b. R. Aidi it is invalid, and so the Halakha prevails, provided the defendant paid in presence of witnesses and the document was not mentioned at all; but if the payment was made between themselves, the plaintiff may be trusted when he says that it was to cover another debt, because were he willing to tell a lie he would simply deny the payment.

A borrower said to the lender: "You are trusted so long as you will say that I have not paid you"; thereafter he paid him in the presence of witnesses, but the plaintiff continued his claim, saying that this payment was for another debt. Both Abayi and Rabha said that the defendant himself has trusted him, hence, he is to be trusted; R. Papa, however, opposed, saying: The defendant trusted in this case more to the plaintiff than to one's self, but did he trust him more than two witnesses?

In another case the defendant said to the plaintiff: "You are trusted like two so long you say that I have not paid you;" thereafter he paid in the presence of three, and the plaintiff still claimed his debt; in which case R. Papa said: He was trusted as two, whereas here there are three witnesses. R. Huna b. R. Jehoshua, however, opposed, saying that concerning witnesses their number whether two or 100 matters not (according to the biblical law); however, if he said to him: "You are trusted like three," and then paid him in the presence of four, it is different, as the number three was intended here not for witnesses but for the *minds*, and in this respect four minds are more than three.

"*There is no oath to the claim of a deaf-mute,*" etc. For [Exod. xxii. 6]: "Unto his neighbors," etc.; and the delivery by a minor is not considered.

"*But there is an oath to the claim of a minor.*" But has it not just been said that there is no oath to such? Said Rabh: It means the minor claims that his father has given this or that to the defendant, and it is in accordance with R. Eliezar b. Jacob, who said in the following Boraitha: There is a case where one has to swear for his own claim—viz.: "Your father had with me a mana, but I paid him a half," then he has to swear for his own claim; the sages, however, say that here he is but returning a lost thing, hence, he is free. And to the question, Does not R. Eilezar agree that the defendant here is returning a lost thing, Rabh said: It treats here of a claim made by a minor after the death of his father. But again, the Mishna states expressly that there is no oath to the claim of minors? Rabh

meant to say: He was as a minor in his father's business, but already of age when putting in the claim. But then how is the expression above "for his own claim" to be understood, as here it is not his claim but that of the plaintiff? It must, therefore, be said that they differ concerning what was said by Rabha (Middle Gate, p. 4) with regard to a biblical oath that "one is not so bold as to deny the whole," etc.: R. Eliezar holds that one is not bold concerning the son (of the deceased) also, and therefore he is not regarded as returning a loss, while the rabbis hold that one is not bold only in face of the party himself, but is so with relation to the son of same, and therefore he is considered as returning a loss.

But how can you explain the Mishna in accordance with R. Eliezar b. Jacob, does not the Mishna state in its first part: If one claims, my father had with you a mana, and the answer is, I have no more than 50 dinar, he is free because he only returns a loss? There it speaks of a case when the heir did not claim: "I am certain," while in the case of our Mishna the minor is supposed to claim that he is certain. Samuel, however, says: Our Mishna's case is when the minor has real estate and one puts in a claim that his father owes him money, in this case even if the plaintiff has a document, he must swear that the minor's father has not paid it; the same is the case with the sanctuary.*

MISHNA II.: One does not swear to the following: To slaves, written documents, arable lands, and sanctified objects; nor is thereto applied the payment of double amount, or of four and five-fold. The gratuitous bailee need not swear, the bailee on payment need not pay damages. R. Simeon holds that one is obliged to swear to objects of the sanctuary, for whose security he is liable, but not to those for which he is not responsible. R. Mair says: There are things attached to the land and yet not considered land; but the sages do not agree with him therein. How so? I have transferred to you ten vines laden with grapes. Nay; there were only five; and he must swear according to R. Mair, while the sages hold that everything attached to the soil is to be regarded as the land itself.

One swears but to things capable of being measured, weighed, and counted. How so? I have transferred to you a house full of fruit, or, I have handed you a purse full of money. I know

* The further discussion on this point appears in its proper places.

not how much there was, but you are at liberty to take back whatever you left there; he is free; but if plaintiff says: They were reaching the cornice, and the defendant rejoins: Only up to the window, latter is liable.

GEMARA: Whence is this deduced? From [Exod. xxii. 8]: "For all manner of trespass": general, "ox, ass, lamb, raiment"; particulars, "for any manner of lost thing"; again general, and there is a rule that wherever particulars appear between generals, it must be judged in the sense of the particulars: and, as these are movables each having in body a value, so also all other cases must be equal to these; except real estate, which is not movable, slave, who are equalled to real estate, documents which though movable are in body of no value, and finally the sanctuary which is excluded because of the verse "his neighbor."

"*Double-amount, four and five-fold,*" etc. The reason here is that the Scripture speaks of four and five-fold, and as in the case of double-amount an oath does not apply; it remains only the case of three and four-fold which is not mentioned in the Scripture.

"*A gratuitous bailee need not swear.*" Whence is this deduced? From what the rabbis taught [Exod. xxii. 9]: "If a man deliver unto his neighbor": general, "an ass," etc.; particular, "to keep"; general, and on the basis of the above-mentioned rule the particulars appearing between generals render the whole to be judged in their sense: as the particulars here are movables each having in body a value, etc. (as above).

"*A bailee on pay.*" Also this is deduced from the just-cited verse and on the basis of the same rule regarding particulars appearing between generals.

"*R. Mair says: There are things attached,*" etc. From this we see that R. Mair does not hold that what is attached to the land is itself considered land. Now, why is here the point of difference illustrated by *laden* vines, and not by vines as such? Said R. Jose b. Hanina: The Mishna speaks of grapes that were ready for the press. R. Mair holds: As they are ready for pressing they are no longer considered attached to the soil, but as already pressed in which case an oath applies, while the sages do not share this opinion.

"*One swears but to things capable of being measured,*" etc. Said Abayi: Provided he says "a house full," etc., but if he says, "*this* house was full," then his claim is definite and recognized. Said Rabha to him: If this were so, why the illustration

in the last part of the Mishna with "cornice" and "window" stated by plaintiff and defendant respectively, and not with "a house" and "this house"? Therefore, says Rabha, there is no liability of an oath unless the claim concerned a certain measure or weight, and the confession was made also to measure or weight. There is a Boraitha in accordance with Rabha: "I have a kur of grain with you." Nay; you have nothing with me; he is free. "I have with you a big chandelier." Nay; you have only a small one; he is free. However, if he says: "I have with you a kur of grain," and the answer is: Only a lethech; "or a chandelier of ten pounds," and the answer is: One of only five pounds, he is liable. Because the rule underlying this judging is: One is not liable unless the claim was for a certain measure, weight or number, and the confession was to the same effect. Now, what is the addition of the rule for in the Boraitha? To indicate that "this house *full*" means also a measure. But why is it not a partial confession if he confesses to a small chandelier when the claim is for a big one? Because to the claim as it is, there is here no confession, nor is the claim made for what is confessed (as the big and small chandelier are two different things); but is not the same the case when the claim is for one of ten pounds, and the confession for one of five pounds? Said R. Samuel b. R. Itz'hak: It speaks of a chandelier made of separable pieces, and the confession was to five pounds of the same chandelier; why, then, is not the same the case with the girdle that may have been of separable pieces? And as this is not so, we must say that it does not speak of pieces in the other case of the chandelier either! Therefore, said R. Aba b. Mamal, it speaks of a whole chandelier, but when the claim is for a big and the confession for a small one, then are two wholly different things involved; but if it speaks of the weight, one could by rubbing reduce the weight of such from ten to five pounds, the only object thus remaining the same.

MISHNA III.: If one lends to his neighbor on a pledge, and the pledge got lost, whereupon the plaintiff says: I lent you on it a sela, but it was worth only a shekkel; the other party says: No, truly, you lent me a sela on it, but it was worth a sela, he is free. But if the plaintiff claims: I lent you on it a sela, but it was worth only a shekkel; whereto the other replies: Nay; you did lend me on it a sela, and it was worth three dinar, he is liable. If the debtor says: You lent me on it a sela, while it was worth two selas, whereto the creditor: Nay; I gave

you on it one sela, its value only, he is free. But if the former says: You lent me a sela on it, it was, however, worth two, and latter says: Nay; I lent you thereon a sela, and it was worth only five dinar, he is liable. Who is to take the oath? The depository, as he could meanwhile produce the pledge if the other one were to swear.

GEMARA: The concluding sentence of the Mishna belongs to which part? If to the last, there is a rule that the oath rests with the lender? Said Samuel and also R. Hyya b. Rabh and also R. Johanan, it belongs to the middle part: I lent you a sela and it was worth a shekel, and the other says it was worth three dinars, in which case the borrower confesses to owe yet one dinar, hence, it is a partial admission to which an oath applies; the rabbis, however, have transferred this oath from the borrower to the lender.* And now that R. Ashi has decided that both depositor and depository must each take an oath, he latter: that he does not have the pledge any more, and the former: that its value amounted to so and so much, the Mishna is to be explained thus: Who is to take the oath first? The depository, since if the depositor swore first the other could meanwhile reconsider and produce the pledge.

Samuel said:† If one lends to his neighbor 1,000 zuz, and pledges for them the handle of a scythe only, if the handle is lost the 1,000 zuz are lost, but if the pledge consisted of such two handles the case is different, as we do not assume that he gave 500 zuz for each handle, but for the whole, and as only one of them was lost the lender loses nothing; R. Na'hman, however, maintains that the same is the case with two, *i.e.*, if one is lost the lender loses 500 zuz, and if both are lost he loses the whole 1,000; but the same is not the case if the pledge consisted of a scythe handle and a piece of metal. The opinion of the sages from Nahardea is that the same is the case with the last mentioned pledge: If either the metal or the handle is lost, 500 zuz are lost, and the loss of both entails the loss of all the 1,000.

An objection was raised from our Mishna—viz.: From the case where defendant says it was worth but three dinar. Why is he liable in this case? Let the depositor say: You have taken it for a sela? The Mishna has in view the case where the de-

* A Talmudic *sela* was of two shekels, each shekel of two dinars; hence 3 dinar = $1\frac{1}{2}$ shekel.

† This is a repetition from Tract Middle Gate, p. 206, which is reproduced here because R. Na'hman's part is not mentioned there.

positary expressly took upon him responsibility for its value only, which is not so in Samuel's case.*

Concerning the last mentioned case shall we assume that the following Tanaim differ: If one had made a loan on a pledge and the Sabbathic year entered, the pledge, though worth only the half value of the loan, the year does not release the loan [Deut. xv. 2]; R. Jehudah the Nassi, however, maintains that if the pledge amounted to the value of the whole debt, the year does not release, but if not to this value, the year does release. Now, let us see what does the first Tana mean by his saying "it does not release"? If he means, it does not release the half debt and R. Jehudah comes to teach that it releases even this half, then of what use is a pledge? We must then say that the first Tana means it releases the entire debt, as he agrees with Samuel's theory that as soon as it was accepted for this amount it must be considered only as such, while R. Jehudah differs! Nay; they differ with regard to the worth of the pledge and still R. Jehudah maintains that the entire debt is released, for the pledge which is not worth the amount of the debt he considers as mere memorandum.

* Here follows the discussion from Middle Gate, p. 206:

"On a pledge," which paragraph is followed by the statement of R. Itz'hak that a creditor acquires title in a pledge (ibid., p. 207). Also the discussion concerning the question as to whether he who takes care of a found object is considered a gratuitous bailee, or a bailee for hire (ibid., p. 65), all which we deem unnecessary to repeat here

CHAPTER VII.

RULES AND REGULATIONS CONCERNING THE CONDITIONS UNDER WHICH THE OATH IS GIVEN TO THE PLAINTIFF OR TO THE DEFENDANT.—REGARDING A SUSPECT OF PERJURY.—THE DIFFERENCE BETWEEN A BIBLICAL AND A RABBINICAL OATH.—IS OR IS NOT A RABBINICAL OATH TRANSFERABLE?—THE OATH OF ORPHANS (PLAINTIFF OR DEFENDANT), PARTNERS, GARDENERS.—THE CASES WHEN THE SABBATHIC YEAR RELEASES ONE FROM AN OATH.

MISHNA I.: All those who are subject to a biblical oath swear and do not pay. The following, however, swear in order to receive pay: The employee, the robbed, the bruised, he whose adversary is suspicious of perjury, and the store-keeper on his business book. The employee, how so? Give me my wages which I have with you, and the employer answers: I have given them to you already, and the former claims: I have received nothing; he swears and gets his claim. R. Jehudah, however, says: Unless there be a partial confession (the oath is not effective)—viz.: the employed says: Give me my fifty dinar wages you have in your hands, and the employer replies: You received on this account one gold dinar.

How is it with the robbed? If witnesses testify that one entered his house to seize a pledge without permission, now the householder says: You have seized one of my utensils, and he denies, plaintiff swears and takes it. R. Jehudah, however, says: Unless a partial confession takes place there—viz.: You took two utensils, and he answers: I took but one.

How is it with the bruised? If witnesses testify that one entered the premises of so and so unhurt and went out in wounds, now the plaintiff says to the defendant: You bruised my body, and he says: I did not, former swears and receives pay. R. Jehudah says: Unless a partial confession took place—viz.: plaintiff says: You wrought upon me two bruises, and the defendant says: Only one.

How is the adversary suspicious of perjury? As follows: Be

it that he became suspicious while under oath as a witness, or under oath for a deposit, or even for merely vain swearing. If one of them is a gambler in dice, a usurer, a dove hunter, or one who is doing business with the fruit of the Sabbatical year, his adversary swears and obtains his claim. In case, however, both were suspicious, the oath returns to its place; such is R. Jose's opinion; R. Mair holds that they divide.

The store-keeper on his book, how so? Not that he say to somebody: It is stated in my book that you owe me 200 zuz, but that when one says to the store-keeper: Give my son two saah of wheat, or: Give my laborer a sela in money, whereupon the store-keeper claims: So I did give, and the others say: We have received nothing, the two swear; he swears and gets paid, and they likewise swear and get paid by the employer. Said b. Nanan: How is that? Either party will necessarily be committed to false swearing! But both parties receive their respective claims rather without swearing. If one said to the store-keeper: Give me fruit for one dinar, and he, having given him, says: Give me the dinar, whereupon this replies: I have given it to you already and you put it into the cash-drawer, the purchaser is to swear. If, however, the customer gave the dinar and said: Give me the fruit, and the store-keeper says: I have given them to you already and you brought them over to your house, the store-keeper is to swear. R. Jehudah says: He who has the fruit in his possession has the preference.

If one says to the money-changer: Give me change for a dinar, and he was given it, whereupon the changer says to him: Give the dinar, and he answers: I have given it to you already and you have put it into the cash-drawer, the customer has to swear. But if he gave him the dinar and says: Give me the change, and the other one replies: I have given it to you already and you have put it into your purse, the money-changer has to swear. R. Jehudah says: It is not customary with a money-changer to give out an issar before he has received his dinar.

As it has been established that a woman who damaged her marriage contract can obtain payment only on oath; that, when a single witness testifies that she was paid, she can receive payment only on oath; that she can get paid from encumbered estates or from the estates of the orphans only on oath; and that when she is to be paid in her husband's absence, she is so only on oath: so likewise should orphans be paid only on oath—viz.: We swear that our father had not willed to us nor told

us, and that we have not found among the documents of our father that this note has been paid. R. Johanan b. Buoka says: Even if the son was born after his father's death, he may swear and collect. R. Simeon b. Gamaliel says: If there are witnesses to the effect that the father said while dying: This note has not been paid, the heir collects without an oath. The following have to swear also in the case when there is no claim: Partners, gardeners, guardians, a woman business-manager, and the son of the house. When one of these parties says: What is your claim against me? and the other one answers: My only desire is that you swear, he must swear. If the partners or gardeners have already divided, they are no longer liable to take an oath. However, if an oath is imposed upon one of them from some other source, all other claims may be included. The Sabbathic year releases from an oath.

GEMARA: "*Swear and do not pay.*" Whence is this deduced? From [Exod. xxii. 10]: "An oath of the Lord, . . . the owner of it shall accept this," etc.; which signifies that the oath rests upon him who has to pay.

"*The following, however, swear in order to receive pay.*" Why have the rabbis enacted the law that the laborer must swear? (For the answer see Middle Gate, p. 300 f.; par. *But it is correct.*) Said R. Na'hman in the name of Samuel: This law holds good, provided he was hired in presence of witnesses, but if without witnesses, the employer is to be trusted, since if he would he could say that he has never hired him. Said R. Itz'hak to him: Thanks, so also said R. Johanan. (Says the Gemara): From this it appears that Resh Lakish differed with the latter; and why is it not mentioned? Some say: Resh Lakish was drinking at that time, according to others R. Itz'hak was then absent from college. The same was taught also by R. Menashia b. Zebid in the name of Rabh. Said Rami b. Hama: How fair is this Halakha! Said Rabha to him: I do not see its fairness, since according to its theory the four kinds of bailees to whom a biblical oath applies find no practical illustration, for as any of them may say that such a thing (as claimed by the plaintiff) has never occurred, he may be trusted also in case when asserting that the thing has been robbed; and should you say that the object was deposited with such a bailee in the presence of witnesses, he could still say that he has returned it, and as he would be trusted when claiming that he has returned it, he may likewise be trusted when he says that it has been robbed;

hence there can be here no case unless the plaintiff took a document on his deposit, as only in this case the bailee cannot assert that he has returned the object, for if he had done so he would have taken back the document. [(Says the Gemara): From Rabha's objection we see that both Rabha and Rami b. Hama hold that if one deposits an article in the presence of witnesses, the depositary is not bound to return it in presence of witnesses, while if deposited on a document the depositary must possess evidence that he has returned the deposit.]

Concerning this Rami b. Hama applied to R. Sheshith [I Sam. xxi. 13]: "And David took these words to his heart"; as R. Sheshith, when meeting Rabba b. Samuel, questioned him: Has the master learned something concerning an employee? And he answered: Yea; an employee, at the time of getting his pay, is to take an oath and then receive his pay. How so? If the employee claims: You hired me and did not pay; while the employer says: I hired you and paid you. However, if the former's claim is: You hired me for two zuz and gave me only one; while the employer says that he hired him only for one, then it is incumbent upon the plaintiff to bring evidence. Now, as in the last case the plaintiff is to bring evidence, it is to be assumed that in the first case there was no evidence required (hence, the above theory of Rabh and Samuel is overthrown). Said R. Na'hman b. Itz'hak (this is no objection at all): It may be that even in the first case there was some evidence, and the evidence in the last case is only required with regard to the collection of the payment from the employer, but concerning the oath the Boraitha did not care to teach.

R. Jeremiah b. Aba said: The college sent a message to Samuel, thus: Let the master teach us as to who is to swear in a case where the specialist says, "You have hired me for two zuz to repair something," while the employer says that he hired him only for one zuz; and Samuel answered: In such a case the employer is to swear and the employee loses the case, for as regards price once fixed people remember it well. But has not Rabba b. Samuel said above that in such a case the burden of proof lies upon the plaintiff, and as here he possesses no evidence he should lose the case even without any oath on the part of the employer? Said R. Na'hman: The above Boraitha is to be interpreted as teaching alternatively, *i.e.*, either the employee is to bring evidence and receive his pay, or the employer is to swear and former loses.

An objection was raised from the following Boraitha: If one has given his garment to a specialist for repair and thereafter they contradict each other concerning the price for labor and services, the law is thus: so long as the article is with the specialist the burden of proof lies on owner; and if it was delivered, the time of payment not yet elapsed, the specialist is to swear and then collect, but if that time has already elapsed, it remains for him as plaintiff to bring evidence. Thus we see that if within the time, the specialist is to swear and collect. Why let the owner swear and the specialist lose? Said R. Na'hman b. Itz'hak: This Boraitha is in accordance with R. Jehudah, who holds that so long as the oath seems to rest upon the owner (and there is a partial admission on his part) the rabbis' enactment is that the employer shall swear and thereupon collect. But let us see which R. Jehudah is meant here? It can not be the R. Jehudah of our Mishna, as he plainly requires a partial admission; it must, then, be the R. Jehudah of the following Boraitha: So long as the time of payment has not elapsed, it is the employee that swears and collects, but after the expiration of said time it is for the employer to swear. Said R. Jehudah: Provided the employee claims fifty dinar for his work, and the employer claims to have already paid one gold dinar (= 20 silver dinar), or they contradict each other regarding the price; but if the employer claims that he has never hired him, or that he has paid his wages to the last pesuta, the burden of proof rests upon the plaintiff.

R. Sheshith b. R. Aidi, however, opposed thus: Would you say that a contradiction regarding the price is in accordance with R. Jehudah and not with the rabbis; bear in mind that where R. Jehudah is in our Mishna more rigorous (as he demands a partial admission) the rabbis are lenient; should the rabbis be more rigorous in the Boraitha where R. Jehudah is more lenient? But is it possible to explain the Boraitha in accordance with the rabbis, has not Rabba b. Samuel taught, in case of contradiction regarding the price, that the plaintiff is to bring evidence, which teaching could be neither in accordance with the rabbis nor with R. Jehudah? Therefore said Rabha: Their point of difference is as follows: R. Jehudah holds that, concerning a biblical oath which applies to the employer, the rabbis have enacted for the sake of the employee to reverse the oath to the latter, so that he may, upon swearing, collect; but where there is a rabbinical oath (as where there is no partial admission) which is

itself merely an enactment, they do not impose another enactment upon it; the rabbis, however, are of the opinion that the said enactment (that the employee swear) applies also to the case of a rabbinical oath, and as to the contradiction about the price, it may be said that, as a price usually remains in memory, the rabbis leave in this case the oath to the employer.

"Entered his house to seize," etc. But perhaps he has not taken any pledge? Has not R. Na'hman said that he who, hatchet in hand, says, "I will go to cut down the tree belonging to so and so," and thereafter the tree is found cut down, we nevertheless do not say that he did cut it down? Hence we see that a man may sometimes merely exaggerate or affect to do something and in reality does not do it; why then not say the same in our case? Read, then, in the Mishna that he actually did seize a pledge. But if so, let the witness testify as to what the pledge was? Said Rabba b. b. 'Hana in the name of R. Johanan: The Mishna speaks of the pledger as claiming that the defendant seized some small utensils which he concealed under his garments (so that the witnesses could not see them, according to Rashi; according to Tasspheth, however, plaintiff claims that the defendant took more than the part the witnesses could see).

R. Jehudah said: If witnesses saw one concealing utensils under his garments when coming out from a house, and he claims that he had bought them, he is not trusted (in case the owner of said house claims that he only loaned them to the defendant), provided the owner of the house was not wont to sell his utensils, but if he was so, the defendant may be trusted; and even in this case he is not trusted if such utensils are not as a rule to be concealed, but if they are so he may, again, be trusted; and even when they are not ordinarily hidden, but the defendant was of such a standing as would not allow him to carry things publicly, it may be assumed that such is his usage and therefore he may be trusted. All this refers only to a claim of hiring and loaning; if, however, the claim concerns stealing, the plaintiff is not trusted when he makes one a thief who is not suspicious of being such (but the defendant has to swear that he bought them). Furthermore, even in the case where the defendant is not reliable he is not to be trusted only with regard to utensils not used for loan and hire, but in case the utensils are loaned or hired out, he is trusted; as concerning this R. Huna b. Abin once sent a message (see Middle Gate, p. 306 f.).

Rabha said: In case one was going to seize the goods of another, even the watchman of the house or his wife is trusted on an oath, and the defendant must pay. Questioned R. Papa: Is a laborer who was doing some work in the house at that time trusted in this case on an oath? This question remains undecided.

R. Yemar said to R. Ashi: If the claim is for a silver goblet, may the defendant be trusted with an oath or not? (and R. Ashi answered: We have to inquire into the position of the man; if he is wealthy or so much respected that people deposit with him valuables of this kind, he is trusted, otherwise he is not trusted).

"*How is it with the bruised,*" etc. Said R. Jehudah in the name of Samuel: The oath applies only in such a case when the plaintiff could himself cause a wound, but if it was not possible for him to do so, he recovers his claim without an oath. But why not fear that he may have hurt himself against a wall or a stone? Taught R. Hyya: It speaks of this case, the wound is found on his shoulder or under the arm. But it may have been inflicted by someone other than the defendant? There was nobody else in the house.

"*Even for merely vain swearing.*" Why even? It means to say: not only; *i.e.*, not only if suspicious of an oath where denial of money is involved, but also even if suspicious of such where only a denial of words is involved, he is not trusted. But if so, let an uttered oath, too, be taught? The Mishna teaches but oaths which are made falsely, while an uttered oath may be made for the future and may therefore be fulfilled. But again, let it include an uttered oath for the past? In teaching vain swearing it indeed includes all that is equal thereto.

"*A gambler in dice,*" etc. To what purpose is this statement? The Mishna classifies first those who are unfit biblically and then also the rabbinically unfit.

"*In case both are suspicious,*" etc. Rabha questioned R. Na'hman: How should we read in the Mishna, R. Mair holds, they divide or R. Jose holds so? Answered he: I do not know. How then shall the Halakha prevail? Answered he again: I do not know. However, it was taught that R. Joseph b. Miniumi said in the name of R. Na'hman that R. Jose was the one who said they divide; likewise taught R. Zebid b. Oshia, or R. Zebid in the name of Oshia. And R. Joseph b. Miniumi said that such a case happened in the court of R. Na'hman and the decision was to divide.

"*The oath returns to its place.*" To which place? Said R. Ami: According to our masters in Babaylon, it returns to its place, the Mount Sinai; and our masters in Palestine said: It returns to him who was obliged to take it (and as he cannot swear, he must pay). Said R. Papa: "Our masters in Babylon" means Rabh and Samuel—viz.: our Mishna states that orphans shall not pay without an oath, and it was discussed as to what it means: shall we assume that the orphans cannot recover from the borrower unless they take an oath; is this possible, since their father, if alive, could recover without an oath, why should they swear? It must then be explained to mean orphans that have to recover from other orphans; and both Rabh and Samuel said provided the lender died while the borrower was still alive, but if the borrower died first the lender was already obliged to swear in order to recover from the orphans of the borrower the latter's debt, and as a man cannot bequeath an oath to his children the oath returns to the Mount Sinai (*i.e.*, there is no oath here); as to the masters of Palestine, it is R. Aba in the case of a robbed piece of metal mentioned above and tried before him when he decided that as the defendant is obliged to swear but cannot, he must pay. Said Rabha: The Halakha seems to prevail with R. Aba; as it reads [Exod. xx. 10]: "The oath of the Lord be between *them*," etc., but not between their heirs. Now, let us see the nature of the case: if the heirs of the plaintiff claim that their father had a mana with the defendants' father and the others answer: We are aware that he had only fifty dinar, then it is a partial admission; what difference then is there whether the plaintiff himself or his heirs appear in the case? We must then say that the defendant orphans say that they are aware of fifty dinar, but are not aware of the other fifty dinar; now, if you say that such answer if put in by the defendant himself would oblige him to an oath, it is correct that the above-cited verse is needed to free the heirs from an oath; but if the defendant would not have to swear, then what is the verse for? Hence, whoever is obliged to swear but cannot swear (as in the case of the orphans) he must pay, as R. Aba decided in the case before him.

But what do Rabh and Samuel infer from the above-cited verse? What was said above by Simeon b. Tarfon: The verse comes to indicate that the oath rests upon both the contestants.

"*The storekeeper,*" etc. There is a Boraitha: Rabbi said, why should these be troubled with an oath? Said R. Hyya to

him: We have learned that both the storekeeper and employees have to swear (the employees that they have not received goods in the value of such and such an amount on account of their employer; and the storekeeper that he has not yet been paid for the goods), and both storekeeper and employees collect from the employer. Has Rabba accepted R. Hyya's theory or not? Come and hear the following: Rabba said that the laborer has to take an oath that he has received nothing from the storekeeper; now, if Rabba had accepted R. Hyya's theory, it would have been stated here that the oath must be taken with reference to the employer. Said Rabba: This Boraitha intends to say thus: the laborer takes an oath with reference to the employer and in the presence of the storekeeper that he (the laborer) has taken nothing from the latter.

It was taught: If there were two parties of witnesses contradicting each other, each party may, according to R. Huna, appear and testify for itself (although either of the parties is surely false, for the court in default of evidence cannot decide which one is true or false). R. 'Hisda, however, maintains that we have nothing to do with false witnesses (and consequently neither party be trusted). Illustration: If there were two cases with two lenders, two borrowers, and two documents, and one witness of each of the two parties of witnesses was signed on the document of the other contestant, R. Huna and R. 'Hisda differ: according to former both the documents are valid, and according to R. 'Hisda they are both invalid as they are both false. On the other hand, if there was but one lender with two documents against one borrower, all agree that the lender has to suffer; but if there were two lenders with two documents against one borrower, it is a case treated of in our Mishna—(viz.: the employees say they have received nothing and claim their pay from the employer, and the storekeeper asserts to have given goods to the employers and claims his pay also from the employer, in which case the Mishna decides that both the claimants swear and recover from the employer); but what is the law in case there were two borrowers and one lender with two documents signed by the two mutually contradicting parties of witnesses, according to R. Huna? Shall we assume that as there are two borrowers we should regard each of the documents as though it were the right one and collect thereupon the two, or as one of the documents is doubtless false the two should be regarded invalid? This question remains undecided.

"If he said to the storekeeper: Give me fruit for a dinar." There is a Boraitha: R. Jehudah said, provided the fruit is lying there in a heap and each of the parties is claiming that it is his, but if the customer has the fruit in his basket and put latter upon his shoulders the burden of proof lies upon the plaintiff.

"If he says to the money changer," etc. These two cases are necessary, since if only the former is stated, one might say that because fruit decays the storekeeper was in haste to put it into the basket for his customer before yet receiving the money; therefore he may be trusted; while, this not being the case with money, it is usual not to give the change before receiving the money, hence, the rabbis, too, would agree with R. Jehudah. On the other hand, if only the second case were stated one might say that only for this reason R. Jehudah differs with the rabbis, while concerning fruit he agrees with them, therefore the two cases are necessary.

"And also the orphans," etc. (This has been explained above to mean orphans versus orphans, and what Rabh and Samuel have to say on this point is all recapitulated.) This statement was sent to R. Elazar accompanied with the question as to the purpose of this oath, and he answered: The heirs have to take the usual oath of heirs (explained further on), and thereupon to collect the bequest. This statement was then again sent to R. Ami, who said: They do not cease sending questions again and again! If I found something worthy of notice in it, would I not notify you thereof, without waiting for your messages? However, continued he, as this question has reached us already yet we have to say something thereabout viz.: If the lender was already summoned and it was decided that he has to take an oath, and he died in between, so that he was already obliged to swear to the orphans of the borrower, and as one cannot bequeath an oath to one's children, they are free from oath; if, however, he has not yet been summoned, and hence not yet obliged to take an oath, the orphans of the lender have to swear the oath of heirs and thereupon collect the debt.

R. Na'hman opposed: Does the court find one liable to an oath? With the death of the borrower the lender is by law liable to an oath with relation to the heirs; therefore, said he, it depends on whether or no the law, laid down above by Rabh and Samuel, is established; if yes, they are free, if not, they have to take an oath and collect. We see from this that R.

Na'hman was in doubt; but has not R. Joseph b. Miniumi said above that R. Na'hman decided in a similar case that the contestants divide? R. Na'hman's explanation here is in accordance with R. Mair, who holds, the oath returns to its place, but he himself holds with R. Jose: if one upon the death of his wife remarries and then dies, the widow and her heirs have the preference over the heirs of the first wife concerning their respective marriage contracts. We see then that the heirs collect without an oath? It speaks of the case they swore before dying. Come and hear the second part: But his heirs may adjure the widow, her heirs, and all empowered by her. (We see then that as his heirs may give an oath to her heirs, the widow who has not sworn has bequeathed, as it were, to her heirs the power of taking an oath, and this is objecting to Rabh and Samuel?) Said R. Shmaia: The Boraitha here speaks alternatively—viz.: his heirs adjure her if she was a widow, and they adjure her heirs if she was but a divorced woman (his heirs may adjure her though he himself could not have done so, as he gave her a document freeing her from all oaths). R. Nathan b. Hoshia, however, objected from the following: Preference was given to the son over his father, in that the son may collect from the orphans if he holds a document against the borrower, provided he has evidence that his father before dying told him that the document has not yet been paid, and if he has no evidence he has to swear to this effect; on the other hand, his father can under no circumstances collect without an oath; hence, the son may collect without an oath in relation to the defendant orphans, if the borrower died when the lender was still alive? Thus we see that it is in accordance with R. Simeon b. Gamaliel from our Mishna? Said R. Joseph: This Boraitha is in accordance with the school of Shamai, who holds that a document which is to be collected is to be regarded as already collected (as the estate is encumbered to the document), hence the rule that the son collects upon presenting evidence of his father's statement.

R. Na'hman happened to be in Tura; both R. Hisda and Raaba b. R. Huna came to visit him, and asked him thus: Let the master conjoin with us in nullifying the statement of Rabh and Samuel; whereupon he answered: Have I troubled myself to make a journey of so many *parsas* to nullify the statement of these sages! It will suffice if I will agree with you not to add to their statement (*i.e.*, not to deduce therefrom any other cases). (Asks the Gemara): What other cases? *E.g.*, such as were

decided by R. Papa: He who impairs his document (by saying that he collected a part thereof), and thereafter dies, his heirs may take the oath of heirs and collect the money (which oath could not be taken according to Rabh and Samuel).

It once happened that *B*, who had borrowed money of *A* through a surety and on a document, died, *A* being still alive; thereafter *A* also died and his heirs claimed the debt from the surety. R. Papa, before whom the case was tried, was about to say that this is a case included in the decision of R. Na'hman that nothing be added to Rabh and Samuel's ruling, and in this case the heirs are to collect not from the orphans but from the surety. Said R. Huna b. R. Jehoshua to him: Are they indeed collecting from the surety for his debt and not for that of the orphans?

In another case the lender died childless, leaving a brother, and Rami b. Hama was about to say that R. Na'hman's decision includes this case, too. Said Rabha to him: Is there any difference between the heir's saying "my father told me," or "my brother told me"? Said R. Hama: As there is no ultimate decision as to whether the Halakha prevails with Rabh and Samuel or not, we should leave it to the judges; he who decides in accordance with Rabh and Samuel should not be objected, nor should protest be raised against him who follows R. Elazar's decision as a precedent. Said R. Papa: If such a case happens in our court, we shall not destroy the document, nor collect it, for fear the Halakha may prevail with Rabh and Samuel; however, not destroy it, in order to give the contestant the benefit of doubt and enable him to bring his case in another court.

Once a judge followed in his decision R. Elazar; a young scholar interested in this problem came to the judge and told him that he is able to produce a letter from the west attesting that the Halakha does not prevail with R. Elazar; and the judge said to him: Well, produce the letter and we will then see. The scholar, however, came to complain in the court of R. Hama, and latter answered that it is already decided thus: He who follows R. Elazar's ruling as a precedent cannot be protested against.

"*The following have to swear*," etc. Does the Mishna speak of idiots? It means to say that these persons have to swear if they say they are not certain of the claim.

There is a Boraitha: The son of the house mentioned in the Mishna is not he who frequents the house, but he who is taking

care of the estate: he engages and discharges laborers, buys and sells, etc. And why should such persons take an oath? Because as a rule they allow themselves more than what is due to them. Said R. Joseph b. Miniumi in the name of R. Na'hman: Provided there was a denial made to the claim of two silver, according to the decision of Rabh.

"*If the partners and gardeners,*" etc. The schoolmen propounded a question: May one include in a rabbinical oath a claim from another business? Come and hear: If one has borrowed on the eve of the Sabbathic year and at the end of the year he become the partner or gardener of the lender, no inclusion can take place in the partner-oath if he has to take such. Thus we see the reason here to be that he borrowed on the eve of the Sabbathic year as this year released him from the oath also, but in a simple year such an oath may be inclusive? Nay; do not say that in a simple year the oath may be inclusive, but if he becomes a partner or a gardener (of the lender) on the eve of the Sabbathic year and at the end of the same he borrowed money from him, he may in his oath include also the partner-oath from the Sabbathic year; as the second part of the Boraitha states it so plainly, hence, a rabbinical oath is inclusive.

R. Huna said: All the oaths are inclusive except the oath of an employee, as this oath is given merely for the purpose of gratifying the employer. R. 'Hisda said: No oaths are to be made lenient in this respect except the oath of an employee, toward which we have to act leniently. And what is the difference between these two opinions? The requiring by the court: according to R. Huna the court itself may declare the oath inclusive independently of the plaintiff, while according to R. 'Hisda the court has no jurisdiction unless the plaintiff requires so.

"*The Sabbathic year releases.*" Whence is this deduced? From [Deut. xv. 2]: "And this is the *verbum (debar)* of the release," *i.e.*, it releases even words.

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING THE FOUR KINDS OF BAILEES :
THE CONDITIONS UNDER WHICH THEY ARE TO PAY OR TO TAKE
AN OATH.—WHAT IS AN UTTERED OATH, A VAIN OATH, A FALSE
OATH.—CASES ILLUSTRATING THE VARIOUS CLAIMS REGARDING
THE FOUR KINDS OF BAILEES.

MISHNA I.: There are four kinds of bailees: gratuitous, on hire, borrower, and hirer. The gratuitous bailee swears to every claim; the borrower pays every claim; the paid bailee as well as the hirer swears in case the cattle broke its leg or was seized or died, but both pay when it got lost or stolen. If one asks his gratuitous bailee: Where is my ox? He is dead, while in reality he is only leg-broken, or seized, or stolen, or lost; or he answers: He is leg-broken, while in fact he is dead, seized or lost; or he answers: He is seized, while he is dead, leg-broken, stolen or lost; or he answers: He is lost, while in fact he is dead, leg-broken, seized or stolen, to which the other rejoins: I adjure you; and the answer is: Amen, he is free. Where is my ox? And the other one answers: I know not what you talk about, while in reality the ox is dead, leg-broken, seized, stolen or lost. I adjure you. Amen, he is free. But if he asks: Where is my ox? Lost. I adjure you. Amen, but witnesses appear to testify that he consumed him, he must pay the full value; if he confesses it of his own will he must pay the value plus one-fifth, and is to bring a trespass-offering. If he asks: Where is my ox? And the answer is: Stolen. I adjure you. Amen, and witnesses appear to testify that he himself stole the ox, he must pay double amount; on self-confession, however, he pays the value plus one-fifth, and brings an offering.

If one says to a man in the street: Where is my ox that you have stolen? And the answer is: I have not stolen, but witnesses testify that he did steal him, he is to pay double amount; and if he has slaughtered or sold him, he must pay four and five-fold. However, if, on noticing the approach of witnesses against him, he says: I have stolen him, but not slaughtered or

sold, he is to pay but the principal amount. If one asks the borrower: Where is my ox? And he answers: He died, while in reality he is leg-broken, seized, stolen or lost; or: Leg-broken, while he is dead, seized, stolen or lost; seized, while he is dead, leg-broken, stolen or lost; stolen, while he is dead, leg-broken, seized or lost; Lost, while he is dead, leg-broken, seized or stolen, whereupon the other one says: I adjure you, and the answer is: Amen, he is free. Where is my ox? I know not what you are talking about, while in fact the ox is dead, leg-broken, seized, stolen or lost. I adjure you. Amen, he is liable. If one says to a paid bailee or to a hirer: Where is my ox, and he answers: He is dead, while he is leg-broken or seized; Leg-broken, while he is dead or seized; seized, while he is dead or leg-broken; stolen, when he is lost or seized; lost, while he has been stolen, whereupon former: I adjure you. Amen, he is free. But if the answer be: He is dead, leg-broken or seized, while he has been stolen or lost, former: I adjure you. Amen, he is liable. But if he says: he has been stolen, or: lost, while he is dead, leg-broken or seized; I adjure you. Amen, he is free. This is the rule: Whoever tends to commutate, by his oath, liability to liability, unliability to unliability, or unliability to liability, is free; but if liability to unliability, he is liable. This is the rule in brief: Whoever takes an oath in order to make his case lenient, is liable; but if *vice versa*, he is free.

GEMARA: Who is the Tana of the four classes of bailees? Said R. Na'hman in the name of Rabba b. Abuhu: It is R. Mair. Said Rabha to him: Is then there a Tana who does not hold so? And the answer was: I mean to say who is the Tana that maintains that the hirer of a thing is under the same rule with a bailee for pay? and this is R. Mair, according to Rabba b. Abuhu. But is there not a Boraitha that R. Mair holds a hirer under the law of a gratuitous bailee, and R. Jehudah is the one who places him under the law of a paid bailee? Rabba b. Abuhu has reversed in the Mishna the order of the names (by tradition). But after all, according to both R. Mair and R. Jehudah there are but three classes of bailees, why then four in the Mishna? Said R. Na'hman b. Itz'hak, the Mishna means to say: There are four classes of bailees but their laws are three.

"I know not what you talk about." Said Rabh: All the expressions "free" used in the Mishna free only from the liability of a trespass-offering, attaching to a depositary, but not from that of a sin-offering, attaching to an uttered oath. Samuel,

however, maintains that it frees them even from the last-mentioned liability.

And what is here the point of difference? Samuel holds that as such an oath can not refer to the future, one is not liable even for the past; while Rabh does not share this opinion. But this their difference has already been pointed out above in connection with the oath made by *A* that *B* threw a stone into the sea, why then again? It was necessary, as in the case of throwing a stone Rabh holds *A* liable because he takes the oath on his own accord, but here, where the court compels him to swear, one might say that Rabh agrees with Samuel, which would be in accordance with R. Ami, who said elsewhere that one is not liable for an uttered oath when made by the judges to swear; on the other hand, if only this were stated one could say that only in this case Samuel differs with Rabh, but in the other one he agrees with him.

What is the reason of R. Ami's statement? It is the verse [Lev. v. 4]: "Or any person swear," which means he swears voluntarily.

R. Elazar, however, said with reference to the expression "free" the Mishna uses: all are free from a depositary-oath but are liable for an uttered oath, excepting, however, the following: a borrower answering "I know not what you talk about," the paid bailee who claims stolen or lost, the hirer claiming stolen or lost, in which cases the Mishna makes them liable to depositary-oath, because here a denial of cash money is involved.

APPENDIX TO PAGE 13.

R. Na'hman b. R. 'Hisda lectured: A fowl burnt-offering must not be bought from the money of the treasury. Said Rabha: This is nonsense! Said R. Na'hman b. Itz'hak to him: Why nonsense? I said it to R. Na'hman b. 'Hisda, in the name of R. Shimi of Nahardea, and the reason is that for the remaining money of the treasury burnt-offerings for the congregation are bought, and there is no fowl-offering for the congregation. In like manner Samuel holds what was said in the name of R. Johanan concerning daily offerings; as R. Jehudah said in his name that all the offerings of the congregation are prepared for what they are intended by the application of the knife to them (and no knife is used to a fowl-offering). So also we have learned

in the following Boraitha: R. Simeon admits concerning a he-goat that was not offered on the festival, that he may be offered on the new-moon or day of atonement, on the feast of Tabernacles, and may as well remain for the next holidays, since originally he was intended as an offering to be brought on the exterior altar.

END OF TRACT SHEBUOTH.

TRACT EDUYOTH (TESTIMONIES).

INTRODUCTION.

THERE is no Gemara to this Tract. However, it forms a part of the section Jurisprudence, and is usually printed with the commentaries of both Maimanides and Rabad.

Although these Mishnaioth are almost each of them repeated in some of the six sections of the Talmud (thus a number of them already translated by us), yet we could not omit them because of the significance they attain in view of the fact that the contents of them all were testified before the Assembly of the sages. The first chapter, however, of this Tract, which was not testified, is significant for its showing (*a*) the cases wherein the sages establish the Halakha without adopting the views of either Shamai or Hillel though expressed by each of them personally; (*b*) wherein the school of Hillel after deliberations abandoned their view to adopt that of the school of Shamai; (*c*) the reasons for the rule that the opinion of an individual is mentioned though the Halakha prevails with the majority; (*d*) where the school of Shamai do not agree with Shamai, their master.

We have translated this Tract almost literally, referring the reader who may be confronted with some difficulties to places where detailed explanations are found, as to explain these here would necessitate a whole volume for itself.

TRACT EDUYOTH (TESTIMONIES).

CHAPTER I.

MISHNA I.: Shamaï says: For all women suffices their perceiving the menses (to make unclean whatever one of them may happen to touch; but not before this perceiving). Hillel, however, says: The time is to be counted between two consecutive examinations regardless of the length of the interval and be it of many days (and all she touches at that time is unclean). The sages, however, say: The Halakha prevails with neither Shamaï nor Hillel; but one day (night included) reduces the interval between the said examinations; on the other hand, the moment of examination reduces the allowance of the day (and night). (However, all agree) that for every woman who has a regular periodic menstruation the perceiving suffices. She who uses sheets to examine herself before and after intercourse, reduces thereby both the time of the previous examination and the above-said day of allowance.*

MISHNA II.: Shamaï says: One must separate Chalah (first dough) from one Kab; Hillel says from no less than two, while the sages set the minimum at one and a half Kab, lowering it, however, to five-fourths of a Kab when the measures were increased. R. Jose says: Not exactly five-fourths, but a trifle above.

MISHNA III.: Hillel says: One Hin-ful of drawn water renders a legal bath,† when poured therein, unfit. (A Hin-ful is not the exact quantity, but is stated here as it is one's duty to use the teacher's language.) Shamaï says: Nine Kab, while the sages, disagreeing with either view, uphold the two weavers that came from the gates-of-refuse in Jerusalem and testified in the name of Shemaï and Abtalion that three Lugs of drawn

* This Mishna is the first in the I. Chapter of Tract Nidah, and will be translated in the proper place with the Gemara.

† In case same does not yet contain the legally prescribed 40 saah.

water render the aforesaid bath unfit, and decided that Halakha to prevail so.

MISHNA *IV.*: Why, then, are the theories of Shamaï and Hillel stated at all, if without avail? To teach to posterity that one must not insist upon one's statements, since the distinguished masters of the world did not persist in their views.

MISHNA *V.*: And why is mention made of the opinion of a single person in connection with that of many, when the final decision is invariably with the majority? In order that when a court should happen to approve of some one's opinion it might base its decision thereon, for no court may annul the decision of another court, unless it be superior to latter both in erudition and number. If, however, it be superior only in one respect: in either erudition or number, it cannot annul; as it must be superior in both.

MISHNA *VI.*: Said R. Jehudah: If this be the case, why is mention made of the opinion of an individual in connection with that of the majority to no purpose? In order that if one were to base his argument on tradition he could be answered that his tradition is in accordance with the opinion of that and that individual.

MISHNA *VII.*: Beth Shamaï says: A quarter Kab of the bones of the dead (defiles one in the tent) be it from two or three dead; Beth Hillel says: A quarter Kab from one corpse, from the quarter part of the entire structure, or of the number of bones. Shamaï himself says: One bone suffices.

MISHNA *VIII.*: Vetch *terumah* may, according to Beth Shamaï, be soaked and peeled in a state of cleanness, but in that of uncleanness the cattle may be fed on it. Beth Hillel, however, hold that in the former state it may be soaked only, while peeling and feeding may be done in the latter. Beth Shamaï says: It must be very dry when given to the cattle; R. Aqiba holds that in a state of uncleanness all actions may be performed on it.

MISHNA *IX.*: If one desires a sela in exchange for copper coin of the second tithe, he must, according to Beth Shamaï, exchange the whole coin for a sela, while the Beth Hillel maintain that he may take but one shekkel in silver and the other have in copper coin.* (R. Mair says): One must not redeem fruit and silver by other silver, while the sages allow it.

* All this receives its explanation in Tract Second-Tithe, section Seeds.

MISHNA X. : When one exchanges a sela of second tithe in Jerusalem, he must, according to Beth Shamaï exchange the entire sela for copper coin; Beth Hillel hold as above; the experts* of the sages say: For three dinar in silver and one dinar coin. R. Aqiba's opinion is: Three dinar in silver and of the fourth one a quarter in coin. R. Tarfon says: Four aspers in silver. Shamaï himself says: Let him leave the sela in the store till he gradually consumes its worth in goods.

MISHNA XI. : The bride's chair, when stripped of its adornments is declared by the Beth Shamaï as subject to defilement, but not so by Beth Hillel. Former holds that even the seat alone of that chair is unclean. Similar are the respective opinions of the Beth Shamaï and the Beth Hillel with reference to a chair put into a trough, the former declaring in addition the chair unclean if even only made in a trough. (Will be explained in Tract Kelim.)

MISHNA XII. : Following are the cases wherein the Beth Hillel have altered their views in favor of those advanced by the Beth Shamaï: The woman who upon coming from the sea-countries asserts that her husband died may, according to the Beth Shamaï, remarry or enter a levirat marriage; while the Beth Hillel contended: We heard this as holding good only concerning a woman who comes from the harvest; whereupon the Beth Shamaï retorted: It is immaterial whether she comes from the harvest, olive gathering or from a sea-country; and the expression "harvest" as used by the sages in this matter was one of fact; thereupon the Beth Hillel conceded. Furthermore, according to Beth Shamaï such woman is allowed to marry and to obtain her marriage contract, which latter right the Beth Hillel denied her, whereupon the Beth Shamaï argued: You allow a possible adultery, a rigorous transgression, and prohibit a money matter, a (lenient) misdemeanor? Where to the B. Hillel rejoined: For we find that the heirs of the deceased cannot enter inheritance upon her statement alone. And Beth Shamaï replied: But we are informed directly from her marriage contract, where the husband writes: If you get married to another one you should get what is here devised to you; thereupon the B. Hillel conceded to them.

MISHNA XIII. : He who is half slave and half free † works,

* *I.e.*: Ben Azai, Ben Zoma, 'Hanan the Egyptian, and 'Hananian.

† *I.e.*, he was a slave of two masters, one of whom freed him.

according to Beth Hillel, one day for his master and one for himself. Hereto objected the Beth Shamaï: You amply provide for his master but not for him; he has no right to marry either a slave or a free woman, nor should he remain single, for the world has been created for propagation, as it reads [Isa. xlv. 18]: "Not for naught did he create it; to be inhabited did he form it." Accordingly, for the sake of a better organization of the world his master is compelled to wholly free him, and the slave writes him a note on the half of his value; and the Beth Hillel accepted this opinion.

MISHNA *XIV.*: An earthen vessel when covered protects (against tent-uncleanness) according to Beth Hillel all (it contains), while the Beth Shamaï holds that it protects only food, beverages and earthen vessels. Asked Beth Hillel: Why? And they answered: Because it is unclean in the opinion of the Amharetz, and no clean vessel is protective; and B. Hillel's question as to why have you declared it protective of food and beverages, they meet thus: We declare these clean only for the Amharetz, but if you were to declare the vessel as such clean, it would be so in general; hereupon the B. Hillel agreed.

CHAPTER II.

MISHNA *I.*: R. 'Hanina the segan of the priests testified the following four statements—viz.: The priests have never hesitated to burn meat defiled in a secondary degree together with meat defiled in a primary degree, though latter augments the uncleanness of the former; R. Aqiba added: Nor have they ever hesitated to burn oil, that has become unusable through a defiled one though bathed during the day, in a lamp defiled through contact with one who touched a corpse, though the uncleanness of the oil is thereby augmented.

MISHNA *II.*: Furthermore, he said: During all my life I have not seen a hide (of a sacrificed animal found internally injured) brought out to the fireplace. Said R. Aqiba: We learn therefrom that when the first-born cattle on being stripped of its hide is found internally injured, the priests may use its hide. The sages, however, say: "We have not seen" is no evidence, so that the hide must be removed to the fireplace.

MISHNA *III.*: The same R. 'Hanina testified that there was an old man in a little village near Jerusalem, who was lending money to all the villagers, writing himself the notes and having others to sign them; when this case came before the sages, they declared it proper. From here is to infer that both woman and man may write she her divorce and he the receipt respectively, since the validity of a divorce is effected only by the undersigned thereon.

He finally testified that, when an (unclean) needle was found in the flesh (of a sacrifice), the knife and the hands are clean, but the flesh is unclean; but if found in the paunch everything is clean.

MISHNA *IV.*: R. Ismael propounded three things before the sages at Iabnah in the vineyard: (*a*) a cracked egg put upon a colewort of Terumah forms a combination except when put on like a hat; (*b*) an ear of corn left standing in the crop with its point toward the yet unreaped corn, belongs to the landowner provided it be capable of being cut off with the standing corn, otherwise it belongs to the poor (*as forgotten*); (*c*) a small garden

fenced with creeping vine may be sowed (with seeds) if it has enough room, so that the vine-dresser with his basket can stand on all its sides, but not otherwise.

Three things have been propounded in the presence of R. Ismael, and as he did not express himself either for or against, R. Jehoshua b. Mathia interpreted them: (*a*) One who inflicts upon one's self a sore on the Sabbath day is guilty if he did it in order to make a permanent orifice, but is free if his purpose was to remove the pus; (*b*) one is free for hunting a snake on Sabbath in order to escape its bites, but is liable if for medicinal purposes; (*c*) earthen dishes used in cities are clean when in the tent of a corpse, but become unclean when carried by him who is possessed of a running issue, in which latter case R. Eliezar b. Zadok declares them also clean since their work has not yet been completed.

MISHNA VI.: R. Ismael declared three things which R. Aqiba has not agreed in: Garlick, sour grapes, and unripe corn-ears ground (on Friday) before twilight may, according to R. Ismael, be finished after sunset, while R. Aqiba does not allow it.

MISHNA VII.: Of the following three statements cited before R. Aqiba the first two were in the name of R. Eliezar, and the third one in that of R. Jehoshua: (*a*) A woman may go out on Sabbath in her gold city-crown; (*b*) hunters after another's doves are unfit as witnesses; (*c*) when a weasel with a worm in its mouth runs over the breads of Terumah and it remains dubious as to whether or not the worm touched the breads they are clean.

MISHNA VIII.: R. Aquiba has made statements, of which only the first two found the approval of the sages: (*a*) A sandal of the lime-burners is subject to defilement by the steps of him who has a running issue; (*b*) the remnants of an (unclean) oven are unclean when four hand-widths high, which height was thought before to be only three; (*c*) a chair, from whose seat two consecutive boards have been removed is, according to R. Aqiba only, subject to defilement.

MISHNA IX.: He (R. Aqiba) was wont to say: The father conditions in his son beauty, force, wealth, wisdom, longevity, and the reward to be bestowed on (his) posterity; and herein lies the end of destiny, as it reads [Is. xli. 4]: "He predetermines from the beginning of fate of the generations to come," and though it reads [Gen. xvi. 13]: "They will enslave them

and torture them for 400 years," yet we read further [ibid. xvi.]: "The fourth generation will return again unto here."

MISHNA X.: Furthermore, he was saying: There are five things of a twelve months' duration—viz.: the punishment of the generation of the flood, that of Job, of the Egyptians, of Gog and Magog in time to come [Ezek. xxxv. 2], and of the wicked in the infernum, for it reads [Isa. xv. 6]: "It will take place (*chodesh bechodsho*) every month," i.e., from the month he died next year the same month renewed. R. Johanan b. Nari says (regarding the last point): It lasts only from Passover till *Azereth*, for it reads [ibid.]: "From one festival to the other."

CHAPTER III.

MISHNA I.: All objects that defile within the tent are, according to R. Dohssa b. Horkinoss, clean when they were brought into the house after having been divided in smaller parts; but the sages declare them unclean. How so? If one touches or carries two pieces of a carcass each of the size of half an olive, or touches of a corpse the size of a half an olive (and his body covers such a size) and such a size shelters him, or he covers as much as two halves of an olive, or only of a half an olive but is roofed by such a size, R. Dohssa b. Horkinass declares him clean and the sages declare him unclean. But if he touches the size of half an olive while another thing covers both him and of a corpse the size of half an olive (or he covers such size and another thing covers him and such a size), he is clean (also according to the sages). R. Mair, however, said: Also herein the sages and R. Dohssa differ as above. (They declare) that all combine to render unclean except touching with carrying, and carrying with roofing. This is the rule: What bears one and the same name is index of uncleanness, two different names is one of cleanness. (All the Mishna is explained in third chapter of Tract Oholoth (Tents)).

MISHNA II.: Food consisting of sundry parts does not, according to R. Dohssa b. Horkinass, combine (to the measure of an egg), while according to the sages it does so. R. Dohssa holds that it is allowed to exchange second tithe for uncoined money, while according to the sages it is not. Finally, he holds that it suffices to bathe one's hands to be allowed to touch the sin-cleansing water, while the sages say that (in this case) with the uncleanness of his hands the entire body is unclean.

MISHNA III.: The interior of a melon, as well as the peel strips of a colewort is as terumah allowed to laymen (non-priests), so R. Dohssa, while the sages do not allow it. He further holds that it is only then obligatory to separate the first-cut wool of five shorn sheep when each of them furnishes one and a half mana worth of wool, while in the opinion of the sages

even when the wool of the five sheep is however little. (Is further explained in Tract Chulin, Chapter XI.)

MISHNA *IV.*: According to R. Dohssa, all mats are getting unclean only when touched by a corpse, but according to the sages, also by (mere) pressure. He says further that all woven work remains clean except a girdle, but according to the sages all are subject to defilement, except, however, those of the wool-traders.

MISHNA *V.*: A sling whose handle is embroidered is subject to defilement. But if it is of leather R. Dohass declares it clean, and the sages, unclean. If its finger-hole has been severed from it, it is clean, but also is unclean if only its end is severed.

MISHNA *VI.*: The wife (of a priest) that was in captivity is, according to R. Dohssa, allowed to eat *terumah*, while the sages say: There is a difference between one captive and another. How so? If she says: I was in captivity, but am clean, she may eat, for the mouth that prohibits also allows, but if her captivity is attested by witnesses and she asserts thereupon to be clean, she is not allowed to eat. (Explained in Tract Kethuboth, Chapter II.)

MISHNA *VII.*: There are four doubtful cases where R. Jehoshua declares the thing unclean and the sages, clean—viz.: (a) while the unclean is standing the clean one is passing, or (b) *vice versa*; (c) when something unclean is in the private ground, while something clean in the public grounds, or (d) *vice versa*, in which cases it is doubtful whether or not one touched, roofed, or was moved by, the other. (Tract Taharoth, Chapter II.)

MISHNA *VIII.*: Three things are declared unclean by R. Zadok and clean by the sages—viz.: (a) The exchanger's nail; (b) the trunk of the bean-grinders, and (c) the screw of the stone sun-clock. (Kelim, Chapter XII.)

MISHNA *IX.*: Four things are held unclean by R. Gamaliel and clean by the sages: (a) The cover of a metallic basket used in households; (b) the handle of a (bathing) scraper; (c) the unfinished metallic vessels, and (d) a board broken in two (equal) parts; in the last-named case, however, if the parts be unequal, the sages concur with R. Gamaliel in that the bigger part is unclean and the smaller, clean. (Ibid., *ibid.*, Mishna VI.)

MISHNA *X.*: In the decision of the following three R. Gamaliel is as rigorous as Beth Shamai: It is not allowed: (a) to keep warm on a holiday cooked food for Sabbath; (b) to put

together the parts of a chandelier on a holiday, and (c) to bake (on a holiday) big loaves of bread, but only small ones. He said: During all the time they were baking in my father's house only thin loaves, and he was answered: We can make no conclusion from your father's house, who have always been rigorous to themselves, but lenient to all others, allowing them to bake not only big loaves but even big cakes on coal.

MISHNA XI.: In the following three things, however, his decisions are lenient: It is allowed (a) to sweep (on holidays) between the bedsteads; (b) to put upon coals the fumigation, and (c) to roast a prepared kid on the first Easter evening, all which the sages forbid.

MISHNA XV.: Three things R. Elazar b. Azaria allows and the sages forbid: (a) His cow was allowed to walk out (on Sabbath) with the strap between her horns; (b) he allows to curry the cattle on holidays, and (c) to grind pepper in hand-mills adapted thereto. R. Jehudah maintains that point sub (b) is not allowable, as one could while currying make a sore, but allows to do it with a wooden comb, while the sages forbid both. (The last two Mishnas are explained in Tract Beitzah.)

CHAPTER IV.

MISHNA I.: In the following cases the decisions of Beht Shamai are lenient, and those of Beth Hillel rigorous. An egg laid on a holiday is, according to Beth Shamai, allowed to eat on that day, but is not so according to Beth Hillel. Regarding the removal of leaven (before Passover) Beth Shamai hold it must be of the size of an olive and leavened bread of that of a date, while the Beth Hillel fix the size of each at that of an olive.

MISHNA II.: All agree in that a cattle born on a holiday is allowed, but a fowl out of the eggs is not. If one slaughter game or fowl on a holiday he is allowed by Beth Shamai to dig up loose ground (the spade already struck in) and cover the blood, while Beth Hillel do not allow to kill unless there be earth prepared, admitting, however, that after one has killed, he may use with the spade the loose ground, and that ashes from the hearth be regarded as prepared earth.

MISHNA III.: The Beth Shamai consider ownerless everything left to the poor, while according to Beth Hillel, only that is ownerless which is abandoned to the rich as well, instance Shmitah. If all the sheaves of a field contain each a Kab and one of them containing four Kab is left, the Beth Shamai do not regard it forgotten, and Beth Hillel do so. (Tract Peah, Chapter VI.)

MISHNA IV.: Likewise do not Beth Shamai regard forgotten a sheaf left near a wall, a stag, a bull, or implements; while Beth Hillel do.

MISHNA V.: The four-year-old vine is, according to Beth Shamai, not subject to either the additional fifth or destruction, while according to Beth Hillel it is. Furthermore, the former hold that it is subject to both *Peret* and *oilleloth* [Lev. xix. 10], and that the poor are to redeem it themselves; while the latter say it all goes to the winepress.

MISHNA VI.: A cask with preserved olives need not have a hole, so Beth Shamai, while Beth Hillel find it obligatory, admitting, however, that if there had been one, but was stopped

by the dregs, the cask is clean. If one, having besmeared his body with sweet oil, became unclean and then took a legal bath, Beth Shamaï declare him clean even when the oil is dripping, but according to Beth Hillel he is not clean, unless there be left on him no more oil than would be necessary to besmear a small organ, which last condition the Beth Shamaï require when the oil used before the bath was unclean, while Beth Hillel in this case require that there be only an inconsiderable moisture. Said R Jehudah in the name of Beth Hillel: That there be a moisture sufficient to moist some other thing. (All this will be explained in Tract Taharath.)

MISHNA VII.: According to Beth Shamaï one dinar or its worth is consideration in the marrying of a wife; the Beth Hillel set it down at a Perutah or its worth, which is one-eighth of the Italic Saar. The former hold further that one may dismiss his wife on the basis of the old divorce bill, *i.e.*, a divorce after whose consummation he remained yet alone with his wife, while the Beth Hillel say he cannot. Similarly, if a wife who had been divorced, happened to pass a night in the same inn with her (former) husband, she needs no other bill of divorce according to Beth Shamaï, but the Beth Hillel say she needs one if she was divorced after they had been wedded, but not after they had been only betrothed to each other, for in the latter case they were not yet intimate with each other.

MISHNA VIII.: Beth Shamaï allow brothers to enter levirate marriage with their rival-wives (of prohibited kinship degrees), which the Beth Hillel forbid. If they have performed Chalitzah, Beth Shamaï declares them unmarriageable to a priest and Beth Hillel allows them. The two schools change their views regarding the case when the wives become widows after they had been taken in levirate marriage. Notwithstanding that the one school prohibits what the other allows, the disciples of the two schools have never refrained from intermarriage with one another. Likewise as regards cleanness and uncleanness where the two hold opposite opinions, they have none the less never hesitated to loan one another objects declared clean by both schools.

MISHNA IX.: If of three brothers two are married to two sisters and the third one is single; if, now, one of the married brothers died and the unmarried promises the widow to marry her, whereupon the second of the brothers died, Beth Shamaï say: The single brother is to keep his wife and the other one is

to go free as the wife's sister; while Beth Hillel hold that he must dismiss his wife with both divorce and Chalitzah, and his sister-in-law with Chalitzah; as the proverb goes: He is to be pitied for both his wife and his sister-in-law! (Tract Yebamoth, Chapter IV.)

MISHNA X.: If one abstain by vow from sexual intercourse with his wife, he is allowed by Beth Shamaï to keep the vow for two weeks, by Beth Hillel for but one. A woman who bears a miscarriage on the eve of eighty-one days (after the birth of a daughter) Beth Shamaï free from an offering, and Beth Hillel hold liable. Beth Shamaï say a quadrangular sheet needs no tzitzis, Beth Hillel hold it needs. A basket with figs prepared for Sabbath is, according to Beth Shamaï free from the tithe, according to Beth Hillel it is not.

MISHNA XI.: If one vowed to remain a Nazarite for some time, and after the expiration of the term comes to the land (of Israel), Beth Shamaï hold he must continue in the state of Nazarite for another thirty days, while Beth Hillel make him begin the whole term anew. If two parties of witnesses testify, the one that so and so has vowed to be a Nazarite twice, the other, five times, Beth Shamaï declare this testimony invalid as conflicting, and he must not be a Nazarite at all, while Beth Hillel say: Five contains two, hence he must be a Nazarite twice. (Nazir, Chapter III.)

MISHNA XII.: The man who finds himself underneath a crevisse does not, according to Beth Shamaï, transfer the uncleanness from one side to the other, while Beth Hillel regard the man as hollow, so that his upper side does transfer the uncleanness (as roofing). (Oheloth, Chapter XI.)

CHAPTER V.

MISHNA I.: R. Jehudah attested six cases where the decisions of the Beth Shamaï are lenient, and those of Beth Hillel rigorous. The blood of a carcass is, according to the former, clean, but unclean, according to Beth Hillel. The egg of a fowl carcass, if it looks like the ordinary egg sold in market, is allowed by Beth Shamaï, but not otherwise, while the Beth Hillel prohibit it in all cases. However, both prohibit the egg of an internally injured, for it was formed in a prohibited stage. The menses of a heathen woman as well as the clean blood of a leprous woman in confinement, Beth Shamaï, declare clean and Beth Hillel consider it to be like her spittle or urine. The fruit of the Sabbathic year one may enjoy with or without reward, according to Beth Shamaï, the Beth Hillel hold that one may eat it and reward somehow the owner. A leather bag is subject to defilement, according to Beth Shamaï, if it is bound and fastened, and the Beth Hillel hold so even when it is not bound. (Shebieth, IV.)

MISHNA II.: R. Jose quotes also similar decisions of six cases. Beth Shamaï allow to serve on the table, but not to eat, poultry together with cheese, while Beth Hillel forbid the one as well as the other. Likewise allow the former to separate Terumah from olives for their oil and for the wine from grapes, and the latter prohibit it. According to Beth Shamaï he who sows seeds within four ells in the vineyard has thereby sanctified one row, while according to Beth Hillel, two rows (*i.e.*, the rows in question must not be sown). Flour put into boiling water is, Beth Shamaï say, free from Chalah, and the Beth Hillel say it is not. The Beth Shamaï allow to use rain-water (running down hill) as a legal bath, the Beth Hillel do not. Finally, Beth Shamaï allow a proselyte, who underwent circumcision on the eve of Passover, to immerse himself and then partake in the Passover-offering, while Beth Hillel declare that he who parts with his prepuce is like one returning from the grave.

MISHNA III.: R. Ismael cites to the same effect the decisions of the following three cases: The book Ecclesiastæ does

not, according to Beth Shamai, render unclean the hands, while it does so according to Beth Hillel. Sin-cleansing water that has already performed its destination is declared clean by former and unclean by latter. The same divergence of opinion the two schools show with regard to the cleanness and uncleanness of black cumin and its tithe. (Negaim, Mishna III., Chapter V.)

MISHNA IV.: R. Elazar quotes two cases to the same effect. The blood of a woman lying-in, who has not bathed (as prescribed) is considered by Beth Shamai as her spittle and urine, while Beth Hillel declare it defiling always, moist or dry. The former agree, however, with the latter view when the woman in question bore in a state of running issue, then the issue defiles immaterial whether dry or moist. (Tract Nidah II., Mishna VI.)

MISHNA V.: If of four brothers two who are married to two sisters die, the latter perform Chalitzah but cannot enter the levirate marriage; and if such marriage has been hastily concluded, divorce must follow. R. Eliezar quotes the Beth Shamai as declaring this marriage to remain, and Beth Hillel as requiring divorce.

MISHNA VI.: Aqavia b. Mehallalel testified four things, which the sages persuaded him to retract, promising him therefor the chair of presiding justice in Israel, to this he responded: I shall prefer to hear the name fool all my life to becoming a wicked even for one hour before the Omnipresent; but let nobody say "He retracted for the sake of an office!" Here are his rules: He declared unclean the white hair (left from a previous case of leprosy) as well as the yellow blood (of a woman), both which the sages declare clean; he allowed to make use of the faded hair of a blemished first-born cattle slaughtered immediately after the hair has been put into a (wall) niches, while the sages forbid it; finally, he prohibited to give the jealousy-water to a female proselyte or to a freed maid-slave, which the sages allow.

The following episode was thereupon presented to him: A certain Karkmith, a freed maid-slave in Jerusalem, was made to drink the aforesaid water by Shmaia and Ahtalion, to which he replied: They did it only in a "make-believe" way. (They, being themselves proselytes, did it.) And they placed him under ban, and when he died the court stoned his coffin. R. Jehudah remonstrated: That Aqavia b. Mehallalel, who among all Israel on whom the doors of the temple court-yard closed, was unequalled in both erudition and piety, should have been placed

under ban? Impossible! It was Eliezar b. 'Hanoch that was excommunicated for his trifling with the rule concerning hand-cleaning; and when he died the court sent to put a stone on his coffin; whence it may be inferred that the coffin of him who dies while under ban is to be stoned.

MISHNA VII.: While on his death-bed he (Aqavia b. Mehallalel) thus spoke to his son: Reject the four rules I have been teaching; I adhered to them because I had received them from a majority, and the others likewise had them from a similar source; we both, therefore, remained true to our traditions; but you have learned them of an individual and then of a majority, now it is more advisable to abandon the opinion of the individual and to follow that of the majority. Then the son's request to commend him to his friends he refused, saying: It is not because I find fault with you, but let your own conduct be your recommendation. (Explained at length in Pessachim V., Mishna IV.)

CHAPTER VI.

MISHNA I.: R. Jehudah b. Baba attested five cases. Girls under age are made to express their refusal; a woman is allowed to remarry on the testimony of one witness; in Jerusalem a cock that had killed a person was stoned; wine only forty days old was brought upon the altar as a drink-offering; and finally, the daily morning sacrifice was (once) offered at the fourth hour (in the morning).

MISHNA II.: R. Jehoshua and R. Nehunia b. Elinathan of the Babylonian village attested that an organ (even if not an olive big) of the dead is defiling, as against R. Eliezar, who asserts that the sages taught thus only in reference to an organ of a live body; and the others rejoined: Is it not an inference *a fortiori*—viz.: since the organ of a live body which latter is clean is, if severed, unclean, so much the more so that of a dead body, which latter is of itself unclean? His answer was: And yet the sages taught so only in respect of an organ of a live body. According to others the answer was this: The uncleanness of the living is more extensive than that of the dead, for the living (who has a running issue) renders all that he lies or sits on capable of defiling man as well as garments, and all that rests above him, by his exhalation capable of defiling food and beverage, all which the dead does not.

MISHNA III.: Flesh of the size of an olive severed from an organ dismembered from a living (person) is unclean according to R. Eliezar, but clean according to R. Jehoshua and Nehunia. On the other hand, a bone the size of a barley-corn severed from said organ R. Nehunia declares unclean, and R. Jehoshua with R. Eliezar, clean. R. Eliezar was then asked: What prompts you to vindicate the former decision? He replied: We find that a severed live organ is regarded as a whole corpse; hence, as from a dead severed flesh of the size of an olive is unclean, severed flesh of such size from the living must be unclean, too! I, therefore, base my decision on this analogy. Whereupon it was rejoined: While you justly declare unclean flesh of an olive size severed from a corpse, for a barley-corn-sized bone of a corpse

is likewise unclean, you commit yourself to a discrepancy in your decision regarding the flesh and the bone of a severed *organ* of a living body respectively, whereby your analogy is annihilated! Similarly was R. Nehunia asked to base his view, which he did by a like analogy, thus: We find that a severed organ of the living is like an entire corpse and a barley-corn-sized bone of the latter is unclean, whence my decision. Whereupon he was answered: If you justly declare unclean so small a bone severed from a corpse by reason of holding unclean flesh the size of an olive severed from a corpse, you cannot on this basis declare unclean a bone the size of a barley-corn severed from the dismembered organ of a living body, since you hold clean the flesh even of an olive-size severed therefrom!

R. Eliezar was then asked: Why have you divided your views? Declare either both unclean or both clean? And he answered: The uncleanness of the flesh is more extensive than that of the bones, because the flesh of carcasses and reptiles is defiling while bones of these are not. Another explanation according to others: An organ that has yet enough of its flesh on causes uncleanness through touching, carrying or sheltering it, and remains yet unclean even if it misses some of its flesh, while if some of its bone is wanting it is clean.

R. Nehunia was asked: Why have you divided your views? Declare either both unclean or both clean? And he answered: The uncleanness of bones is more extensive than that of flesh, for flesh severed from the living body is clean, while the organ, if severed from it in its natural state, is unclean. Another explanation: Flesh the size of an olive defiles by being touched, carried or sheltered, in like manner do bones defile in their majority; if some of the flesh misses it is clean none the less, if some of the majority of the bones lacks it is still unclean by touch and carriage, though not by shelter. Or thus: All the flesh of a corpse is clean when it does not all in all measure the size of an olive, while the greater part of its body or of its bones are unclean even when they do not make up a quarter of a Kab.

R. Jehoshua answered the question as to why he decides in both cases "clean," thus: The analogy between the dead and the living does not hold good, for to the former apply the requisite of majority, quarter-Kab, and spoonful of decomposed stuff, while to the living all this does not apply.

CHAPTER VII.

MISHNA I.: R. Jehoshua and R. Zadok attested that the priest has no claim to the assigned redemption of a first-born donkey that died, as against R. Eliezar, who said: The owner is obliged to indemnify it, as the five sela redemption of the first-born son. The sages, however, maintain that there is here no more obligation of indemnifying than in the case of redemption for the second tithe. (Tract Bechoroth I., Mishna VI.)

MISHNA II.: R. Zadok attested that the brine of the prohibited locusts is itself clean. For, the preceding Mishna reads: If unclean locusts have been pressed together with clean ones, they do not render the brine forbidden.

MISHNA III.: The same attested further that if flowing water exceeds in quantity the rain-water with which it is mingled, it is proper. Such a case occurred in the capital of Plia and the sages declared it proper.

MISHNA IV.: He attested, finally, that flowing water remains proper as such when made to rush through the green peel of a walnut. A case to this effect happened at Ohlia and, when brought before the court in the Hall of hewed stones in the temple, was found proper.

MISHNA V.: R. Jehoshua and R. Jakin from Hadar attested that an earthen pitcher with sin-cleansing ashes placed upon a reptile is unclean, while R. Eliezar declares it clean. R. Papies attests that he who, having vowed to be a Nazarite twice, had his hair cut the first time on the thirtieth day, may have his hair cut the second time on the sixtieth day; and if he cut his hair on the fifty-ninth day, he kept sufficiently his vow, since the thirtieth day is counted both ways. (Nazir, Chapter III.)

MISHNA VI.: R. Jehoshua and R. Papies attested that the offspring of a peace-offering may be offered as a peace-offering; now, as the sages hold so against R. Eliezar who maintains the opposite, said R. Papies: I attest that we ourselves had a cow of a peace-offering which we ate on Passover, and whose offspring we consumed the next Tabernacle likewise as a peace-offering. (Themura, Chapter III.)

MISHNA *VII.*: The same two attested that the flat boards of the bakers are unclean, as against R. Eliezar, who declared them clean; furthermore that a baking oven cut in parts between which mortar has been put, is subject to defilement, as against R. Eliezar, who finds it clean; that the court of justice has time to declare the year to be a leap-year during the entire month Adar, for formerly the Purim feast was thought to be the time limit for this declaration; finally, that the year may be declared a leap-year on condition. So it once happened that when R. Gamaliel, having gone to ask leave of the Hegemon of Syria, tarried on his way, the year was declared a leap-year on the condition that R. Gamaliel consent to it on his return, which he did upon returning and the year remained a leap-year. (*Kelim*, Chapter XV.)

MISHNA *VIII.*: Mena'hem b. Signai attested that the enameled brim of the (metallic) kettle used by the olive-boilers is subject to defilement, but that of the painters is clean, for, formerly the converse was held.

MISHNA *IX.*: R. Nehunia b. Gudgada attested that a deaf-mute girl married off (while under age) by her father may receive a divorce; that a minor (orphaned) Israel-girl married to a priest may eat Terumah, and that in case she dies her husband is her heir; furthermore, that the owner of a beam robbed and immured in a palace can claim only its value; finally, that a robbed sin-offering not known to the majority is regarded as atoning for its owner when offered on the altar (in order not to make the altar unclean).

CHAPTER VIII.

MISHNA *I.*: R. Jehoshua b. Bathyra attested that the blood of carcasses is clean. R. Simeon b. Bathyra attested that the ashes of the sin-cleansing red cow, if touched even in part by an unclean one, become all unclean; to which R. Aqiba added that he who has bathed for cleansing himself (and hence is not yet wholly clean) renders improper the whole of the holy flour, the frankincense, the incense and the coal on touching them only in part.

MISHNA *II.*: R. Jehudah b. Baba and R. Jehudah the priest attested that an (orphaned) Israel-daughter married under age to a priest is entitled to eat terumah soon after she was led under the canopy, though before cohabitation. R. Jose the priest and R. Zecharia the son of a butcher related the following: It happened that a small girl had been kidnapped by the heathens of Ashkalon; her kinfolks wanted to reject her from the family notwithstanding the assurance of the witnesses that she was not hiding with anybody nor dishonored, and the sages interfered, saying: If you believe her witnesses that she was kidnapped, there is no reason for you not to believe that she was not hiding with anybody nor dishonored; on the other hand, if you distrust the latter part, don't believe the former, either.

MISHNA *III.*: R. Jehoshua and R. Jehudah b. Bathyra attested that the widow of a priest of a doubtful pedigree may yet marry a priest, that such a doubtful family may enquire after the purity or impurity of its members, in order to separate itself from, or to approach them. Thereupon remarked R. Simeon b. Gamaliel: We accept your attestation, but what shall we do now that R. Johanan b. Zakkai has decreed not to call any jury on this point? The priests will surely follow you when a case of separation, but not when such of approaching, is concerned!

MISHNA *IV.*: R. Jose b. Joezer, the man of Zereda, attested that the locust *Ail Kamsa* is allowed, that all liquids in the slaughter-house of the temple are not subject to defilement,

and finally that only he is unclean who has surely touched a corpse. He received on this account the name, Jose the allower.

MISHNA V.: R. Aqiba attested in the name of Nehemia from Beth D'lee, that the testimony of one witness suffices to allow a woman to remarry. R. Jehoshua attested that regarding bones found in the wood-barn (of the women's courtyard in the temple) which are yet unclean, the sages say: Pick them out singly, bone by bone, and all remains clean.

MISHNA VI.: Said R. Eliezar: I heard that when the central hall of the temple was being built, curtains were put up before both the hall and the courtyards, with the difference, however, that in the former the wall was built outside, while in the latter inside, of the curtains. R. Jehoshua said: I heard that it is allowed to offer sacrifices also when there is no temple, that the all-holiest offerings may be eaten also when there is no curtain; that leniently-holy offerings as well as second tithe may be eaten even if there be no city walls (around Jerusalem), for the first consecration has rendered her (the city) holy for her times as well as for all time to come.

MISHNA V.: R. Jehoshua said: I have it by tradition from R. Johanan b. Zakkai, who heard it in direct line from his teacher, to be a Halakha from Sinai to Moses that Elijah is not coming in the future to declare certain families clean or unclean, to separate or to reconcile them, but to remove those who were reconciled by force, and to bring together those who were segregated by force. A family of the name Bethz'repha was across the Jordan, excluded by a certain Ben Zion with the use of force; another family (of impure blood) was in the same manner accepted by the same Ben Zion. It is to declare cases of this kind clean or unclean, to remove or to accept that Elijah is coming. R. Jehudah says: Only to accept, but not to remove. R. Simeon says: His mission is only to settle certain disputes. The sages, however, say: His advent will have for its purpose not the removing or accepting of the mentioned cases but the establishing of peace in the world, for it is written [Malachi, iii. 23, 24]: "Behold, I send unto you the prophet Elijah, . . . and he shall turn back the heart of the fathers to the children, and the heart of the children to their fathers."

END OF TRACT EDUYOTH AND OF VOLUME XVII.

NEW EDITION
OF THE
BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and
Translated into English

BY
MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)
TRACTS ABUDA ZARA AND HORIOTH

Volume X. (XVIII.)

NEW YORK
NEW TALMUD PUBLISHING COMPANY
1117 SIMPSON STREET

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.
2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.
3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waibayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.
4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.
5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.

COPYRIGHT, 1903, BY
MICHAEL L. RODKINSON.

CONTENTS.

SYNOPSIS OF SUBJECTS OF TRACT ABUDA ZARA (IDOLATRY).	PAGE v
--	-----------

CHAPTER I.

RULES AND REGULATIONS CONCERNING TRANSACTION OF BUSINESS WITH HEATHENS ON THEIR FESTIVAL DAYS; WHICH FESTIVALS ARE CONSIDERED, AND WHAT REAL ESTATE MAY BE SOLD AND RENTED, AND AT WHAT PLACES	1
--	---

CHAPTER II.

RULES AND REGULATIONS CONCERNING PLACING OF CATTLE WITH HEATHENS, ACCEPTING CURE FROM THEM, AND CONCERNING THINGS WHICH MAY AND MAY NOT BE BOUGHT FROM THEM	41
---	----

CHAPTER III.

RULES AND REGULATIONS CONCERNING THE DERIVING OF BENEFIT FROM PROFANED IDOLS AND IMAGES OF HEATHENS AND ISRAELITES.—CONCERNING UTENSILS ON WHICH ARE ENGRAVED THE SUN, THE MOON AND OTHER PLANETS.	82
--	----

CHAPTER IV.

CONCERNING OBJECTS USED FOR IDOLS.—THE MANNER IN WHICH AN IDOL IS PROFANED SO AS TO BE ALLOWED FOR USE.—THE DISCUSSIONS BETWEEN THE ELDERS OF ROME ON THE ONE HAND AND R. LAMALIEL, THE PRINCE, ON THE OTHER.—HOW TO PREPARE WINE IN THE POSSESSION OF A HEATHEN FOR ISRAELITES.	104
--	-----

CHAPTER V.

	PAGE
RULES AND REGULATIONS CONCERNING WAGES AND LIBATION WINE.—EFFECTS OF SUCH WINE WHEN FALLING ON FRUIT OR MIXING WITH OTHER WINE.—UNDER WHAT CIRCUM- STANCES WINE MAY BE LEFT WITH A HEATHEN.—CON- DITIONS UNDER WHICH JEWISH WINE IS SOLD TO HEATH- ENS.—DETERMINATION OF QUANTITY OF LIBATION WINE MIXED WITH OTHER WINE.—HOW VESSELS OF HEATHEN ARE TO BE ALTERED TO MAKE THEM FIT FOR A JEWISH TABLE	135

SYNOPSIS OF SUBJECTS
OF
TRACT ABUDA ZARA (IDOLATRY).

CHAPTER. I.

MISHNA I. Three days before the festival of the heathen, it is forbidden to have any business with them. In the future the Lord will take the Holy Scroll in hand, saying, "He who was occupied with it shall appear and receive his reward." The kingdom of Rome will then enter first, etc. After Rome has departed, Persia enters, etc. We have constructed many bridges, conquered many great cities, we were engaged in many wars, all for the sake of Israel to enable them to study the law, etc. "Have we then accepted the Torah, and not fulfilled its commandments?" A Gentile who is occupied with the study of the law is likened to a High-priest, etc. "Lord of the Universe, has then Israel, who has accepted the Torah, observed it?" "Men of ye nations may come and testify that Israel has observed the Torah. Nimrod may testify, etc. There are twelve hours in a day, three hours of which the Lord is occupied with the Torah, etc. There is no smiling by the Lord, since the temple was destroyed. But in the fourth three hours He teaches, etc. There is no Gehenna in the future. But the Lord will take out the sun from its sheath, etc. If not for the fear for government the stronger would swallow the weaker, etc. Concerning the explanation of (Amos, iii. 2) said R. Abuhuh, I will do it in the form of a parable. There was once a creditor of two persons, one a friend and the other an enemy of his. It is advisable for one not to pray singly the additional benediction in the first three hours at the first day of new year. When one performs a meritorious act in this world it precedes him in the world to come. "Three days," etc. Is such a long time needed? is this forbidden because a Jew must not interfere with the idols, or because "Thou shalt not put a stone for the blind"? The prohibition to do business with them refers only to a thing which can be kept in good order until the festival day. It is advisable for one to always arrange the praises of the Omnipotent first, and thereafter to recite the daily eighteen benedictions. The following are the festivals of the heathens: Kalends, Saturnalia, Kratsin, etc. Adam the first, on the first day of his creation, when he saw the sun set, cried: "Woe is to me, the world is to be returned to chaos, etc." Thirty-two battles the Romans fought with the Greeks, etc. Twenty-six years the Romans kept their

▼

promise to Israel, and thereafter they failed. The twenty-six years are not counted. The world will continue for six thousand years, the first two thousand of which were a chaos (Tahu), etc. It happened with Antoninus (the Caesar of Rome), who said to Rabbi, etc. (See the whole legend, pp. 16-18). Unklus b. Klenimus embraced Judaism, and the Caesar sent militia to take him, etc. (See the legend, pp. 18-19). There was still another festival in Rome which occurs once in seventy years, on which they would make a well man ride on a lame man, etc. 1-21

MISHNA IV. In a city where the idol is placed, interfering is forbidden inside, but not outside. If, during an idol festival in the city, some stores were there decorated, one must not buy, etc. The following are forbidden to be sold to the heathens; Fir-cones, etc. We have a tradition that the tract Aboda Zara of Abraham the patriarch contained four hundred chapters, etc. Where it is customary to sell small cattle to heathens it is lawful to do so, etc. One must not sell to them bears, lions, and all such things, by which the people can be injured, etc. I walked in the upper market of Ciporas, and I met one of the minim, named Jacob, of the village of Sac-hania. So taught Josa B. Southyra, etc. (See foot-note, p. 27.) The legend of Eliazer ben Durdaya (28). The leech hath two daughters (crying), "Give, give," i.e. minunism—and the government, which are never satisfied, etc. Raba sold an ass to an Israelite who was suspected of selling it to a heathen, etc. He who occupies himself with the Torah, but does not observe bestowing of favors, is similar to him who denies God. The Legend of Eliezer b. Sarta and Chanina b. Tradion when captured by government, p. 29, 30. How Chanina was burned together with the holy scrolls, and what became of his wife and daughter, p. 31, 32. The redeeming of latter by R. Mair (Baal Hanes), p. 33. Happy is he who conquers his evil spirit, as a heroic man, etc. It is advisable to divide one's years into three parts: one-third for the study of Scripture, the second Mishna, and the third Talmud, etc. R. Aqiba when he saw the wife of Tormus Rupers, he laughed and wept, etc. Houses must not be rented to the heathens in Palestine, etc. One must not rent his bath-house to a heathen, but how is it to a Samaritan? etc. 21-40

CHAPTER II.

MISHNA I. Cattle must not be placed in the inns of the heathens. (See foot-note, p. 41.) "And the cows went straight forward," etc. What does this expression mean? It reads (Jos. x. 13): "And the sun stood still, written in the book of Yasher." What is the book of Yasher? One must not stay alone even with two women. If an Israelite while on the road, happened to be accompanied by a heathen, etc. One must not confine a heathen because she brought up a person to idolatry, etc. A city in which there is no Jewish physician, but a Samaritan and a heathen, the heathen shall circumcise and not the Samaritan. One may employ their (the heathens') services for curing his personal property, etc. Ben Dama was bitten by a snake, Jacob come to heal him with the name of Jesus, but R. Ismael did not allow. With R. Johanan it is different, as he himself was an established physician. Medicines and other remedies for different sickness by different men and women, on pp. 50-53. The following things of the

heathens are prohibited, and the prohibition extends even to the deriving of any benefit therefrom—viz: wine, vinegar, etc. No benefit is to be derived from the dead. Samuel and Ablat, the latter who was a heathen, were sitting together, and cooked wine was brought for them, etc. To fermenting wine no uncovering applies. One must not pour water which has been uncovered, in the public streets, and also not water cattle with it. The sages forbid date-beer of the heathens, as a safeguard against inter-marriage. The sick heathens who become swollen, and whom uncovered water does not harm, surely ate reptiles, so that their bodies contain poison which prevent the harming effects of the snake-poison. A heathen pilgrim is prohibited only when on his way to the idol, etc. Enamelled vessels, no matter what color, are permissible. Fish oil made by a heathen specialist is permissible. Why did the sages forbid the cheese of Anugiki? Sweet are to me the words of thy friends (the sages who are explaining the law), more than the essence of the Torah. Compress your lips, one upon the other, and hasten not to propound question, 41-65

MISHNA V. The following are prohibited, but not from deriving benefit from them: Milk, etc. What is the reason for the prohibition of milk? etc. Concerning oil, Daniel has decreed the prohibition according to Rabh, etc. To everything which is not served on the table of noblemen to relish the bread, the prohibition of "cooked by a heathen" does not apply. All that may be eaten in a raw state, may also be eaten when cooked by a heathen. The sea-donkey is allowed, but not the sea-ox; and you remember this by the following mark: the unclean (on earth?) is clean, while the clean is unclean. We are to trust the wife of a scholar as we have trusted her husband. Meat, wine, blue wool that are to be forwarded through a heathen, require each two seals. The following things are allowed to eat, milk milked by a heathen in the presence of an Israelite, honey and honey-cake, etc. Fish entrails as well as fish-rye you may buy only of a specialist, etc. If the vender says, I have pickled the fish and know them to be clean, he is trusted. Praised be the Omnipotent, who puts this world in the hands of guardians! 65-81

CHAPTER III.

MISHNA I. TO VI. All images are prohibited, for they are worshipped at least once a year. The staff in the hand of the idol. The bird in its hand of the idol. Finally, the sphere is to indicate that it sacrifices itself for the whole globe. If one finds fragments of images, he is allowed to use them, etc. It is taught that a heathen can profane the idol of his fellow heathen as well as his own, while an Israelite cannot profane the idol of a heathen. If one finds vessels with the image of the sun, moon, etc., he must throw them into the salt lake. The human image and that of a nurse are, however, prohibited only when having respectively a measure in the hand and a son in the arms whom she is nursing. One may grind the images and scatter them to the wind, or sink them into the sea, etc. Peroklas, the son of a philosopher, asked once R. Gamaliel at Ako, who was then bathing in the bath of the goddess Aphrodite, etc. R. Gamaliel gave Peroklas an evasive answer; but I (Hama) say it was not evasive, etc., etc.

The mountains and hills worshipped by heathens are allowed to use, but not the things, brought upon them, etc. Wherever you find a high mountain, an elevated hill, a leafy tree, there is surely an idol there. A town or place bearing the name of an idol should be renamed. If stones absolved fortuitously from a mountain rock, that was worshipped, is their use allowed or not? 82-96

MISHNA VII. to XV. If a house situated, close by a worship-house of an idol crumbles down, its owner is prohibited from rebuilding it, etc. There are three kinds of houses. There are three kinds of stones. There are three kinds of groves, etc. What is a grove? A tree with an idol under it. R. Simion said: "Any tree that is worshipped. It is not allowed to sit down in the shade of such a tree." Under such a tree is allowed to sow herbs in the winter, but not in summer, etc. To derive any benefit of wood obtained from an idol-grove is prohibited. How is the idol worship of a tree profaned, etc.? 96-103

CHAPTER IV.

MISHNA I. to VI. Three stones near one another and beside the Merkules are prohibited. The son of the saints treads on them, should we abstain therefrom? Who was this son, etc.? One is not liable for slaughtering a blemished animal to an idol, etc. Money, garments, utensils found on the head of an idol are allowed, etc. The use of a garden or bathing-place belonging to an idol is allowed when it is gratis, etc. It is common sense that that idol of an Israelite should be forbidden from the very beginning, etc. Whether or no food offered to an idol, if profaned, loses thereby its defilement? There was a pantry in the temple, where the Macabees heaped up the stones of the altar defiled by the Greeks. A heathen can profane his idol as well as that of his neighbor, etc. How is an idol to be profaned? If an Israelite erects a brick to worship it, but does not worship, and a heathen comes, and worships it, it is prohibited, etc. An idol abandoned by its worshippers in time of peace is allowed. My respect for Rabh and Samuel is so great that I should readily fill my eyes with the ashes of their corpses; none the less, etc. An animal resting in the proximity of an idol becomes unallowable, etc. The animal obtained by the idol-worshippers in exchange for an idol is forbidden 103-119

MISHNA VII. to IX. If God is displeased with idol-worship, why does he not destroy the idols, etc.? If the heathens worshipped but things not needful to the world, He would surely annihilate them; but they worship the sun, moon, stars and the planets. How is it that so many cripples are cured by the idols in their temples? If one comes to defile himself, the door is opened to him, while when one comes to cleanse himself, he is supported. It is forbidden both to tread and to gather with an Israelite, who prepares the wine while he is unclean, etc. They further warned against contributing toward the conditions defiling the fruit in Palestine, etc. It once happened that an Israelite and a heathen jointly hired and worked a wine-press in the City of Nahardea, etc. A heathen once happened to enter the house of a Jewish wine-seller, etc. R. Johanan b. Arza and R. Jose b. Nehorai were once sitting together indulging a little in

wine, when a man came in, etc. Does a heathen render the wine prohibited by pouring water into it? Whether it is allowed to hire a heathen for conveying grapes to the wine-press of an Israelite, etc.? A heathen standing near the wine reservoir renders the wine forbidden, provided he has a lien on it, etc. If an Israelite, who has cleansed the wine of a heathen, left it on the latter's premises, etc. When an Israelite buys or rents a house in the courtyard of a heathen, etc. It once happened that Israelites bought of Sarsik, the viceroy, the grapes of a vineyard, etc. . . . 119-134

CHAPTER V.

MISHNA I. TO V. The wages of a laborer hired by a heathen to work with him, wine for libation are prohibited. How is it when the heathen hires a Jewish laborer to prepare wine in general? Whether or no the use of the money obtained by a heathen from the sale of an idol is all forbidden to an Israelite. Can a citizen-proselyte, a heathen settled down in the land of Israel, on having taken upon himself not to practice idol-worship only, etc. "Jews in prospect such pleasures in your paradise? Do you really mean," said the other, "that there are greater pleasures than this?" If offered wine he poured on grapes, etc. In the case when beer vinegar was intermixed with wine vinegar, or oaten yeast with wheat yeast, etc. The rule is: "a prohibited thing renders another one forbidden," etc. It once happened that a mouse was found in a barrel of beer, and Rabh prohibited the beer. Wine known as being watched, is allowed when transported from place to place by a heathen, etc. "When an Israelite leaves his wine in the wagon," etc. Jewish wine was once stored up in a house, where a heathen and an Israelite lived in the lower and upper floors, respectively, etc. An Israelite and a heathen were once at an inn sitting and drinking wine, etc. In the city of Sumbeditha thieves once intruded into a house, etc. When an army enters a town in time of peace etc. He who sells his wine to a heathen is allowed to use the money, etc. Rabh told the Jewish wine-dealers to have their heathen customers pay in advance, etc. Once an Israelite said to his neighbor: "When I make up my mind to sell this field, I will sell it to you." Later on he sold it to a third party, etc. An Israelite once said to his neighbor: "When I make up mind to sell this field, I will sell it to you for a hundred suz, etc. If the funnel was first used to measure through it into the heathens flask, etc. Devoted wine is prohibited, and renders unallowable even by a minimal quantity. If forbidden wine falls into a reservoir, and simultaneously a pitcher of water, etc. This is the rule: "When the two are of the same kind; a minimal quantity suffices, etc. For how long must the utensils remain glowing in fire, etc. "A knife is cleansed even by grinding it."

TRACT ABUDA ZARA (IDOLATRY).

CHAPTER I.

RULES AND REGULATIONS CONCERNING TRANSACTION OF BUSINESS WITH HEATHENS ON THEIR FESTIVAL DAYS; WHICH FESTIVALS ARE CONSIDERED, AND WHAT REAL ESTATE MAY BE SOLD AND RENTED, AND AT WHAT PLACES.

MISHNA I.: Three days before the festivals* of the heathens it is forbidden to have any business with them. One must not lend them anything (which can be useful to them) nor borrow such from them. And the same is the case with cash money, even to pay or to receive payment is forbidden. R. Jehuda, however, maintains: To receive payment is allowed, because it is a displeasure to the payers. And he was answered: Although it is *now* a displeasure, it pleases them, in the future.

GEMARA: R. Hanina b. Papa, according to others, R. Simlai, lectured: In the future, the Holy One, blessed be He, will take the Holy Scroll in hand, saying: "He who was occupied with it shall appear and receive his reward." The nations then at once will gather themselves and come motley crowded as it reads [Is. xliii. 9]: "All the people were gathered together." The Holy One, blessed be He, however, tells them: "Do not enter in such confusion, but let each nation with her scribes enter separately," as it reads further on: "Let the people† be assembled." And by the term people kingdoms are meant. [Can there be such a thing as motley before the Holy

* The term for festivals in the Mishna, is "*Aidehen*" and Rabh and Samuel are discussing this term at some length. According to one it is *Aidehen* and means misfortune while to the other it is "*Edihen*," and means "witnesses." It is because the sages of the Mishna hesitate to name the holidays of the idolators with the term "festivals." We, however, deem it not necessary to translate this discussion, as it is unimportant.

† The term for people here, is *Leumi* and by an analogy of expression it is inferred to mean kingdom.

One, blessed be He? It means they themselves shall not come in confusion, so that they shall understand what will be said to them.] The kingdom of Rome will then enter first on account of its greatness. As concerning it [Dan. vii. 23]: "And will devour all the earth, and will tread it down, and grind it up." And R. Jochanan said: Rome is thereby meant, whose fame is respected throughout the whole world. But whence do we know that the more distinguished come first to judgment? It is as R. Hisda said (Rosh Hashana, p. 13). The Holy One, blessed be He, questioned her: "What was your occupation in the world?" To which she answered: "Lord of the Universe! we have established many markets, we have constructed many bath-houses, we have multiplied in great mass gold and silver, and all this was done for the sake of Israel, to enable *them* to study the Law." The Lord's answer will be: It is foolish of ye to state that all you have done was for the sake of Israel, while in reality it was but for yourselves. The construction of markets was for the purpose of prostitution. The establishment of bath-houses was for your own pleasure, and as to gold and silver, it is mine, as [Hos. ii. 8]: "Mine is the silver, mine," etc. But, are there, then, among ye those who have studied the Law? They went out in despair.

After Rome has departed, Persia enters. Because she is considered second to Rome, as [Dan. vii. 5]: "And behold, there was another, a second beast, like a bear." To which R. Joseph taught: Thereby, Persia is meant, the people of which are fleshy like bears, eat and drink like bears, are overgrown with hair, and have no rest, like bears. And to the question of the Holy One, "What was your occupation?" They will answer: We have constructed many bridges, conquered many great cities, we were engaged in many wars, all for the sake of Israel to enable them to study the Law. The reply to which will be: "All that was done by you was for your own sake." Bridges, for the collection of duties. Great cities, to establish *angaria*. And as to wars, I have conducted them. As it reads [Ex. xv. 3]: "The Eternal is the lord of war." But are there among ye those who have studied this Law? And they also went out in despair. [But, why did Persia enter, after seeing that Rome was disappointed? They thought: We may have more chance than Rome, as the latter has destroyed the holy Temple, while we have rebuilt it.] And a similar answer will be given to the other nations. But why should the other

nations enter after seeing the disappointment of the first two? They thought: The first two made slaves of Israel, which was not the case with them. But, if so, why should Rome and Persia be more honored than the other nations? They are distinguished by the permanence of their kingdoms, which will exist until the time of Messia. Finally they will say before Him: Lord of the Universe, didst thou give us the Torah and we did not accept it? But how could they say so? Is it not written [Deut. xxxiii. 2]: "The Lord came from Sinai, and rose up from Sa'ir unto them: he shone forth from Mount Paran." And it also reads [Habak. iii. 3]: "(When) God from Theman came, and the Holy One from Mount Paran." And to the question: What has the Law to do in Sa'ir and Paran? Said R. Jochanan: From this it is inferred that the Lord has presented his Torah to every nation, but it was not accepted until it came to Israel. Therefore, it is supposed that they said to Him: "Have we then accepted the Torah, and not fulfilled its commandments?" [But what answer is this. Could they not be accused because they have not accepted it?] They said thus: Lord of the Universe, hast thou inclined the mountain toward us as thou didst toward the children of Israel? (See Sabbath, p. 167, par. Ex. xix., etc.) To this the answer will come: "Let the former things shew us." [Isaiah xliii. 9] The Holy One, blessed be He, will say to them: "The seven commandments which were *given* to the descendants of Noah, have ye observed them?" And whence do we know that they have not? From that which R. Joseph taught. It reads [Hab. iii. 6]: "He stood forward, and made the earth tremble; he looked, and dispersed nations." What did He see? That the seven commandments accepted by the descendants of Noah, were not observed. And therefore He absolved the nations of them. Absolved. Should then the sinner be benefited? Said Mar b. Rabbina: It means that even should they absolve them, they would not be rewarded. Is that so? Did not R. Mair say: "Whence do we know that even a Gentile who is occupied with the study of the Law, is likened to a high-priest from [Levit. xviii. 5] "Which if a man do, shall live on it," where it does not specify priest, Levite, or Israelite, but states in general if *a man*, whence it may be inferred that a Gentile, too, who occupies himself with the study of the Law is equal to a high-priest." It means that they will not be rewarded for the observance equally with those who observe in accordance

with the commandments. As R. Hanina said: The reward for him who observes that which he is commanded, is greater than to him who observes same without being commanded. The nations will then exclaim: "Lord of the Universe, has then Israel, who has accepted the Torah, observed it?" And to the answer of the Holy One: "I testify that he did," they exclaim: "Lord of the Universe, is then a father fit to be a witness in the case of his son? Is not Israel called the son of the Eternal" [Ex. iv. 22] "My son, my first-born, is Israel." He will then say: "Let heaven and earth testify that the Torah was observed by Israel." They, however, object in saying that heaven and earth are interested in this case, and therefore are not fit to be witnesses—viz: [Jer. xxxiii. 25]: "If my covenant be not . . . the appointment with heaven and earth, would not be established."* And Resh Lakish said: It reads [Gen. i. 31]: "And it was evening, and it was morning," and this justifies the inference that the Lord made a stipulation with all that had been created in the six days to the effect that if Israel will accept the Torah, well and good, but if not I will return all of you to chaos and ruin. Then the Holy One, blessed be He, will say: "Men of ye nations may come and testify that Israel has observed the Torah. Nimrod may testify that Abraham has not worshipped idols. Laban may testify that Jacob was not suspected of robbery. The wife of Potiphar may testify that Joseph was not suspicious of sin. Nebuchadnezzar may testify that Chananyah, Mishaël and Azaryah had not bowed themselves to the image; Darius of Daniel, that he had not abolished prayer; Eliphaz the Themanite, and Bildad the Shuchite, and Zophar the Na'amathite may say of all Israel that they have observed all the Laws." They will then exclaim: "Lord of the Universe, give it to us now, and we will observe it." To which they will be answered: "He who has prepared on the Eve of Sabbath, for the Sabbath, will have what to eat. But he who has not prepared, what then will he have to eat on Sabbath? However, I have one easy, meritorious act, it is the *Sukka*, go and perform it. [Why is it called easy? Because it requires no expense.] Everyone of them, will then prepare a *Sukka* on his roof, but as soon as the sun heats it, they abandon it, and go away. But did not Rabha say that he who is afflicted by performing the command of *Sukka*, is free from this obligation? Yea, but not to reject.

* Leeser's translation does not correspond.

The Holy One, blessed be He, will then smile upon them. Said R. Itzhak: "There is no smiling with the Holy One, but on that day."

There are others who taught the saying of R. Itzhak in the following connection: R. Jose said: In the future heathens will come to convert themselves with the *Tephilin* on their heads and arms, *tchitches* on their dresses, *mazusas* on their doors. But, as soon as they will see the war of Gog and Magog, and will question them: "With whom do you want to fight?" Whereto the answer will be: With the Lord and his Messiah [as it reads [Psalm ii. 2]: "Against the Lord and his anointed"], each of the nations will remove the above, and go away; and the Holy One will smile upon them. It is here that R. Itzhak said: There is no smiling with the Lord, but on that day. But did not R. Jehudah say in the name of Rabh: There are twelve hours in a day, three hours of which the Holy One, blessed be He, is occupied with the Torah. The next three hours, He judges the whole world, and seeing that it is liable to be destroyed, He rises from the chair of judgment and sits down on the chair of mercy. The third three hours, He supports the whole world with food, from the very largest creature to the smallest one. And the last three hours, He plays * with the *leviathan*, as it reads [Psalm civ. 26]: "Leviathan, whom thou hast made to sport therein." Said R. Nachman b. Itzhak: "With His creatures He smiles, but not upon them." R. Aha said to R. Nachman: There is no smiling by the Holy One, since the Temple was destroyed. As it reads [Is. xlii. 14].† But in the fourth three hours, he teaches the Torah to the school-children. As it reads [ibid. xxviii. 9]: "Whom shall he teach knowledge? And whom shall he give to understand doctrine? (to) those that are weaned from the milk, (to) those that are taken from the breasts." And what does He do in the night-time? If you wish, it may be said that He does the same as in the day-time. And if you wish, it may be said that He rides upon His light cloud and moves in all directions upon 18,000 worlds. As it reads [Psalm lxviii. 18]: "The chariots of God are two myriads; thousands of angels (follow him)." And if you wish, it may be said that He is sitting and

* The term for this word is *sh'hoḥ*, which means both sport and smile, hence the objection.

† The translation of this verse does not correspond at all, it is therefore of no use to quote it.

listening to the song of the angels, as [ibid. xlii. 9]: "And in the night his song shall be with me."

R. Jehudah said in the name of Samuel: It reads [Hab. i. 14]: "And (why) makest thou men as the fishes of the sea, as the creeping things, that have no ruler over them?" Why are men compared with fish of the sea? To wit: even as the fish die as soon as they are taken on land, so do men die when they separate themselves from the law of the Torah. Another explanation: as fish die from the strong heat of the sun, so also do men. If you wish it may be said in this world, and this would be in accordance with R. Hanina, who said: "Everything is decreed by heaven, except cold" (see Middle Gate, p. 285). And if you wish it may be said, in the world to come, and this is in accordance with Resh Lakish, who says: There is no *Gehenna* in the future. But the Holy One, blessed be He, will take out the sun from its sheath. The wicked will be punished with its heat, and the upright be cured by it. As it reads [Malachi, iii. 19]: "For, behold, the day is coming, which shall burn as an oven; and all the presumptuous, yea, and all who practice wickedness shall be stubble: and the day that is coming shall see them on fire, . . . who will not leave them root or bough. (20) But there shall rise unto you that fear my name, the sun of righteousness with healing in his wings." Furthermore, the latter will have pleasure and become fat from it, as the end reads, "And ye will go forth, and grown fat as calves of the stall."

There is another explanation, "as fish in the sea," the larger one swallows the smaller, so also is it with men, since if not for the fear for government the stronger would swallow the weaker. And this is what a Mishna states: "Pray for the peace of the government," etc. (See Aboth, p. 72.)

R. Hinna b. Papa propounded a contradiction to the following [Job, xxxvii. 23]: "The Almighty we do not find him out excellent in power."* And [Ex. xv. 6]: "Thy right hand, O Lord, is become glorious in power." And also [Psalm cxlvii. 5]: "Great is our Lord, and abundant in power"? This presents no difficulty: At the time of judgment, He does not use his might; but in time of war, He uses it.

Rabha said [Job, xxx. 24]: "But doth not a man stretch out

* Leeser's translation, according to the sense, does not correspond with the Talmud who takes it literally.

his hand among *ruins*? or doth one not cry out therefrom when he meeteth his downfall?" So said the Holy One, blessed be He, to Israel. By judging Israel, I do not treat them in the same manner as I do heathens, which is mentioned in [Is. xxi. 32]: "Overthrown, overthrown. . . . I will render it." But I punished them as the picking of a chicken. And according to others: "Even if Israel do but small good deeds, as the picking of chickens in the dunghill, I will combine them into one large sum." Another explanation: "I help them because of their praying to me. And this is what R. Aba said: It reads [Hos. vii. 13]: "Though I desired to redeem them, they yet spoke lies against me." *I.e.*, I thought: I will redeem them by loss of money in this world, for the purpose of rewarding them in the world to come. And they told lies about me. And the same said R. Papa in the name of Rabha: The inferring it from [ibid., ibid. 15].

R. Abuhuh introduced R. Safra to the *minim* (who were appointed by the government to collect duties) as a great man. And they freed him from duty for thirteen years. Once they met him and asked him to explain the following [Amos, iii. 2]: "Only you have I loved out of all the families of the earth: therefore will I visit upon you all your iniquities." If one is in bad humor, will he let it out on his friend? He kept silent, as he was ignorant of the answer. And they inflicted upon him. R. Abuhuh then met them, to ask for the reason. And they answered: You introduced him as a great man, while he does not even know the explanation of a passage. Rejoined he: "I told you he was a scholar, but did I say that he was a master in the study of the Bible?" And to their question: Why are *you* familiar with it? He answered: "Because we have to discuss with you frequently, we give our attention to it." They say: It is for you, then, to explain the above-mentioned passage. And he answered thus: I will do it in the form of a parable. There was once a creditor of two persons, one a friend, and the other an enemy of his. From his friend, he demands to be paid in small sums, while from his enemy he demands the whole debt at once. (And the same is the case with Israel: He clears them of all their iniquities by small punishments in this world, so that they shall not have to suffer in the world to come.)

The rabbis taught: The Lord becomes angry every day, but only during one instant, which is the fifty-three thousand eight hundred and forty-eighth part in one hour; and there is

no creature in the world who is able to guess this moment, except Bil'am, about whom it reads [Numb. xxiv. 16]: "Knoweth the knowledge of the Most High." Which means that he knew how to guess the second in which the Lord becomes angered. (See Sanhedrin, p 339.)

R. Joseph said: It is advisable for one not to pray singly the additional benediction in the first three hours at the first day of new year, for, the heavenly judgment takes place at that time, and because of his praying attention may be given to his deeds, and he may get an unfavorable decree. But if so, one should not do it even with the congregation together? With the congregation is different, as the attention is given to their deeds in average. But was it not said above that in the first three hours the Lord is engaged in the Law? Yea, however, by the Torah, in which truth is mentioned [Prov. xxiii. 23]: "Buy the truth," judgment cannot be modified. But concerning judgment, truth is not mentioned, and therefore the Holy One, blessed be He, modifies it.

R. Joshua b. Levi said [Deut. vii. 11]: "Which I command thee *this day*, to do them," means *to do* it to-day, but not to be rewarded for it to-day. He said again: "All the performance of the commandments which Israel observed in this world, will come and testify for them in the world to come." He said again: The crime of the golden calf was committed only to give a chance to the repenter. As it reads [ibid. v. 26]: "Who would grant that this their heart might remain in them to fear me at all times." (Hence, they were not fit to commit a crime.) Similarly said Johanan in the name of R. Simeon b. Jo'hai: David was not fit to commit the crime with Bath Shaba, as concerning him it reads [Psalm, cviii. 22]: "My heart is deeply wounded within me." And also Israel was not fit for the above crime, for the reason said above. And why was it committed? For the benefit of sinners. If it happens to be an individual, it may be said to him: Repent, as the individual David did. And if it happens to be a congregation, they also may be told to repent, as the congregation of the desert did. And this is what R. Samuel b. Nachman in the name of Jonathan said: It reads [II Sam. xxiii. 1]: "And thus saith the man who was raised up on high" (the term in Hebrew for high is *ol*, which means also yoke), and is to be interpreted thus: The man who had raised the yoke of repentance. The same said again in the name of the same authority: When one performs a meritorious act in this world, it pre-

cedes him in the world to come. As it reads [Is. lviii. 8]: "And before thee shall go thy righteousness, the glory of the Lord shall be thy reward." And the same is the case with him who commits a crime in this world, that it clings to him and goes before him on the day of judgment. As it reads [Job, vi. 18].*

The rabbis taught: Concerning the above-cited verse [Deut. v. 26]: Moses said to Israel: Ye are ungrateful my children, as at the time, the Holy One, blessed be He, said to you: "Who would grant," etc., ye ought to say: Thou, Lord, grant it to us. Your ungratefulness is also marked from [Numb. xxi. 5]: "And our soul loathed this miserable bread." Ye are also children of an ungrateful, as it reads [Gen. iii. 12]: "The woman whom thou gavest to be with me, she gave me of the tree," etc. Moses, however, hinted this to Israel only after the forty years in which he led them in the desert. As in respect of that time it reads [Deut. xxix. 3]: "And yet the Lord gave you not a heart to perceive," etc. Said Rabha: "Infer from this that one cannot know the real mind of his master, until the elapse of forty years."

R. Johanan said in the name of R. B'naha: It reads [Is. xxxii. 20]: "Happy are ye that sow beside all waters, freely sending forth the feet of the ox and the ass." Happy is Israel at the time when he is occupied with the Torah and with bestowing of favors; as his evil spirit is then transferred into his hands, and not *vice versa*. And this is inferred from the just-cited verse, "that sow," which means charity, as [Hos. x. 12]. And "by water" it means the Torah, as in [Is. lv. 1] means the Torah. And "by freely sending forth," etc., is meant, what the disciple of Elijah taught. One should always consider himself in his relation to the laws of the Torah, as an ox to its yoke, and an ass to its load.

"Three days," etc. Is such a long time needed? Does not a Mishna state: At four periods in the year, he who sells a cow to his neighbor must notify him thus: I have sold her mother or her daughter to be slaughtered. (It is biblically forbidden to slaughter the mother and her child on one and the same day), and they are: the Eve of the second festival of Tabernacles, the Eve of the first day of Passover, the Eve of Pentecost, and the Eve of New Year. According to R. Jose the Galilean: Also

* We do not quote the passage, as the translation of it does not at all correspond.

the Eve of the day of Atonement in Galilee. (Hence, we see that only one day is sufficient.) Where eating is treated of, one day suffices, but where sacrificing is treated of three days are needed. Are, then, three days sufficient for sacrificing? Is there not a rule that thirty days before Passover are needed to study the laws of this festival? Concerning our sacrifices, which even a blemish in the eye-lash makes invalid, thirty days are needed for studying the Law. But concerning the heathens, that only a missing limb of an animal makes it invalid. But not a blemish, three days suffice.

The schoolman propounded a question as to whether or not the statement of the Mishna, "three days," include the festival day also? Come and hear. R. Ismael said: "Three days before and three days after their festivals." Now, should it mean to include the festival day, would, then, R. Ismael count *it* twice, to the first and to the last days? This is no objection, as the number three, mentioned last, may be used merely because of the first. Come and hear the following: R. Tachlipha b. Abdimi in the name of Samuel said: If their festival occurs in the middle of the week, it is forbidden to do business with them the whole week. Now, if that day were included, one day of the week would be allowed. There is no question, according to R. Ismael, as he certainly excludes that day, but how is it the question is according to the rabbis? Come and hear: The following are the festivals of the heathens: *kalends*, *Saturnalia* and *kratsim*. And R. Hanin b. Rabha said: *Kalends* occurs eight days after the solstice, and the *Saturnalia* eight days before. Now, if the festivals were included, it would be said ten days? Perhaps the Tana counts the whole festival of *kalends* for one day. Said R. Ashi: From the expression of the Mishna, "before," it may be inferred that it means to exclude the day in question. For if not, it would state three days of their festivals, etc. Infer from this that so it is.

The schoolmen propounded a question: Is this forbidden because a Jew must not interfere with the idols, or because of the commandment, "Thou shalt not put a stone for the blind"? And the difference is in whether or not the heathen has his own animal for sacrificing. If because of interfering, it is forbidden, but if because of the latter, it is not, as he has his own. But even if he has his own, the above negative rests upon him, as R. Nathan states in a Boraitha: Whence do we know that one must *not* serve a goblet of wine to a Nazerite nor a member

of a live animal to a descendant of Noah? from [Levit. xix. 14], "Nor put a stumbling-block before the blind." We see then, that though these two would each take the forbidden even if not offered, nevertheless he who serves therewith commits a transgression, it speaks of a case when the two, giver and receiver, are separated, by *e.g.*, a river, so that if not served he could not take it himself; and the word serve instead of give seems to corroborate this view. The schoolman propounded another question: How is it if he had done business with him in the prohibited days? According to R. Johanan: The benefit which he derived from the business is forbidden, and according to Resh Lakish, it is not. Resh Lakish objected to R. Jochanan from the following: In the festivals of heathens, if one had business with them, the derived benefit is forbidden. We see that thus the festivals, as such are meant, but not the time before. R. Jochanan, however, maintains: That in the expression "festivals" the days before are also meant.

There is a Boraitha in accordance with Resh Lakish: The prohibition to do business with them refers only to a thing which can be kept in good order until the festival day, but not otherwise. And even concerning the former, if it was already done, the benefit is allowed.

R. Zabid taught in a Boraitha of R. Osia: A thing which cannot be kept in good order may be sold to, but not bought from, them. There was a minn who, in his festival, sent a new *dinar* to R. Jehudah the second. Resh Lakish was then at the latter's house, and Jehudah consulted him as to the acceptance of it. If he accepted he would transgress the rule of interfering, while his refusal would cause animosity. Said Resh Lakish to him: Accept, and throw it away in the presence of the donor. To which R. Jehudah rejoined: Then I will cause still more animosity. Rejoined Resh Lakish: I mean that you should throw it in such a manner that he should think it was done unintentionally.

"*To lend them or to borrow.*" The prohibition to lend them is correct, because it pleases them. But why is it forbidden to receive payment from them; does it not diminish their property? Said Abai: If it were permitted to receive from them, one would be led also to lend them. Rabha, however, maintains: Both are prohibited only because of interfering.

"*Because it is a displeasure.*" Does not R. Jehudah hold the view: That it pleases him in the future. We have heard

him say elsewhere that he upholds such a theory concerning Jewish festivals? Said R. Na'hman b. Itzhak: Leave alone the Halakhas of minor festivals, as they are allowed only upon the basis of "it pleases him in the future, although it is a displeasure to him while performing it." Rabbina, however, maintains: A heathen is always displeased at a payment. Our Mishna is not in accordance with R. Joshua b. Karcha of the following Boraitha, who said: If the lender had a document, he must not receive payment at that day. But if it was a verbal loan, he may, as it is a rescue. (Here is repeated from the First Gate, 229 par., "R. Jehudah says," to p. 30 next par.)*

MISHNA II.: R. Ismael said: Three days before and three days after it is prohibited. The sages, however, say: Before the festivals, but not after them.

GEMARA: What new views do the sages of this Mishna advance. Was same not said by the first Tana of the first Mishna? They differ in what was said by Samuel: "In exile, the prohibition refers to the day of the festival only." The first Tana upholds the theory of Samuel, which the sages of the latter Mishna do not. It may also be said that they differ in that which was said by Na'hum the Modaite. The prohibition is imposed only upon one day before their festival. And in this case, the Tana of the first Mishna does not agree with him, while the sages of the second do. There is a Boraitha which states that as regards the decision of Na'hum the Modaite, it was said: It is better that such should be dropped and not repeated. There is another Boraitha; Na'hum the Modaite said: An old male horse may be sold to them in case of war. And he was also answered: Such may be dropped, etc. And there is another Boraitha: That the same declared a Halakha concerning tithe, seeds and herbs, and was also answered: It may be dropped, etc. Said R. Aha b. Minumi to Abai: Is it right that everything declared by so great a man who comes into our country be annulled by mere exclamation such as above? And he answered: There is one thing of the following Boraitha, on which we act according to his decision—namely, Na'hum the Modaite says: One may pray for his necessities the benediction of, "He listens to prayer." Rejoined R. Aba: Leave alone this Halakha which relies not upon Na'hum the Modaite only,

* In text many things on which the Halakha prevails according to R. Jehoshua b. Kar'ha are gathered, though they do not belong to this tract at all; and as all of them are mentioned, each in its proper place, they are omitted here.

but upon the discussion of great men in the following Boraitha: R. Eliezar said: One should beg for his necessities first, and thereafter he shall recite the daily benediction. As [Psalms, cii. 1]: "A prayer of the afflicted, when he is overwhelmed, and poureth out before the Lord his complaint." * R. Joshua, however, maintains: One has to recite his benediction previously, and thereafter pray for his necessities. As [Psalms, cxlii. 2]: "I poured out my *shicho* before him, I relate before him my trouble." (Hence, the trouble is related after the benediction.)

Let us see: The passages do not correspond with either of them; hence, there must be some other reason. Wherein, then, is their point of difference? In that which was lectured upon by R. Simlai: It is advisable for one to always arrange the praises of the Omnipotent first, and thereafter to recite the daily eighteen benedictions. And this can be inferred from Moses, our master [Deut. iii. 24]: "Thou hast begun to show," etc., and thereafter (25): "Let me go over, I pray thee." R. Joshua maintains: We may learn it from Moses, but R. Eliezar holds that we cannot compare ourselves to Moses, and must not dare to do like him. The sages, however, maintain differently from both: As according to them, one may pray for his necessities in the benediction of, "He listens to prayer." Said R. Jehudah b. R. Samuel b. Shilath in the name of Rabh: Although it was decided that one may pray for his necessities in the benediction of "listen to prayer," yet if he understands how to express his desire at the end of each benediction (conjoined in the daily eighteen benedictions), he may do so.

MISHNA III.: The following are the festivals of the heathens: *Kalends*, *Saturnalia*, *kratsin*. The accession of their kings upon the throne, their birthday, and the day of their death. So R. Mair. The sages, however, maintain that only such a death on which burning (dresses) is used, is conjoined with worshipping the idols. But in such on which it is not used, there is no idolatry. All, however, agree concerning the following days: That of shaving his beard and hair, that in which he lauds, that on which he was released from prison, and that on which is celebrated a marriage of his son that the prohibition concerns only one day, and the only one man engaged in this affair.

GEMARA: The rabbis taught: Adam the first, when he saw

* The word complaint is termed by *shicho*, which means "prior" according to the Talmud concerning Isaac in [Gen. xxiv. 63] where the same term is used.

that each day of the week became shortened, cried: Woe is to me, the world becomes dark to me because of my sin, and it seems to be returned to chaos and ruin. And this is my death which was decreed by heaven. He arose and fasted and prayed eight days. Thereafter, when he lived to see the solstice of the month of *Tabit*, when the days become longer, he understood that such is the cycle of the world, and therefore established eight holidays. The next year, he also proclaimed the eight days on which he had fasted as holidays. He has established them to laud heaven; his descendants, however, made them holidays for the idols.

The rabbis taught: Adam the first, on the first day of his creation, when he saw the sun set, cried: Woe is to me, the world is to be returned to chaos, because of my sin, etc. He wept all night, and Eve did the same opposite him. However, when the morning star appeared, he understood that such was the order of the world. He arose and sacrificed an ox, whose horns were like its hoofs.

R. Mathna questioned: Are the small towns under the dominion of Rome and near to the capital, prohibited, at the time Rome celebrates its *kalends*, or not? According to R. Jehoshua b. Levi, the festival *kalandes* is forbidden to everyone. And according to R. Johanan, it is forbidden to interfere with those who worship her only. There is a Boraitha in accordance with R. Johanan as follows: Although it was said that if Rome established a *kalandes*, and all the near cities which are under her dominion supported her, the prohibition of interfering concerns only its worshippers. On *Saturnalia*, *kratsin*, the day of the throne and the day in which he ascends to reign, only one day before, interfering is prohibited; but not the day after. During the celebration of the son's marriage the interfering is forbidden to this man, and on that day only. Said R. Ashi: The statement of R. Johanan is also hinted at in our Mishna by the expression "and that man," which excludes those who are under his dominion. (Here is repeated from Aboth, p. 94, ¶ . R. Simeon b. Eliezar said the whole par.; here, however, it is said in the name of R. Ismael. (The Gemara adds): It is therefore decided that if a heathen invites one during thirty days from his son's wedding, the invitation being special to the wedding, or anonymous, it is considered a wedding day, and the interfering is not allowed. At the elapse of thirty days, if the invitation was specific of the wedding, it is so considered; and

if anonymous, it is not. Until what time is it considered wedding time in the case of a special invitation? Said R. Papa: Twelve months. And previous to the wedding, at what time is to be considered? From the time when they put the barley in the pestle for preparing beer.

"*Kratsin*." What festival is this? Said R. Jehudah in the name of Samuel: It is the day on which Rome has established her kingdom. But is there not a Boraitha: *Kratsin* and the day on which Rome has established her kingdom? (Hence *kratsin* must be something else.) Said R. Joseph: Rome has established her kingdom twice. Once in the days of the Queen Cleopatra and the second time in the day of the Greeks. As R. Dimi told when he came from Palestine: Thirty-two battles the Romans fought with the Greeks, and could not conquer them until they had conjoined the Israelites with them, under the stipulation that if the kings were of one nation, the great officers of the government should be taken from the others. And then the Romans sent a message to the Greeks: Until now we have tried to conquer you by battles, but now we will try to do it by a discussion. We may ask you, if one likes to conjoin a pearl with a diamond, which of them shall be the basis? And they answered: The pearl to the diamond. A diamond and an onyx? The diamond as a basis, was the answer. An onyx and the Holy Scrolls? The onyx to the Holy Scrolls, was the answer. Then they sent to them: "Now, the Holy Scrolls with the Israelites are with us." (And the Greeks were conquered.) Twenty-six years the Romans kept their promise to Israel, and thereafter they failed, and took the Israelites under their dominion. Whence do we know that they were true to their promise twenty-six years? From what was said by R. Ka'hana. When R. Ismael b. Jose was sick, it was sent to him that he should recite a few things which he related in the name of his father. And his answer was this: A hundred and eighty years before the Temple was destroyed, Rome had thrust her dominion upon Israel. Eighty years before the destruction, it was decreed by the sages that the land of the nations outside of Palestine should be subject to defilement. Forty years before, the Sanhedrin were exiled from their place and settled in shops. (Here is repeated from Sanhedrin, p. 121, concerning the establishment of fine.) The text says 180 years, and not more? Does not a Boraitha state in the name of R. Jose the great: Palestine was under the dominion of Persia 430 years; under the Greek, 180

years; the house of the Makabaius reigned 103 years and the house of Herod reigned likewise 103 years. Now, according to this chronology there will be 206 years for the dominion of Rome over Israel.* Therefore, we must say that the 26 years in which they were true to their promise are not counted under their dominion. There is a Tosephtha: The disciples of Elijah taught: The world will continue for six thousand years, the first two thousand of which were a chaos (*Tahu*), the second two thousand were of Torah, and the third two thousand are the days of the Messiah, and because of our sins many years of these have elapsed, and still he has not come.† Let us see from what time the two thousand of Torah are reckoned. Shall we assume it to be the time when the Torah was given to Israel? Two thousand years have not elapsed as yet since.‡ We must therefore say that it means the time mentioned in [Gen. xii. 5]: "And the persons that they had obtained in Charan." And it is known by tradition that Abraham was then fifty-two years of age. And from his fifty-second year until the Torah was given, 448 years elapsed, and that number will complete the number of 2,000 which were less at the time the Tana taught about the 2,000 years of wisdom.§

"*The accession to the throne.*" Whose accession? If it means the king's, how should the following Boraitha be understood? "The ascending to the throne, and the day on which they select the king," which seems to be one and the same. We must say, therefore, that by accession that of the king's *son* is meant. And the objection that it was not customary in Rome the son should inherit the throne, may be thus meant: That upon the request of the king, they were now to affiliate it to the son. As it happened with Antoninus (the Cæsar of Rome), who said to Rabbi: I would like that Asurius, my son, should reign after me, and also that Tiberius should be free from duty. But I am aware that if I will ask my people to do me one favor, they will, but not two.

* We do not quite understand how to make out 206 years according to this account. Rashi's explanation does not suffice, and all other commentators keep silent. The Gamara itself was in doubt, concerning this account, as R. Papa said in text. We have, however, omitted it, leaving the whole affair to the historian.

† There are a few lines repeated here from Sanhedrin, p. 303, to which we could not refer because of the continuation in text.

‡ The reader must not forget that this was said fourteen centuries ago.

§ This account remains very complicated, notwithstanding Rashi's attempt to explain it. And as it seems to us unimportant, we have omitted the whole discussion.

What have I to do? Rabbi, who did not want to answer his question in words, told a man to mount upon the shoulders of another one, and having given him a dove, said to the other one, tell him who is mounted upon you to let the dove free. From this Antoninus understood that he had to request his people to proclaim his son king after him, and to instruct his son that he should set Tiberius free. Once the same said to Rabbi: The officers of Rome irritate me. (What shall I do?) Rabbi asked him to walk with him in the garden, and began to tear out the large radishes of the beds, planting smaller ones instead, by which Antoninus understood that he intimates the necessity of removing the old officers little by little and not all at once, so as to prevent a rebellion. But why did not Rabbi answer him in words? He was afraid that the officers of Rome would get wind of it and would harm him. The same Cæsar had a daughter by the name Girah, and it happened that she sinned. Antoninus then sent to Rabbi white mustard, which is called in Aramaic *gargira* (whence Rabbi understood that something happened with Girah). He sent him in answer a seed by the name of *khusbratha*, the meaning of which in Aramaic is *khus bratha* (remove the daughter). Antoninus again sent him garlic, named in Aramaic *karthi*, from which Rabbi understood that he questioned him: Shall I cut off my child? And in answer he sent him lettuce, which is named *chassa*, which means have mercy with her.

Antoninus used to send to Rabbi frequently pieces of pure gold in leather sacks covered with wheat. And to the objection of Rabbi: I have too much of my own, he exclaimed: Leave them to him who will substitute thee, that he shall spend it to please those who will reign after me. From the house of Antoninus, there was a cave which reached the house of Rabbi, and each time that he went to the house of Rabbi through this cave, he would take with him two slaves. One he used to kill at the gate of Rabbi, and the other when he returned, at his own gate. He, however, told Rabbi that at the time of his visit no one should be found with him. It once happened that he found Hanina b. Hamana with him, and to his question: Did not I say that no one should be found with you during my visit? Rabbi answered: This is not a human being. Said Antoninus to Hanina: Go and call for me the slave who sleeps at the gate. Hanina, however, found him dead, and he deliberated what to do: shall he go to tell him that he is dead? There is a rule that

one must not answer with degradation; should he leave him and go away? This would be a disgrace to a king. He therefore prayed, and the dead became alive, and he then sent him to his master. Said Antoninus to Rabbi: I am aware that even the smallest of you is able to bring the dead to life. However, I want that when I come here, I should not find a living soul with you. He used to serve Rabbi in all his needs, and he once questioned him if he would have a share in the world to come. To which Rabbi answered, "yea." Said he: Does it not read [Ab. i. 18]: "And there shall not be anyone remaining of the house of 'Eseau." It means he who acts like 'Eseau. But, it reads [Ezek. xxxii. 29]: "There are Edom, her kings, and all her princes," etc. The answer was, it reads kings, but not all her kings. Princes, but not all of them. So also we have learned in the following: "Her kings, and not all of them, *i.e.*, exclude Antoninus b. Asudius. Her princes and not all of them, excluding K'tiha b. Shalum."

What happened with the latter? There was a Cæsar who disliked the Jews, and he asked the advice of his officers: Should he who has a fibre in his foot cut it off and be at ease, or should he leave it and be afflicted? And the advice of them all was, that he should cut it off and remain at rest. K'tiha, however, who was one of them, objected, saying: First you cannot get rid of all the Jews, as it reads [Zech. ii. 10]: "For as the four winds of the heaven have I spread you abroad, saith the Lord."* And secondly, your kingdom will be considered mutilated, and one that kills its own subjects. The king then said: Thy advice is true, but there is a law that he who concurs the king, must be thrown into the furnace. When they took him to be slain, he said: I bequeath all my property to R. Aqiba and his colleagues. A heavenly voice was then heard: K'tiha b. Shalum has a share in the world to come. Rabbi then wept and said: Here we have a man who has bought his world in one moment, while another one has to work for it all his life.

Antoninus served Rabbi; Adarkhan (a Persian Prince) served Rabh. When Antoninus departed, said Rabbi: Our union broke, and the same said Rabh when Adarkhan departed.

Unklus b. Klenimus embraced Judaism, and the Cæsar sent militia to take him. He, however, persuaded them, and they also became proselytes. He then sent other militia, warning

* For the explanation, see Taanith, p. 4.

them that they should not converse with him. When they took him and were going, he said to them: I will tell you something; usually the torch-bearer carries the light in front of the litter, the chief *lecticarius* (behind the litter, carries the light) for the *dux*, the *dux* for the *hegemon*, the *hegemon* for the *comes*; but does the *comes* carry the light before the people? And they answered, No. Said he: The Holy One, blessed be He, carries light before Israel as it reads [Ex. xiii. 21]: "And the Lord went before them in a pillar of cloud," etc. And they also became proselytes. The Cæsar then sent other ones after him, telling them not to talk to him at all. But when they took him, he saw a *mazuzah* on the doorpost, and said to them: Do you know what this is? They answered: No, but you may tell us. He then said: It is customary with a human king that while he is sitting inside of his palace his servants guard him outside. With the Holy One, blessed be He, it is the contrary. His servants are inside, and He guards them from the outside, as it reads [Psalm cxxi. 8]: "The Lord will guard thy going out and thy coming in," etc. Then these became proselytes, too, and the Cæsar did not send any more after him. It reads [Gen. xxv. 23]: "And the Lord said to her, two nations are in thy womb." Said R. Jehudah in the name of Rabh: This means Antoninus and Rabbi, upon whose tables were not missing lettuces, cucumbers and radishes, summer as well as winter. As the master said: The radishes masticate the food in the stomach, lettuces overturn it, and cucumbers extend the gut. But have not the disciples of Ismael taught that cucumbers are as harmful to the body as swords? This presents no difficulty, as one speaks of large ones, and the other of small ones.

"*The day of death*," etc. From this we see that R. Mair makes no difference between a death, to which burning is, and that to which it is not, used; in both cases as according to him, idols are worshipped there. Hence the burning is not a custom of the Amorites, which the Israelites are prohibited from. And the rabbis who oppose R. Mair hold that it is a custom. Why then do *we* use burning? As there is a Boraitha that one may burn things for the death of kings. Therefore, as to burning, we must say, all agree that it is not considered a custom, but an act of honor. The rabbis, however, hold that worship of idols takes place only in cases where there is burning. While according to R. Mair, it is worship in both cases. Where do we find that burning is used for kings? [Jer. xxxiv. 5]: "In peace

shalt thou die and as burnings were made for thy fathers," etc. And as they burn for kings, so also do they for princes. What they used to burn upon kings? Their beds and all the utensils which were used by the deceased. And it happened on the death of Raban Gamaliel the elder, that Unclus the proselyte burned clothing worth seventy *manas* coined in Zur.

"*The day of shaving his beard*," etc. The schoolman propounded a question: Does the Mishna mean the shaving of his beard and the surrounding of the hair (which they used as a worship for the whole year, and at the end they used to remove for the same purpose) or do they mean the removing of the hair? Come and hear the following: The day of shaving the beard and leaving the hair and also the day of removing it.

R. Jehudah in the name of Samuel said: There was still another festival in Rome which occurs once in seventy years, on which they would make a well man ride on a lame man, dress him in the garments of Adam, and place on his head the scalp of R. Ismael, etc.; on his neck was suspended gold of the weight of four *zuz*. And they cover the markets with it, heralding before him: *sakh quiriphaster*.* The brother of our Lord is a deceiver. (They mean Jacob, the brother of Eseau, who deceived the latter by taking away the blessing of Isaac to himself.) He who saw this now may be rejoiced, as if not to-day, he will not see it any more (because it was once in seventy years), and they would finish with: Woe will be to him at the time the other will arise. But why does not the Tana of our Mishna count this feast? Because he counts only what is usual each year, and not what happens once in seventy.

R. Hanan b. R. 'Hisda or R. Hanan b. Rabha in the name of Rabh said: There are five houses of idols; the house of Beil in Babylon, the house of Nebu in Khursi, of Tharetha in Mapag, Zripha in Askkilon, and Nishra in Arabia. When R. Dimi came, he said: It was added to them the yared of An Bekhi of Ekha of the town of N'dbkah. All these houses were standard, and were worshipped the whole year. So said R. 'Hisda in the name of his father-in-law.

It is said above, that according to Samuel: In exile it is for-

* To the explanation of these peculiar words, we give the following of Jastrow Dictionary: an alleged proclamation made in Rome on the occasion of a sort of secular game, and intended as a satire of Eseau (Rome) on his brother Jacob (Judaism). The interpretations of commentaries (*sakh number* of years predicted for the coming of the Messiah, or *sakh brother*) are unsatisfactory.

bidden only the very day of the festival, not the day before and after. But even on that day did not R. Jehudah allow R. Brona to buy wine and R. Giddle to buy wheat in the festival of the merchants? Such a festival is different, as it is not standard.

MISHNA IV. : In a city where the idol is placed, interfering is forbidden inside, but not outside. And if outside, the inside is not forbidden. May one go to the city at that time? If the way leads to the idol only, it is forbidden, but if it leads also to another place, it is not.

GEMARA: What is meant by outside is, *e.g.*, the bazaar of Gaza. Resh Lakish questioned R. Hanina: Is indeed the bazaar of Gaza permitted? And he answered: Did it not happen to you to be in Zur where you could see an Israelite and a Gentile putting their pots upon one stove, and the sages did not object. The same is the case with the bazaar of Gaza; the sages did not care to forbid this because of these festivals.

"*May one go to the city,*" etc. The rabbis taught: A city in which an idol is placed, one must not enter, nor pass from it into another city. So R. Mair. The sages, however, say: The prohibition lies when the way is specified to that place only, but not otherwise. If a thorn sticks in one's foot at that place where the idol is standing, he must not bend to take it out, because it would seem as bowing to the idol; but if it does not seem so, he may. And the same is the case if one's money scattered near that place. From a spring which runs before the idol, one must not bend to drink for the same reason, unless it does not seem as if bowing to the idol. If an aqueduct is placed in the idol, one must not put his mouth to it, as it would seem like kissing it. However, it is not advisable to put one's mouth to any duct, as one may swallow a leech.

The rabbis taught: One may not drink water from rivers or ponds either with his mouth or with one hand (as he cannot discern anything in it with both hands; however, he can keep the water, and examine it). And if he did so, he would be responsible in case he swallowed a leech, which is dangerous, and this is a support to R. Hanina, who said: That for such an accident it is allowed to violate the Sabbath by warming water; and also R. Ne'hamaia allowed to do same in such a case. And R. Huna b. Jehoshua said: That if such happened, he may drink vinegar until the water is warmed. R. Idi b. Abin said: He who has swallowed a bee, cannot be cured. However, he may drink some strong vinegar, perhaps this will give him time to make his will.

MISHNA V.: If, during an idol festival in the city, some stores were there decorated, one must not buy from these stores, while he may from the others, as such a case happened in the city of Beth Shean, and the sages have so decided.

GEMARA: Said Resh Lakish: The prohibition lies only on those which are decorated with roses and myrtles, because the odor pleases him, but not to those which were decorated with some other fruit. And the reason is [Deut. xiii. 18]: "And there shall not cleave to thy hand aught of the devoted things." Which signifies that it is prohibited only to derive any benefit for himself, but not to benefit others. R. Johanan, however, maintains that the prohibition lies also on those which are decorated with fruit, as such conclusion can be drawn *a fortiori*. If deriving benefit *from* them is forbidden, so much the more should it be, to benefit them. An objection was raised from the following: R. Nathan said: It is usual in the day of the idol to herald: everyone who will decorate his head and the heads of his animals for the honor of the idol will be freed from duties for such and such a time. What had then a Jew to do? Should he decorate, then he derives benefit from the idols; should he not, then he benefits them. From this it was said: He who is doing business in the market established for the idol, his property must be destroyed in such a manner that no one should be able to derive any benefit of it. We see, then, that to benefit is also prohibited, and this contradicts Resh Lakish's above statement. Said R. Mesharshia b. R. Idi: Resh Lakish hold that the rabbis differ with R. Nathan, and the Halakha prevails with the majority, while R. Johanan holds that they do not differ. (Here is repeated from tract Minor Festivals and Abel Rabbathi, which we deem not necessary to translate.)

R. Jacob bought shoes on such a market day, and R. Jeremiah bought bread. Each of them bought from a private man, not from a storekeeper. However, each one thought that his colleague bought from a storekeeper, and rebuked each other because of the statement of Aba b. R. 'Higya b. Aba: That the prohibition to buy lies only from a storekeeper, but not from a private, as a private does not pay any duties. He also said that if R. Johanan were in such a place where they take duties from a private also, he would forbid to buy even from a private. The above-mentioned sages, however, bought their goods from such a private who was not established at that city, and, therefore, they were sure that he does not pay duties.

MISHNA VII.: The following are forbidden to be sold to the heathens: Fir-cones, white figs on their stems, frankincense, and a white cock. R. Jehudah, however, said: That a white cock may be sold among other cocks, and if singly, he has to cut off a finger of it, because the heathens do not sacrifice an animal of which an organ is missing. All other things may be sold anonymously, but if they say that they buy it for worshipping, one must not sell. R. Mair, however, forbids to sell them fine date trees, sugar-canes, and a variety of dates.

GEMARA: "*Frankincense*," said R. Itzhak in the name of Resh Lakish: Only the best frankincense which is used for worshipping, and there is a Boraitha: That from all the things mentioned above, one bundle may be sold; and what is to be considered a bundle? Explained R. Jehudah b. Bathyra: No less than three manas worth. But why not fear perhaps the buyer will sell of it for worshipping? Said Abayi: We are told not to put a stone before the blind, ourselves, but we are not told that we should fear some other one should do same with our stone. (The prohibition is, because one must not assist a sinner, and worshipping idols is a sin even to the heathens.)

"*A white cock*," etc. R. Jonna in the name of R. Zara according to others quoting R. Zebid, said: If the buyer is searching for a cock anonymously, even a white one may be sold to him. But if he asks for a white cock, then such must not be sold. There is an objection from our Mishna. R. Jehudah said: It may be sold among others. Now, let us see the nature of the case. If the buyer ask for a white cock, then certainly it must not be sold even among others; we must then say that he asks for a cock in general, and notwithstanding this, is allowed to sell it among the others, but not singly, even according to R. Jehudah. And according to the first Tana, not even among the others? Said R. Nahman b. Itzhak: The Tanaim of our Mishna speaks of a case when the buyer mentioned a black, red and white one. According to the first Tana, as soon as white is mentioned, it must not be sold even among others, and according to R. Jehudah, it may, on the supposition that as the other colors are not for sacrificing, the white is not either. But if color was not mentioned at all, even according to the first Tana, the white may be sold among other colors. And there is a Boraitha in accordance with R. Na'hman b. Itzhak, as follows: R. Jehudah said: The prohibition is in force only when the buyer says, Sell me this white cock; but if he said, Sell me this

and other colors you have, it is not. And even in the former case, if the buyer has a sick person in his house, or he is preparing a banquet for his son, it is permitted. But does not our Mishna state above: That in such a case *that* man as well as that day *is* prohibited? Said R. Itzchak b. R. Mesharshia: R. Jehudah, by the word banquet means a dancing banquet, on which sacrificing is not used, and not a wedding banquet. R. Ashi propounded a question: If the buyer asks for a blemished white cock (which is not used for sacrificing), may one sell him a good white cock, or is it to be feared that because he knows that an Israelite would not sell him a white cock, he deceives him by asking for a blemished one; and should you decide that such is prohibited? Furthermore, how is the law in case he asks for a white one and, nevertheless, takes also a black and a red one; may one then sell him a white one also, as it is to be supposed that he does not take them for sacrificing; or here, also, it may be feared that he bought the other colors only because he needs the white one? This question remains undecided.

"*R. Mair said*," etc. Said R. 'Hisda to Abimi: We have a tradition that the tract Aboda Zara of Abraham the patriarch contained four hundred chapters. We, however, have only five of them, and even these we do not quite understand. What is the difficulty? R. Mair said: "A fine date tree," from which it is to be understood that a simple one *may* be sold. And there is a Mishna: Nothing must be sold of that which is attached to the ground. Answered Abimi: By a "fine date tree" the fruit of it is meant; and so also said R. Huna: *e.g.*, (*'Hasal nkshba nklas*) the species or variety of dates. When R. Dimi came from Palestine, he said in the name of Hamma b. Joseph: *Quryti* (that which is fit for a drink, made of cariota [cariotum]). Said Abayi to him: We have learned *nklas*, and we do not know what it is, and now you say *quryti*, and we do not know what it is either. Of what use is it, then, to us? And he answered: If you happened to be in Palestine and say *nklas*, no one would understand you, but if you said there *quryti*, they would understand, and show you what it means.

MISHNA VII.: In places where it is customary to sell small cattle (sheep, goats, etc.) to heathens, it is lawful to do so, but not in places where this is not customary. Large cattle must not be sold to them at all, nor calves nor foals of asses, either sound or broken-legged. R. Jehudah per-

mits the sale of the latter, and Ben Bathyra permits the sale of a horse.*

GEMARA: From this Mishna it seems that it relies only upon a custom, but there is no prohibition, and in the first Mishna of the second chapter, we see that one must not place an animal in the inns of the heathens, etc. Said R. Eleazar: Even at those places where it is forbidden to place the animals in their inns, it is allowed to sell them. As usual the heathen takes care that his animals should not be uprooted. And so also said R. Tachlipha in the name of Shila b. Abimi, quoting Rabh. As the latter retracted his first statement "that it must not."

"*Large cattle*," etc. R. Ada permitted to sell an ass through a middleman (also an Israelite). R. Huna sold a cow to a heathen. Said R. 'Hisda to him: Why did the master do so? And he answered: Because it seems to me that he bought it for the purpose of slaughtering. And whence do we know that such is permitted? From (Shebüth, v. 8), where the school of Shamai says: One must not sell a ploughing cow on the Sabbathical year. The school of Hillel, however, permits it, because one may buy it for slaughtering.

Said Rabba: What comparison is this? Concerning the Sabbathical year, there is no obligation that cattle shall rest then, while on the Sabbath one is obliged to give his cattle rest. Said Abayi to him: But where do we find that such is forbidden, even when there is an obligation? There is a Tosephta: The school of Hillel permits to sell a ploughing field in the Sabbathic year, because it may be supposed that one buys it to rest this year, but to plough it the next, and one is certainly obliged not to plough his field on the Sabbathic year. R. Ashi opposed: On the contrary, there is a Mishna [Shebüth, v. 6]: "Ploughing vessels must not be sold on the Sabbathic year," and we know of no obligation that one must give rest to his ploughing vessels. And therefore, says he: When there is a supposition that it can be used for another purpose, we may do so, even, when there is an obligation; but when there is no such supposition, it must not be done, even when there is no obligation.

Rabba sold an ass to an Israelite, who was suspected of selling it to a heathen. Said Abayi to him: Why have the masters

* This Mishna is repeated from tract Passover, p. 90. We did not omit because it is a Mishna and because of the discussions of the Gemara here.

done so? And he answered: I sold it to an Israelite. And to Abayi's question: But he will sell it to a heathen, he answered: Does he sell to heathens only, if an Israelite will give him a good price will he not sell it? Abayi then objected to him from the following: In places where it is customary to sell small cattle to Samaritans, one may do so, but not in places where it is not customary; and this is only because they are suspected of selling it to the heathens, as all other reasons advanced were denied. (Hence, we see that one must not sell to a suspected one.) Rabba then ran after him three miles to return him, but failed to overtake him. Said R. Dimi b. Aba: As it is not allowed to sell to a heathen, so it is not allowed to sell to an Israelite either, who is a robber. What does the expression "robber" mean? If he is suspected that in case of an opposition, he would slay, then it is self-evident, for he is worse than a heathen; and if he is not suspected of such, why not sell to him? It speaks of one who is suspected of slaying only, then, when the owner runs after him to persecute. The rabbis taught: Shields must not be sold to those; others, however, taught they may. The reason of those who forbid is, that if they are short in weapons they use the shields instead; and the reason of those who permit is, that if they are short in weapons they run away. Said R. Na'hman in the name of Rabba b. Abuhu: The Halakha prevails with the latter. R. Ada b. Aba said: Lumps of wrought iron must not be sold to them, because they make weapons of it; but if so, should not spades be forbidden, too? Said R. Zabid: It means of Indian iron, which is useful for weapons. And now that we do sell to them is because the Persians are protecting us with their weapons. So said R. Ashi.

MISHNA VIII.: One must not sell to them bears, lions, and all such things by which the people can be injured. One must not conjoin himself in building their court houses (from the roofs of which they usually throw the one who is sentenced to death, to be killed), *gradus*, arenas and scaffolds. However, in building monuments and bath-houses, one may. But when they reached that chamber in which their idols should be placed, he must stop.

GEMARA: Rabbina propounded a contradiction. Our Mishna states: That only things which may be injurious to the people, whence it is to be understood that if not injurious, it does not matter, from the following: As one must not sell to them large cattle, so also must he not do with large beasts.

And even in those places where small cattle may be sold, large beasts must not. (We see, then, that even such that are harmless must not be sold either.) And he explains that our Mishna speaks of a lame lion, and it is in accordance with R. Jehudah, who holds that such may be sold. R. Na'hman opposed: Who can say that the lion is placed under the category of large beasts; perhaps he is placed under the category of small ones.*

"*Himself in building.*" Said Rabba b. b. Hanna in the name of R. Johanan: There were three such palaces: for kings, for bath-houses, and for treasuries. Said Rabba: All of them are permitted.

The rabbis taught: When R. Eleazar was captured by the government, accusing him of being a *min*, he was brought to the *gradus*, and the *hegemon* (chief judge) said to him: A sage like yourself should engage himself in such a valueless thing. And he answered: The judge himself may testify that such is not the case. [The *hegemon* thought that he means him; he, however, meant the heavenly judge.] And he said: Because you trust in me, I swear by *Dimus* (his idol) that you are free from this accusation. When R. Eleazar returned home, his disciples surrounded him to condole him, but he did not accept it. Said R. Aqiba to him: "Rabbi, allow me to say before you one of the things you taught me," and he allowed him. Said he to him: "Rabbi, probably some explanations of the *minim* pleased you and you have accepted them, and therefore you were suspected and captured." Answered he: "Aqiba, you have reminded me; it happened once that I walked in the upper market of Ciporas, and I met one of the *minim*, named Jacob, of the village of Zachania and he said to me": It reads [Deut. xxiii. 19]: "Thou shalt not bring the hire of a harlot," etc. May then a retiring room for the high priest be built from such money? And I kept silent. Said he to me: So taught Jeshu b. Panthya.† It reads [Mich. i. 7]: "For from harlot's wages she gathered them, and for harlot's wages shall they be used again"; hence, money that comes from a dirty place, may be expended

* The text discusses here whether an animal in convulsive movement before death is considered alive or dead, which is inserted here not in its proper place, nor is it of importance and therefore omitted.

† In Tosaphta Chulin (ii. 24) it states that Eliazar said: Jacob has related to me things of *minim* in the name of Jeshu b. Panthya, and I was pleased with them. But it is not mentioned what it was, and we are in doubt whether it means the joke in text. This may serve as an answer to the criticism of the "Open court." Vol. 16, pp. 475-477.

on a dirty place, which explanation pleased me. It is for this that I was suspected and captured. And I confess that I have transgressed [Prov. v. 8]: "Remove far from her thy way, and come not nigh to the door of her house." "Remove from her," means from minunism and "come not nigh" means to government. Others, however, interpret same "remove far" etc. as to mean minunism, and "come not nigh" etc., prostitution, which place, according to R. 'Hisda, is prohibited to approach from a distance of four yards.

Mar. Uqba said: it reads [Ps. xxx. 15]: "The leech hath two daughters (crying) Give, give," *i.e.*, minunism and the government, which are never satisfied, the first of catching men to her belief, and the second, duties. R. 'Hisda in the name of Mar. Uqba said: The *Gehenna* cries, saying, "bring me in the two daughters, who always cry in this world": "Bring in to me, bring in to me." It reads [Prov. ii. 19]: "All that come unto her return not again, and they will not reach the paths of life." If they do not return again, they will certainly not reach the paths of life? It means, therefore, that they who repent and return from minunism, die that they might not return to minunism again. Does one die who repents minunism only and not other sins; is there not a Boraitha: It was said of Elazar b. Durdia who left not out one prostitute. He was once informed that there was a prostitute in one of the sea countries, who received a pocketful of dinars in reward, and he took this amount and passed seven rivers until he reached her. She, however, caused him to repent. He then placed himself between two mountains saying; "O ye mountains, pray for me," to which they answered: "Instead of praying for thee, we must pray for ourselves" [Is. liv. 10]: "For the mountain may depart, and the hills may be removed." He then said: "Heaven and earth, pray for me," and they also answered: "We have to pray for ourselves," as it reads [ibid. li. 6]: "For the heavens shall vanish," etc. The same answer he got from the sun and the moon of which it reads [ibid. xxiv. 23]: "And the moon shall be put to the blush and the sun be made ashamed." A similar answer he got from the stars and planets of which it reads in [ibid. xxxiv. 4]: "And all the host of heaven shall be dissolved." He then exclaimed: "I see that I can rely only upon myself," and having put his head between his knees, he wept until his soul departed. A heavenly voice was then heard, saying, "R. Elazar b. Durdia is prepared for life in the world to come."

Rabbi, when he heard this, wept, saying, "there is again one who bought his world in one moment while another one must work for it all his life." And again, it is not enough for those who repent, that they get a share in the world to come, but they are named also rabbis, as the heavenly voice said: Rabbi Eliazar, etc. [hence we see that he who has repented from sin, also died? Because he, Elazar was involved in such, it is similar to minunism].

R. Hanina and R. Jonathan were on the road and they met two thoroughfares, one leading to the gate of an idol and the other to the gate of the prostitutes. Said one to his colleague: Let us go on that which leads to the idol as the evil spirit of idolators is killed. Answered his colleague: On the contrary, let us go on to that which leads to the prostitute so that we should overrule the evil spirit, and be rewarded. When they arrived to the prostitutes, the latter ran away to their homes. And his colleague asked him: "What was the reason you relied upon—[Prov. ii. 11]: 'Discretion * will watch over thee, understanding will keep thee.'"

The rabbis taught: When R. Elazar b. Partha and R. Hanina b. Tradian were captured by the government, said the former to the latter: "Happy are you, that you were captured because of one thing only, and woe is to me that I am captured for five things." Said he: Happy are you who are accused of five things and will be saved, woe is to me who am accused only of one thing shall be sentenced. The reason is, that you were occupied with both the Torah and with bestowing of favors, while I was occupied with the Torah only. This is in accordance with R. Huna who said elsewhere: He who is occupied with the Torah only, is similar to him who denies God. As it reads [II Chron. xv. 3]: "And many days (had elapsed) for Israel, (they being) without the true God." What does the expression "without the true God" mean? He who occupies himself with the Torah, but does not observe bestowing of favors, which is the main point of humanity. Was indeed R. Hanina b. Tradian not occupied in bestowing of favors? Is it not stated further on that he did? Yea, but not so as it was fit for his dignity. Elazar b. Partha was brought before the judges and they asked: "Why are you studying, and stealing? And he answered: If

* The term for discretion in Hebrew is *me zema* the last word is the term for prostitution and the Talmud explains it as it would be written *men zema* which means from prostitution.

one is a scholar, he is no warrior (robber) and if a warrior, he is no scholar, and as it is not true that I am a warrior, so is it also untrue that I am a scholar. Why then are you named master? And he answered: "I am the master of embroidering." They brought two coils before him and said to him: "Which is warp and which is woof?" A miracle occurred and a female bee set on the warp while a male bee on the woof and he said: This is a warp and this is a woof. "Why did you not visit the *Bee abidon* (the house of discussion)?" And he answered: "I am too old, and feared perhaps I would be trodden down under the feet of the crowd." "Has it ever happened that old men should be trodden down in the mentioned house? Again a miracle occurred, and just at that time they were notified that an old man was trodden down in the house in question. "And why then have you freed your slave (which is forbidden)?" This never occurred. One of the crowd, however, arose to testify against him. Elijah then disguised himself as one of the consuls of the government and said to the witness: As in all the other things a miracle occurred, the same would occur also in this case and you would be considered an enemy of his and a liar. The alleged witness, however, did not listen and rose to bear his testimony. Meanwhile, a letter from one of the great officers which was to be sent to the Cæsar was handed to this man as messenger. While he was going, Elijah caught and threw him four hundred *parsas*, so that he did not return any more. Hanina b. Tradian was then brought before them and questioned why he occupied himself with the Torah, and he answered: Because I am so commanded by the Lord my God. The decree was then rendered that he should be burned, his wife killed, and his daughter to be taken to the house of prostitutes. [He to be burned, because he used to express the name Jehovah as it is written (and not Adonai as it is to be read instead), but why did he so? Did not Aba Shaul say (Sanhedrin, p. 265) that he who does so has no share in the world to come? He did so to learn which is allowed privately, but he did it also publicly. His wife to be killed, because she has not prevented his doing so by protesting; from this it is to be inferred that he who feels that his protests would effect and does not protest, is punished therefor. And his daughter to prostitution; because, according to R. Johanan, it happened once that she walked in the presence of the great people of Rome, and they exclaimed: How nice are the steps of this girl!

And from that time she took care of her steps to please the spectators.] When all the three went out from the court, they justified the decrees upon them. Hanina said [Deut. xxxii. 4]: "He is the Rock, his work is perfect," etc. His wife said: "The God of truth and without iniquity"; and his daughter said [Jer. xxxii. 19]: "Great in council, and mighty in execution (thou) whose eyes are open over all the ways of the sons of man." Said Rabbi: How great are these upright that to justify their decrees, the three verses of justification came to their mouths, at the time of so great a trouble.

The rabbis taught: When R. Jose b. Kisma became sick, R. Hanina b. Tradian called on him; the former said to him: Hanina, my brother, are you not aware that this nation is reigning by heavenly decree, and notwithstanding that she has destroyed the Temple, burned the palaces, killed the pious and put out of the way all the best of Israel, she is still in force. About you, however, I heard that notwithstanding the decree of the government, you occupy yourself with the Torah publicly, and you bear with you the Holy Scrolls at all time. Hanina then answered: The heavens shall have mercy with us. Exclaimed Jose: I am relating to you reasons, and you say, the heavens shall have mercy. I wonder whether the government will not burn you with the Holy Scrolls on fire? Hanina then said: Rabbi, what will become of me in the world to come? And Jose asked him: Did not some of the meritorious acts come to your hand? And he answered: The money which I prepared to celebrate *Purim*, I erred, thinking that it was of the charity treasury; I have distributed it to the poor, and thereafter I have not collected from the charity. If so, answered Jose, I wish that my share should be like yours, and my fate similar.

It was said that a few days later R. Jose ben Kisma departed, and all the great men of Rome were going after his coffin, lamenting him greatly. On their return, they found Hanina b. Tradian studying the Torah publicly with the Holy Scrolls in his bosom; he was enwrapped in the Holy Scrolls and surrounded with branches of trees, which were kindled. And two woollen towels, soaked in water, were placed on his heart that his soul might not depart so quickly, and when his daughter said to him: Father, is it just, what I see done with you? He answered: If I were burned alone, it would be hard for me, but now that I am burned in conjunction with the Holy Scrolls, I am sure that He who will take revenge for the Holy Scrolls

will take revenge for me also. His disciples questioned him: What do you see now? And he answered: I see the letters are flying away from the parchment while *they* burned. They said to him: Rabbi, open your mouth, so that the fire should catch you, and he answered: It is better that my soul be taken by Him who gave it and not I myself shall cause it an earlier death. The executioner then said to him: Rabbi, if I will increase this fire and will take off the woollen towels from your heart, would you bring me to life in the world to come? To which he answered, Yea. He then asked him to swear, which he did. Immediately he increased the fire, took off the towels, and his soul departed. The executioner himself then jumped into the fire. A heavenly voice was then heard: Hanina and the executioner are prepared for life in the world to come. Rabbi then wept, saying: There is one again who bought his world in one moment, etc.

Bruria, the wife of R. Mair, was a daughter of Hanina b. Tradian, and she said to her husband: It is a disgrace for me that my sister should be in the house of prostitution. He then took with him a *πικραβος* full with *dinars*, and said: I will go there, and if she is yet pure, a miracle will occur. He disguised himself as a military rider, visited her, asking her to listen to him. She, however, gives him many reasons, and finally tells him that in this place he will find many who are more beautiful than she. He then convinced himself that she answered the same to everyone, and went to her guardian asking him to accept the money he brought for transferring her to him, saying: The half of the *dinars* will be sufficient to bribe the officers of the government, and the other half will remain for you. And to his question: What should I do when the half will be spent and they will still persecute me? he answered: You will then say, God of Mair, help me, and you will be saved. And whence do I know that so it is? Mair answered: I will convince you immediately. There were dogs who devoured people, and the guard stimulated them upon Mair, and he pronounced God of Mair, answer me, and they kept aloof from him. The guard then delivered to Mair his sister-in-law. Finally, the government got wind of it, and the guardian was brought to the gallows to be hanged, and as soon as he pronounced, God of Mair, help me, he was thrown down uninjured. And to the question, What is it? he related before all what happened. The government then engraved the picture of R. Mair on the gate of Rome,

commanding that he who should see such a face should deliver him to the officers. It happened that he was once seen, and they ran after him; he then ran away to a place of prostitution, and Elijah disguised himself as one of the prostitutes and embraced him. The officers then said that it must be someone else, as Mair would not do so. Thereafter, Mair ran away to Babylon, according to some, because of this occasion, and according to others, because of that which happened to Brura.*

(Concerning arenas and circuses) Tanaim differ in the following: An Israelite must not visit arenas, because they are considered a place of scorners. R. Nathan, however, permits it for two reasons: first, one should be able to save an Israelite if it happened that he was placed there by animosity; and secondly, if it happened that an Israelite should die there, the visitor may then be a witness, so that the widow of the deceased should be allowed to remarry.

The rabbis taught: One must not go to the theatres and circuses, because at those places they gather up money for the idols; so R. Mair. The sages, however, say: In the places where they gather, it is prohibited because of the suspicion of idolatry. And in those where they are not gathering, it is prohibited, because they are considered places of scorners. R. Simeon b. Pazi lectured [Psalm i. 1]: "Happy is the man who walketh not in the council of the wicked, and standeth not in the way of sinners, and sitteth not in the seat of scorners." If he had not walked how could he stand, and if he did not stand how could he sit, and if he did not sit, how could he scorn? It means as follows: That if he had walked, he will finally stand, and if stood, he will finally sit and scorn, and concerning him it is said [Prov. ix. 12]: "But if thou art a scorner, thou alone will have to bear it." Said R. Eliezar: He who scorns brings chastisements upon himself as [Is. xxviii. 22]: "And now be ye no longer scornful, lest your bonds be made strong." And Rabha said to the rabbis (his disciples): I beg you not to scorn so that chastisements shall not come upon ye. And R. Ktina said: Even his food becomes lessened, as it reads [Hos. vii. 5]: "(Because) he joineth his hand with scorners." (Here is repeated about the same matter from Last Gate, p. 30.) R. Simeon b. Pazi lectured again: "Happy is the man who walketh not" to

* The text does not say what happened to her. Rashi explains that she committed suicide because of a discussion between her and her husband, who finally conquered her.

the theatres and circuses of the heathens, "standeth not in the way of sinners," that is, he who does not stand as a spectator at bestial contests (arranged by the Romans). And "the sitting of scorners" beget contention. And lest one say: As all the above I have not done, I may engage my time in sleeping, therefore, "But whose delight is in the law of the Lord."

R. Samuel b. Na'hman in the name of R. Jonathan said: "Happy is the man who walketh not," etc., means Abraham our father, who was not conjoined with the generation of separation, who were wicked, as [Gen. xi. 3]: "Let us make bricks," etc. "In the way of sinners," etc.—he did not stand with Sodomites of whom it reads [ibid. xiii. 13]: "But the men of Sodom were wicked and sinners," etc.—"with scorners"—he did not associate himself with the Philistines, who were "scorners," as [Judges xvi. 25]: "Call for Samson that he may make sport of us."

It reads [Psalms, cxii. 1]: "Happy is the man that feareth the Lord." Man, and not woman? Said R. Amram in the name of Rabh: Happy is he who repents when he is still young. And R. Jehoshua b. Levi said: Happy is he who conquers his evil spirit, as a heroic man; "that greatly delighteth in his commandments." Said R. Eliezar: In his commandments, but not in the reward for them. And this is what a Mishna in Aboth states: Be not like slaves who serve their master because of reward, but as the one who serves him not to receive any reward. "In the law of the Lord is his delight," said Rabh: *i.e.*, one should always study the law to which his heart is inclined. Levi and R. Simeon, the son of Rabbi, were sitting before Rabbi reading one book of the Bible, and after finishing Levi said: Bring us "Proverbs." And R. Simeon said: Bring us "Psalms." He overruled Levi, and "Psalms" was brought. When they came to the verse, "In the law of the Lord is his delight," Rabbi stopped and said: One has to study only what his heart is inclined to. Said Levi to him: Rabbi, with this you have given us permission to stop studying. R. Abdimi b. Hama said: Him who occupies himself with the Torah, the Holy One, blessed be He, grants his desire. Rabha said: At the time one begins to study, the Torah is named the Holy One's, but after studying, it is considered to be his (the student's); as first it is written the law of the Lord, and thereafter, in *his law*. And he said again: One shall first study, and thereafter deliberate, as the above-cited verse reads. The same said again: One shall study,

although he forgets; shall study, although he does not understand it well.* (Here is repeated from Sanhedrin, p. 369, and from Erubin, p. 126. See there.) It reads [Psalm i. 3]: "And he shall be like a tree replanted by rivulets," etc. Said the disciple of Janai: "Replanted and not planted" signifies that he who receives his knowledge from one master, does not see any blessing in his studies. Said R. 'Hisda to his disciples: I would like to tell you something, but I am afraid you will leave me: He who studies always from one master, does not see any blessing. They then left him and went to the college of Rabba, who, when he heard the above reason, said to them: This is true only concerning reasons and ingenuity; but as for traditions, it is better to learn them from one master, so that they should not be metamorphosed in different versions. Tanhum b. Hanilai said: It is advisable to divide one's years into three parts: one-third for the study of Scripture, the second, Mishna, and the third, Talmud. But does one know how long he has to live? It means, he should do it every day.

"The fruit in its season . . . does not wither," said Rabha: It signifies that if the fruit is given in its season, then its leaves will not wither; but if not, the succeeding verse (4) applies to both the teacher and pupil.

R. Aba in the name of R. Hunna, quoting Rabh, said [Prov. vii. 26]: "For many deadly wounded hath she caused to fall," means a disciple who, though not as yet fit, decides questions; "very numerous were slain by her," means the contrary: he who is fit to do so and does not. And until what age? Till he reaches his fortieth year. But has not Rabha decided questions in his youth? It was because there was no greater scholar than he. Aba b. Ada in the name of Rabh, or b. Aba in the name of R. Hamnuna, quoting Rabh, said: Even the gossip of a scholar is to be studied, as it reads: "And its leaves shall not wither."

R. Joshua b. Levi said: The following is written in the Pentateuch, repeated in the Prophets, and thirdly in the Hagiographa: He who occupies himself with the Torah is prosperous in all his undertakings. In the Pentateuch [Deut. xxix. 8]: "Keep ye therefore the words of this covenant, and do them, that ye may prosper in all that ye do," repeated in Prophets [Jos. i. 8]:

* In text it is inferred from (Ps. cxix. 20). However, the translation does not correspond and therefore the quotation is omitted.

"This book of the book shall not depart out of thy mouth; but thou shalt mediate therein day and night, in order that thou mayest observe to do according to all that is written therein; for then shalt thou make thy way prosperous, and then shalt thou have good success." And thirdly in Hagiographa [Psalm i. 2, 3]: "But whose delight is in the law of the Lord, and who doth meditate in his law by day and night. (3) And he shall be like a tree planted by rivulets of water, that yieldeth its fruit in its season, and the leaf of which doth not wither; and all that he may do shall prosper."

R. Alexander heralded: Who wants to live, who wants to live? And a big crowd surrounded him. He then referred them to [ibid. xxxiv. 14-16].

"Where the idols should be placed," etc. Said R. Eliezar in the name of R. Johanan: If however, he has built, the reward of it is valid. Is this not self-evident? It is only the preparation for the idol to which both R. Ismael and R. Aqiba agree that they are not forbidden, unless the idol is already worshipped? Said R. Jeremiah: The Mishna means that even if he has made the idol itself, the reward is valued. But this is correct only to him, who holds that when an Israelite made an idol for himself, it is forbidden even before it was worshipped; but of a heathen, it is not, unless worshipped. But to him who holds that the same is the case with the idol of a heathen, what can be said? Said Rabba b. Ula: The Mishna refers to the finishing touch, which completes the idol, and the reason is: what made the idol ready? The last touch, which in itself is not worth the smallest coin (*a perutha*), and therefore it is not forbidden. From this it may be inferred that the Tana holds the obligation to pay a laborer, counts from the beginning till the very end of the labor, and not only after its completion.

MISHNA IX.: One must not manufacture ornaments for an idol—*e.g.*, necklaces, nose-bands and rings. R. Eliezar, however, maintains that for reward one may. Nothing must be sold to them while attached to the ground, but after it was cut off, one may. R. Jehudah said: He may also sell with the stipulation to cut it off afterward.

GEMARA: Whence is this deduced? Said R. Jose, from [Deut. vii. 2]: "Nor favor them," * means, he shall not give

* The term for favor in Hebrew is *chanina*. *Chanina* means also rest. Hence the deduction.

him a rest in the land; we have learned similarly in a Boraita, with the addition that it also means: You shall not give him such which shall make them merciful in the eyes of others. (Here is repeated from Chulin, p. 114 b.) The above statement is a support to that which Rabh said: It is forbidden to say: How nice is this female heathen? An objection was raised. R. Simeon b. Gamalien, being once on the steps of the Temple mountain, happened to see a female heathen who was a great beauty, and he exclaimed: "How great is thy work O Lord!" And it happened also to R. Aqiba that, when he saw the wife of Tornus Rupus, he laughed and wept. Laughed, because he saw that she would become a proselyte, and he would marry her; wept, that such a beauty must be buried under earth? This does not contradict Rabh, as it was only a benediction, which one has to recite by seeing nice creatures.* R. Joshua b. Levi said: Modesty is the greatest of them all, as it reads [Is. lxi. 1]: "Hath anointed me to announce good tidings unto the meek," it does not read to announce pious men, but meek; hence modesty is greatest.

"*One must not sell.*" The rabbis taught: One may sell them a tree with the stipulation to cut it off, and he cuts it immediately, so R. Jehudah. R. Mair, however, says: Only that which is already cut. The same is the case with hay, and also with flour. According to R. Jehudah, it may be sold to harvest, and according to R. Mair that which is already harvested. It was necessary to learn their points of differing in all the three, as one from the other could not be inferred (we omit the reasons, as of little importance). The schoolman propounded a question: May one sell them a cow with the stipulation to slaughter it? Shall we assume that the above things R. Jehudah permits, because they are not under the control of the heathen so that he is not able to prolong time? But in the case of a cow which he takes immediately, he may prolong the time a good deal until slaughtering, and this even R. Jehudah will not allow. Come and hear the following: One may sell a cow with the stipulation of slaughtering, and the heathen has to do it immediately. So R. Jehudah, while R. Mair permits only the sale of the slaughtered.

* Here is repeated from many tracts, especially from Middle Gate, p. 227, and a whole Mishna from Tract Shekalim vi, which we have omitted. The statement of R. Joshua b. Levi in text belongs to the Mishna Shekalim vi, which states that piety is greater than all other good things.

MISHNA X: Houses must not be rented to the heathens in Palestine, not to speak of fields. In Syria, however, houses are permitted to be sold, but not fields, and out of Syria houses may be sold and fields rented. So R. Mair. R. Jose, however, said: In Palestine, houses may be rented, but not fields, in Syria houses sold, and fields rented; out of Syria, everything may be sold. However, even in the places where renting is allowed, it must not be for residence, as the idol is brought there, which is against [Deut. vii. 26]: "And thou shalt not bring an abomination in thy house." A bath-house must not be rented at any place because it is named after the owner, who is an Israelite (and he can be suspected of heating it himself on the Sabbath).

GEMARA: What is meant by the expression "not to speak of fields"; is it because two things would be neglected, resting the fields and tithe from the growth? The same would be with the houses also, resting, and the neglect of a *mazusa*? Said R. Mesharshia: The *mazusa* is not an obligation upon the house, but upon him who lives in it.

"*In Syria houses,*" etc. Let us see; why is selling forbidden? Because it is considered as the land of Israel. Why, then, is renting permitted? Renting even in Palestine is only as a safeguard that one should not come to sell; and a safeguard to a safeguard we do not decree. But is not renting fields in Syria also a safeguard to a safeguard, and is nevertheless forbidden? This is not considered a safeguard, as the Tana holds that the land which was taken away by an individual (not by the people of Israel at large) is considered, nevertheless, to be the land of Israel. Hence, against fields upon which two things would be neglected, as said above, the rabbis decreed; but this is not the case with houses.

"*In Syria houses are permitted,*" etc. For the just-mentioned reasons. "*R. Jose . . . in Palestine, houses,*" etc. Also for the same reason.

"*In Syria houses sold,*" etc. It is because he holds that the land which was taken by an individual is not considered the land of Israel, and, therefore, only against fields they decreed for the reasons adduced above, but not against houses.

"*Everything may be sold,*" etc. Because it is far from Palestine, no decree was rendered. Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Jose. Said R. Joseph: Provided it does not make a whole neighborhood of heathens.

And there is a Boraitha: That less than three families is not considered a neighborhood.

"*Where renting is allowed*," etc. From this we infer that not in every place renting is allowed. Hence, the unnamed Mishna is according to R. Mair; as according to R. Jose, renting is permitted in every place.

"*But not a bath-house*," etc. There is a Boraitha: R. Simeon b. Gimalia said: One must not rent his bath-house to a heathen because the bath is named after the owner and the heathen does his labor on Sabbath and holidays (and people may think that the Israelites themselves do this). But how is it to a Samaritan? It may be rented, although he works on the minor festivals? On minor festivals, we Israelites also are permitted to heat baths. But let us see why it is permitted to rent a field to a heathen, although he does labor on Sabbath? Because people know that the gardener is doing work for himself. Why not say the same concerning a bath-house? It is because usually a field is hired to a gardener, which is not the case with bath-houses. There is another Boraitha: R. Simeon b. Eliezar: One must not rent his field to a Samaritan because it is named after him, and the Samaritan works the field during the minor festivals. But how is it with a heathen? It is allowed, because people know that he does it for himself; why not say the same concerning a Samaritan? R. Simeon b. Eliezar does not consider the reason of a gardener at all, and his reason why it is allowed to a heathen is that if we tell him that he should not work, he will listen to, which is not the case with a Samaritan, who thinks that he knows better than we do. There were fields of safran in partnership of an Israelite and a heathen; the heathen worked on Sabbath and the Israelite on Sunday, and Rabha has permitted to do so. Rabbina questioned him from the following: "An Israelite and a heathen who have hired a field in partnership, the Israelite must not say to the heathen: You take your share on Sabbath and I on a week day, unless it was so stipulated at the time they started. However, when they come to make their accounts, it is not permitted to the Israelite that he should take his share from the Sabbath labor." Rabha became ashamed; thereafter, however, it was announced that such was stipulated when the partnership was started.

The schoolman propounded a question: How is it if there was no stipulation? Come and hear: "If such a stipulation was made at the time when started, it is allowed"; whence it may

be inferred, that if there was no stipulation, it is prohibited. But if so, how is the latter part to be understood? "When they come to make the account, the Israelite must not take his share of Sabbath," from which it may be inferred that without an account, he may accept it, although there was no stipulation. In view of this, from this Boraitha nothing can be taken for a support.

CHAPTER II.

RULES AND REGULATIONS CONCERNING PLACING OF CATTLE WITH HEATHENS, ACCEPTING CURE FROM THEM, AND CONCERNING THINGS WHICH MAY AND MAY NOT BE BOUGHT FROM THEM.

MISHNA I.: Cattle must not be placed in the inns of the heathens because they are suspicious of having sexual intercourse with them.* And for the same reason a female must not stay alone with them, because they are suspected of insult; nor should a male stay with them alone, because they are suspected of bloodshed.

GEMARA: There is a contradiction from the following: One may buy from them cattle for sacrificing without fear that it was instrumental in the committing of a crime or that it was separated as a sacrifice to an idol, or that it was itself worshipped. Now it is correct that there is no fear of its being separated or worshipped, for if such were the case, he would not sell it. But why should not be feared its said relation to a crime, and they not suspected? Said R. Ta'hlipa in the name of R. Shila b. Abina, quoting Rabh: With his own cattle, the heathen is not suspected, because of his economy that the cattle should not become uprooted. This, however, can apply only to female cattle; what can be said concerning male cattle? Said R. Kahana: Here, also, the same reason may apply, as the cattle become meagre from such employment. But why must one not place female cattle in the inns which are under the control of females? Said Mar Uqua b. Hama: Because the heathens are wont to visit the wives of their neighbors, and if such visitor happened not to find the hostess, he may substitute the cattle.

* Voltaire makes rather an exhibit of his ignorance when he mocks the ancient Jews, saying (in his *Philos. Diction*, vol. ii., p. 102) that they were the only nation given to this offence, since otherwise the prohibition thereof would have been superfluous. This Mishna as well as the following Gemara justifies the conclusion that this offence was rather general and was practiced by non-Jews and even by non-Semites at a period much later than the time when the prohibition of the Scripture was established. The attention of the reader is called to the eye-witnesses reported in the following Gemara.

And to the question of the schoolmen: How is the law with fowls? R. Jehudah in the name of Samuel, quoting R. Hanina, said: I have seen a heathen who bought a goose in the market, sexually intercoursed with it, chopped, roasted and consumed it, and R. Jeremiah of Diphte said that he had witnessed a similar affair by an Arabian.

Rabbina said: There is no contradiction between the Boraitha cited, which does not consider suspicion, and the Mishna which does, as the Mishna speaks of starting, which is forbidden and the Boraitha speaks of a case which was already done, where suspicion is no sufficient basis for forbidding. And whence do we know that such difference is considered? From a Mishna which states that a woman captured by a heathen because of a civil case is allowed to her husband, but not if captured because of a criminal case. We see, then, that although our Mishna forbids a woman to stay alone with a heathen, yet the act having taken place, she is allowed to return (hence there is a difference between starting an act and an act done). But perhaps the reason why she is allowed to her husband when captured because of a civil case, is that the heathen was afraid to touch her lest he lose his money? And such seems to be the case, as the second part states: If because of a criminal case, she is not allowed; and to this discussion nothing is to be added. R. Pdath said: The difference between our Mishna and the Boraitha is to be explained thus: The former is in accordance with R. Eliezer of a Mishna (par. II. 1), and the Boraitha is in accordance with the rabbis thereof, as according to the former, the red cow must not be bought from a heathen; and according to the latter, it may. And the reason is the above suspicion which, according to one, is considered, and according to the other, it is not. But perhaps there is another reason, as Shila explained. The reason of R. Eliezer is, in the following [Numb. xix. 2]: "Speak unto the children of Israel that they bring unto thee a completely red cow," which signifies that the *children of Israel* shall bring, but not other nations? This cannot scarcely be the reason, as the latter part states: "And so has Eliezer invalidated all the sacrifices which were bought from heathens," to which the above reason cannot apply, as concerning them such an expression is not used. But perhaps the rabbis differ with R. Eliezer concerning the red cow only because of its great value, which the heathens would not like to lose; but concerning other sacrifices, would they agree with R. Eliezer? Nay;

in the first place there is a Boraitha: One may buy from them cattle for the purpose of sacrificing, which would be neither in accordance with the rabbis, nor with R. Eliezer; and secondly, it states there plainly: The rabbis have answered to R. Eliezer with [Is. lx. 7]: "All the flocks of Kedar . . . upon my altar." But is, indeed, "suspicion" the reason of R. Eliezer's statement; is there not a Boraitha: The sages then said to R. Eliezer: We know of a case that the red cow was bought from a heathen by the name of Dama or Remetz; and he answered: This is no evidence, as the Israelites had watched over it from the time it was created? R. Eliezer's reason was both—the expression concerning a red cow cited above, and also "suspicion."

R. Ami and R. Itz'hak of Naf'ha were sitting on the balcony at the latter's. One of them began with the last part cited above, "so has R. Eliezer invalidated all the sacrifices," etc., to which the other quoted that which his colleagues answered him, with the above-cited verse, "all the flocks of Kedar," etc., and R. Eliezer rejoined: This is no evidence either, as the nations about whom the cited verse reads will all become proselytes in the future. R. Joseph infers this from [Zeph. iii. 9]: "Yea, then will I change unto the people a pure language, that they may all call on the name of the Lord." And to the opposition of Abayi R. Joseph: Perhaps it means that they will repent from idolatry only? Abayi R. Joseph answered: The verse ends with: "To serve Him with one accord." So taught R. Papa. R. Zebid, however, reverses the order of Abayi R. Joseph, adding that both quoted the verse of Zeph.

It reads [I Sam. vi. 12]: "And the cows went straight forward,"* etc. What does this expression mean? Said R. Johanan in the name of R. Mair: They sang a song. And R. Zuthra b. Tubiah, in the name of Rabh: They have straightened their faces to look upon the ark, and sang a song. What song was it? R. Johanan in the name of R. Mair [Ex. xv. 1]: "Then sang Moses," etc. And R. Johanan himself said [Is. xii. 4]: "And ye shall say on that day, Give thanks unto the Lord, call on his name," etc. And R. Simeon b. Lakish said [Psalm xcvi. 1, 2]: "Oh sing unto the Lord a new song; for he hath done wonderful things; his right hand and his holy arm have gotten him the victory. (2) The Lord hath made known his salvation, before the eyes of the nations hath he revealed his

* The term in Hebrew is *vaysharnha*, and song in Hebrew is *shira*.

righteousness." And R. Elazar said [ibid. xcix. 1]: "The Lord reigneth," etc. And R. Samuel b. Na'hmani [ibid. xciii. 1]; and R. Itzhak of Naf'ha said: They sang: Sing, sing, thou ark, arise in this great journey thou that art decorated with golden embroidery which is placed in the great palace, adorned with the best ornaments. R. Ashi taught the saying of R. Itz'hak to [Numb. x. 35]: "And it came to pass, when the ark set forward that Moses said," etc. And what did Israel say? The above that R. Itz'hak said: It reads [Jos. x. 13]: "And the sun stood still . . . written in the book of Yashar." What is the book of Yashar? Said R. Hyya b. Aba in the name of R. Johanan: The book in which the birth of Abraham, Isaac and Jacob, who are named Josharim (the upright) is meant, as it reads [Numb. xxiii. 10]: "May my soul die the death of the righteous." And where is the hint to be found there [Gen. xlviii. 19]: "And his seed shall become a multitude of nations." This occurred when Jehoshua "stopped the sun." [Jos. x. 13]: "And the sun stood still in the midst of the heavens, and hastened not to go down about a whole day." How many hours? Said R. Jehoshua b. Levi: Twenty-four; it was running six and stopped six, running six, and stopped six, four times; R. Elazar said: Thirty-six, it ran six and stopped twelve, etc. Samuel b. Na'hmani said: Forty-eight, it ran six and stopped twelve; ran six and stopped twenty-four. According to others, the above differ in the additional hours of that day. There is a Boraitha: As the sun stopped for Joshua, so did it stop for Moses, etc. (See Taanith, p. 52. The rabbis taught the whole paragraph.) An objection was raised from [ibid., ibid. 14]: "And there was no day like that before it or after it"? If you wish, in the time of Moses it stopped for fewer hours, or if you wish, it may be said that in Moses' time there were no hailstones mentioned [ibid., ibid. 11].

It reads [II Sam. i. 18]: "The bow, behold it is written in the book of Yashar." (What does Yashar mean? Said R. 'Hyee b. Aba in the name of R. Johanan: "Genesis" as said above.) And where the allusion? [Gen. xlix. 8]: "Thy hand shall be on the neck of thy enemies." Which is the weapon that needs the hand against the neck? It is the bow. R. Eliezer, however, maintains that the book of Yashar means Deuteronomy. And why is it named Yashar? Because there is written [vi. 18]: "And thou shalt do that which is right (Yashar) and good in the eyes of the Lord." And where is the

allusion? [xxxiii. 7]: "Let the power of his hands." And which is the weapon to which both hands are needed? The bow. R. Samuel b. Na'hmani said: It is the book of Judges in which [xvii. 6]: "Every man did what seemed right (Yashar) in his eyes. And where is the allusion? [iii. 2]: "To teach them war." And to which weapon, teaching is needed? The bow.

"*A woman must not stay alone*," etc. Let us see how is the case? If it means she must not stay alone with *one heathen*, is this, then, allowed with an Israelite? Is there not a Mishna: One must not stay alone even with two women? And if it means she should not stay with even three of them, is there a similar case allowed with three licentious Israelites? Is there not a Mishna: A woman may stay with two persons? And Jehuda, in the name of Samuel said: Provided they are righteous men, but, if they were licentious, even if they would be ten, she must not, as it once happened that a woman was alone with ten and was insulted. It means even when his wife is with him. As to Israelite's, his wife guards him, which is not the case with a heathen. But why not say that because they are suspected of bloodshed? Said R. Jeremiah: It speaks of a respectable woman whom they feared to kill. R. Idi, however, maintains that there is no fear of bloodshed, even with any woman, for usually her weapons are upon her (they insult, but do not kill). And what is the difference between the two reasons? If the woman was respected by the government, but not among her colleagues, then, according to R. Jeremiah, there is no fear for bloodshed, but of insult, and according to R. Idi the same is the case with any woman. And there is a Boraitha in accordance with R. Idi—viz.: A woman, although her weapon is usually with her, must nevertheless not stay alone with heathens, because they are suspected of insult.

"*A male must not stay alone*," etc. The rabbis taught: If an Israelite while on the road, happened to be accompanied by a heathen, he should so manage that the heathen should be on his right hand. Ismael b. R. Johanan b. Broka, however, said: If the heathen was provided with a sword, the Israelite shall manage that he shall be on his right side, and if with a cane, on his left side (so that it shall be easier for the Israelite to protect himself). If they have to ascend or to descend, the Israelite must not be on the bottom and the heathen on the top, but the contrary. Nor shall the Israelite bend himself in the heathen's

presence, for fear the heathen may break his skull. If the heathen question him to what place he goes, he shall make the distance longer as did Jacob our father to Esau the wicked [Gen. xxxiii. 14]: "Until I come unto my Lord to Se'ir." And (17) reads: "And Jacob journeyed to Succoth" (which was much nearer than Se'ir). It happened to the disciples of R. Aqiba while on the road, to meet robbers, who questioned them, Where are you going? And they answered, To Akhau. However, when they reached the City of Khzib they separated. The robbers then questioned them, Whose disciples are you? And they answered, Of R. Akiba. To which the robbers rejoined, Well is to Akiba with his disciples, who are careful not to be afflicted by bad men. R. Mnashi was on the road to the City of Thurtha and he met thieves, who asked him where he was going, and he said, To Pumbadithe. When they reached Thurtha he separated from them. Said they, You must be a disciple of Jehuda the deceiver. To which he rejoined, Do you know him (R. Jehuda) and dare to call him deceiver? I put you under ban. The thieves then engaged in thievery for thirty-two years, but did not succeed, so that they were afterward compelled to come to R. Mnashi asking for a release. One of them, who was a weaver, did not care to come to ask for a release, and was finally devoured by a lion. Come and see the difference between the thieves of Babylon and the robbers of Palestine (the latter had praised the disciples who separated from them, and the former scolded him).

MISHNA II.: A daughter of an Israelite must not confine a heathen, because she confines a person to idolatry; however, a heathen may confine an Israelite. The same is the case with nursing, an Israelite must not nurse the child of a heathen, while the latter, being under the control of the former, may do so.

GEMARA: The rabbis taught: One must not confine a heathen because she brought up a person to idolatry, nor must a heathen confine an Israelite, because they are suspected of bloodshed; so R. Mair. The sages, however, say: The latter may, in the presence of others, but not when she is alone in the confinement. R. Mair, however, does not allow this because she may put her hand on the skull of the child and kill it, while the others standing by would not notice it. As it happened, a heathen woman who reproached her colleague of being a Jew—confiner—daughter of a Jew confiner, and she answered: Is it

not sufficient the injury I have done to the Jews by decreasing them, killing their children at the birth, and I shed their blood like water. The rabbis, however, maintained that this counts for nothing, as she boasted only.

"*An Israelite must not nurse,*" etc. The rabbis taught: One must not nurse a child of a heathen, because she brings up a person to idolatry, neither must a heathen woman nurse a Jewish child, because she is suspected of bloodshed; so R. Mair. The sages, however, say the latter might do so in the presence of others, but not when she is alone with the child. R. Mair, however, maintains that even in the presence of others she may smear the breasts with poison and kill the child, while the others present will not notice it. A contradiction was raised from the following: A Jewess may confine a heathen for the reward but not gratuitously? Said R. Joseph: For reward it is permissible, in order to avoid animosities. The rabbis taught: An Israelite may circumcise the child of a heathen for the purpose of proselytism, but not for the purpose of curing, and a heathen must not do so to an Israelite because he is suspected of bloodshed. The sages, however, maintain that the latter may do so in the presence of Israelites, but not when he is alone with the child. Does indeed R. Mair hold that a heathen must not circumcise an Israelite? Is there not a Boraitha: A city in which there is no Jewish physician but a Samaritan and a heathen, the heathen shall circumcise and not the Samaritan; so R. Mair. R. Jehuda, however, maintains the converse, that the Samaritan should have the preference? Reverse the names in the cited Boraitha; but how can you say that Jehuda permits a heathen to do the circumcision? Is there not a Boraitha: R. Jehuda said: Whence do we know that a circumcision which was performed by a heathen is invalid? From [Gen. xvii. 9]: "But thou, for thy part, shalt keep my covenant" (which means thou and not a heathen). Therefore, the names in the above-cited Boraitha are correctly placed and must not be reversed, as it speaks of an established physician, who would not spoil his reputation by doing harm to an Israelite, as R. Dimi, when he came from Palestine, said in the name of R. Johanan: That an established heathen physician may be trusted to do everything for an Israelite. But how can you say that R. Jehuda permits a Samaritan to circumcise an Israelite? Is there not a Boraitha: An Israelite may circumcise a heathen, but a Samaritan must not do so to an Israelite, because he is doing this in the name of his idol

in the Mount Gerism. And R. Jose said to him: Where do we find that circumcision must be done in the name of Heaven, etc. (hence, we see that R. Jehuda does not permit a Samaritan). Therefore we must say that the names of the Boraitha in question are to be reversed, and the contradiction from one statement of R. Jehuda to the other presents no difficulty, as R. Jehuda of the contradictory Boraitha means R. Jehuda the prince, whom we heard stating elsewhere just the same as the Boraitha teaches.

It was taught: Whence do we know that a circumcision made by a heathen is invalid? Daru b. Papa in the name of Rabh said: From the above-cited verse [Gen. xvii. 9], and R. Johanan maintains from [ibid., ibid. 13]. And what is the difference between them? If a woman is commanded to circumcise her child, according to Rabh she is not, and according to R. Johanan she is. But is there one who holds that a woman is not commanded to circumcise, does it not read [Ex. iv. 25]: "Then took Zipporah a sharp instrument," etc.? Well, she has done this through a messenger; or, if you wish, it may be said that she began and Moses himself finished.

MISHNA III.: One may employ their (the heathens') services for curing his personal property, but not for curing the body. However, cutting hair by them is prohibited at any place; so R. Mair. The sages, however, maintain: One may do so in a public place, but not when he is alone with him.

GEMARA: What do personal property and body mean? The former is, *e.g.*, his cattle, and body means human being. And this is what R. Jehudah said: No imperfection, not even so much as the mark of bleeding, must be taken from them. Said R. Hisda in the name of Mar Uqba: If, however, the heathen said to him that such and such a medicine is good, and such and such is bad, he may use his advice, since the heathen thinks: as he asks me, so will he ask some other one, and should I give him wrong advice, I would be ridiculed. Rabba, according to others, R. 'Hisda, in the name of R. Johanan said: If there is a doubt as to whether the sick will recover or die, the heathen must not be taken for curing, but if it is certain that he will die, it is allowed. But why let it be feared, perhaps he will foster his death? This is not to be taken in consideration. And whence do we know that so it is? From [II Kings, vii. 9]: "If we say, We will enter into the city, then is the famine in the city, and we will die"; and they did not take into consider-

ation that should they fall in the hands of the enemy, they would be killed immediately. An objection was raised from the following: One must not interfere with the Minim and must not cure himself by them, even to delay death for but a few hours.

As it happened to ben Dama, the son of Ismael's sister, to be bitten by a snake, Jacob, of the village of Skhanian, came to heal him with the name of Jesus, but R. Ismael did not allow. The patient, however, said to him: Ismael, my brother, let him cure me and I will bring you evidence from the Scripture that such is allowed. But ere he finished his soul departed, and R. Ismael exclaimed: Well is to thee, ben Dama, that thy body was pure and thy soul left thee in purity, and thou hast not transgressed the decision of thy colleagues, who say [Eccles. vii]: "Him who breaketh down a fence—a serpent will bite him." With Minismus it is different, as it is attractive and "he may be induced to follow them." But what has ben Dama to say? [Lev. xviii, 5]: "And he shall live with them," but not he shall die with them. R. Ismael, however, maintains that such is allowed only privately, but not in public; as we have learned in the following Boraitha: R. Ismael used to say: Whence do we know that if one is told to worship idols, under the threat of being killed, that he may worship and not be killed? From the above-cited verse—"he shall live," etc. But lest one say that this may be done publicly also, therefore it is written [ibid. xxii. 32]: "And ye shall not profane my holy name." Rabba b. b. Hanna in the name of R. Johanan said: A wound inside the body must not be cured by them. R. Johanan, however, when he suffered from scurvy, went to a matron of Rome for a cure (see Tract Yomah, p. 128, par. "R. Mathiah b. Hersha," the whole story, 229, par. "Whatsoever). But how did R. Johanan do so? Was it not said that an infliction which is inside the body must not be cured, etc? With a well-known man, like R. Johanan, it is different, as they will fear to harm him. But was not R. Abuhu a well-known man, and Jacob the Minn prepared a medicine for him to place on his shoulder, and if not for R. Ami and R. Assi, who burnt (cauterized) his shoulder to get the poison out, he would have died? Yet with R. Johanan it is different, as he himself was an established physician. But was not R. Abuhu also the same? As the latter was very much respected by the government, and was badly annoying the Minim by his frequent discussions, he (Jacob the Min) made up his

mind to do with him what Samson did [Judges, xvi. 30]: "Let me die with the Philistines."

Samuel said: An open wound (sabre cut) is dangerous, and one may violate the Sabbath for the purpose of curing it. The remedy to stop the blood is, cress-dishes mixed with vinegar, of which the patient shall partake. R. Saphra said: An enabta (carbuncle?) is a forerunner of the angel of death. How is it cured? Put upon it a rue (plant) with honey, or radishes with strong wine. While these remedies are being prepared, put meanwhile on the sore a white or red grape according as the sore is white or red. Rabba said: A tumor is a sure symptom of inflammation. And what is the remedy against the tumor? Hit upon it with the fingers sixty times, then open it crosswise. If, however, the tumor has a white spot on the top, all this is not necessary, as it is not dangerous then.

R. Jacob suffered from pain in the abdomen, and R. Ami, according to others R. Assi, advised him to take seven red grains usually found in the wash-houses, to put them in the linen collar of an old shirt, which he should bind with a cord made of the hair of a cattle; then he should immerse it in white pitch and burn it, the ashes thereof he should apply to the sore place and relief will ensue. While the preparation of this is going on, he may meanwhile apply the kernels of blackberries. This remedy, however, is effective only in case of external pains; for internal abdominal pains grease the sore place with the molten fat of a goat that has not yet born any offspring, or burn three pumpkin leaves dried in the shade and apply the ashes; also almond-worms or olive-oil and wax may be applied, in summer on linen, in winter on cotton.

R. Abuhu suffered once from an ear-ache, and R. Johanan advised him, according to others he was told in the college, what R. Abayi, too, heard later from his mother, that the loins have been created only for curing ear-ache. In like manner said Rabba: I was told by the physician, Miniumi, that all fluids are injurious to the ear, except the *water from the loins*. Thus, take the kidney of a woolless sheep, cut it crosswise, place it on burning coals and collect the water that begins then to flow from it. This water, when it is neither too cold nor too warm, syringe into the ears. Or one may rub in the ears with the molten fat of a big chafer. The following is another good remedy for ear-ache: Fill the sick ear with olive-oil, then make of wheat-straw seven wicks, and with the hairs of a cattle attach

to them the peel of garlic; kindle these wicks and put them into the olive-oil in the ear, taking, of course, precautions against burning the patient; when one wick has been thus burnt to the end, take the next one, etc., until the pains cease. However, seven ordinary wicks would also do, if dipped in hayseed-oil (?); but in this case one must be heedful of the wind. Here is yet another remedy: Put into the ear dyed unbeaten cotton and, taking heed of the wind, keep the ear over the fire. Also this remedy is recommendable: Take a rush that was cut down one hundred years ago, fill it with mineral salt, burn all this and strew the ashes in the ears. It must also be noted that for secreting ears the remedies must be dry, while for aching ears that do not secrete, moist remedies must be used.

Rabha b. Zutra said in the name of R. Hanina: It is allowed to straighten the ears on Sabbath. Observed R. Samuel b. Jehudah: Provided it is done with the hand and not with medicine. According to others the converse is allowed, *i.e.*, to straighten the ears on Sabbath by means of medicine and not by the hands, for it is to be feared that with the hand one may make a wound.

R. Zutra b. Tubia said in the name of Rabh: He who is in danger of losing an eye is allowed to accept cure on Sabbath. This, however, was understood to be allowed only when the medicine was prepared *before* Sabbath; but to prepare it on Sabbath and carry it through the public grounds is not allowed. Hereupon said one of the rabbis, named R. Jacob: I have heard it from R. Jehudah that it is allowed under the said circumstances to prepare the medicine on Sabbath and carry it through the public streets. R. Jehudah allowed to cure eye-diseases on Sabbath. Thereupon said R. Samuel b. Jehudah: Who will listen to this R. Jehudah who thus profanes the Sabbath? But it happened that he himself got sore eyes, and he sent to consult the same (R. Jehudah) as to whether or no it is allowed (to cure them on Sabbath)? And the answer came back: Everybody is allowed, but not you (who were so indignant at my decision); was it, you think, my own opinion? Nay; it was the master, Samuel, whose servant got an inflamed eye on Sabbath; she cried the whole day and none paid attention to her, and on the morrow her eye jumped out of its orbit; then said the master, Samuel, in his sermon: It is allowed to cure on Sabbath eye-diseases if there be danger of losing one's eye; and why? Because the optic nerves are dependent on the heart.

What kind of eye-diseases is allowed to cure on Sabbath? Said R. Jehudah: A secreting eye, a wounded eye, an eye covered with blood, and an inflamed eye. In the beginning of the sickness as well as during its becoming better, it is not allowed to apply medicine on Sabbath; nor is it allowed to use on Sabbath such medicine as would tend to sharpen the eye-sight.

R. Jehudah said: The sting of a wasp, the pricking of thorns, if the wounds caused by either are swelling, likewise an eye-disease complicated with fever, are all dangerous. The high temperature in these cases must, therefore, be reduced by the application of radishes, while low temperature is banished by that of sea-radishes; to apply the one for the other entails danger. The sting of a lizard must be cured with warm medicines, while that of a hornet with cold ones; to reverse the medicines, the one for the other, also here entails danger. Likewise are recommendable warm medicines for the pricks of thorns, and cold ones for the chapped skin; to reverse is dangerous.

He who had his blood let should not eat almonds, nor sit near the fire. He who has diseased eyes should not have his blood let, for it is in this condition dangerous. After eating fish one should wait two days before having his blood let; and after bleeding one should not eat fish for two days. Fish on the third day after bleeding is harmful.

The rabbis taught: After bleeding one should not eat milk, cheese, onions, almonds; but if one has carelessly eaten some of these, he should, according to Abaye, drink a little wine mixed with vinegar. But in this case, one must go outside of the city for his natural exigencies, and notably toward the east, in order that the ill odor might not reach the city (being carried off by the east wind).

R. Jehoshua b. Levi said: It is allowed to cure on Sabbath the *onkly*. What is *onkly*? Said R. Aba: It is the *stomachus* of the heart (or the fleshy valve of the heart, called *nibla*). And how is this disease cured? By an ointment prepared of cumin, soap, mint (*fern*), wormwood, cedar-blossom and hyssop. All these are to be dissolved in wine, and is good for the heart; your sign is [Psalm, civ. 15]: "*Wine* gladdens the human heart." Against flatulence (*mach*) use the same, but dissolved in water; your sign is [Gen. i. 3]: "And the wind (*mach*) of the Lord flits over the *water*." Against pains in the uterus (*kuda*) use the same dissolved in beer, and your sign is [ibid. xxiv. 15]: "She had her pitcher (*kuadah*) on her shoulder."

R. Aha b. Rabba prepared of the above herbs a powder of which he dissolved about a handful and drank it. R. Asha used to prepare a powder of each of these herbs and drink a dose from each. Said R. Papa: I had tried all this but without avail, until an Arabian merchant advised me to fill a new pitcher with water, put therein a spoonful of honey, leave, then, all this in the open air over night and drink it next morning; I have done so, and it really helped me.

The sages taught: Six things are good for all diseases, and they are as follows: green colewort, sea-radishes, the water from dry *sisin* (a Syrian plant), the stomach, the uterus (of cattle), and the raw meat of a cow. Other sages add yet small fishes, which possess besides medicinal yet the property of making one fecund and robust. Furthermore, ten things there are that are detrimental to the sick—viz.: meat of an ox, fat, roasted meat, poultry, roasted eggs, almonds, a hair-cut, a bath, cheese, and liver. Others add yet nuts and gourds.

The disciples of R. Ismael taught: Why are gourds called *keshuin* (heavy)? Because they are as harmful and heavy to the human body as daggers.

“*And cutting hair.*” The Rabbis taught: An Israelite who cuts his hair by a heathen, may look in the looking-glass (so that the heathen shall be afraid to kill him). An Israelite who cuts the hair of a heathen, when reaching the surrounding of his hair, which is usually for the purpose of worshipping the idol, may drop his work. The master said: An Israelite who cuts his hair by a heathen shall look in the looking-glass. Let us see how is the case: If it was in public then to what purpose is the looking-glass, and if privately, what can the looking-glass help (if the heathen would like to kill him suddenly)? It means privately; but as soon as he has a looking-glass in his work-shop, it seems to be a respectable place, so that there is no fear of killing. R. 'Hana b. Bizna used to cut his hair by a heathen, in the by-streets of N'hardea. At one time he said to him, 'Hana, 'Hana, thou hast a fine neck for the shears. Said he: I may take this as a punishment for not following R. Mair's decision. (Says the Gemara): Did he then follow the decision of the rabbis? The rabbis also permitted in public only, but not privately. He thought that the sideways of Nahardea are considered public, as many people pass there.

MISHNA IV.: The following things of the heathens are prohibited, and the prohibition extends even to the deriving of

any benefit therefrom—viz.: wine, vinegar, and pieces of wine extract, and skins in which there are holes opposite the heart. R. Simeon b. Gamaliel adds: Provided the hole is made round, but not if lengthwise. Meat which is entered for the idol is not prohibited, but which comes out of it is prohibited, as it is equivalent to the offerings of the dead. Such is the decree of R. Aqiba. With pilgrims while going for worship one must not interfere, but with those who are coming from, one may.

The bags of the heathens, the pitchers which contain wine of an Israelite, are forbidden to derive any benefit from them. So R. Mair. The sages, however, maintain: They are forbidden, but not to derive benefit. The pressed grapes of which wine was made as well as their kernels are prohibited for any benefit. So R. Mair. The sages, however, forbid only the wet ones, but not the dry ones. Fish-oil and cheese of the village Aunyiki made by the heathens are, according to R. Mair, prohibited for any benefit, and according to the sages the using is prohibited, but not the benefit. Said R. Jehudah: R. Ismael questioned R. Jehoshua while they were on the road: Why have the sages prohibited the cheese of the heathens, and he answered: Because they use the rennet of a carcass to curdle milk. Said he to him: The rennet of a burnt-offering is more rigorous than of a carcass, and nevertheless a priest, who is not so particular, consumes it while raw. This, however, the sages did not admit, but even they allow no benefit therefrom, although its use, when made, is no transgression. Answered R. Jehoshua: The prohibition was because they curdle their milk with the rennet of the calves, which was sacrificed to the idol. Thereupon rejoined R. Ismael: If such is the case, why was not prohibited all benefit thereof? R. Jehoshua, however, was not prepared to answer him this question, and called his attention to another thing: Ismael, my brother, how do you read ([Solomon's song, 1, 2]) Thy caresses? And he answered: I read thy as masculine. To which Jehoshua answered: It is not so, as further on (3) it reads feminine, and this is evidence that also verse 2d uses thy in the feminine.

GEMARA: Whence is it deduced that wine is prohibited? Said Rabba b. Abuhu from [Deut. xxxii. 38]: "They that ate the fat of their sacrifices, and drank the wine of their drink-offerings," *i.e.*, as from a sacrifice no benefit must be derived, the same is the case with wine. And whence do we know that such is the case with a sacrifice itself? From [Psalm cvi. 28]:

"And they joined themselves unto Ba'al-pe'or, and ate the sacrifice of the dead," hence, as from a dead one no benefit must be derived, so is it with a sacrifice. But whence does it follow that no benefit is to be derived from a dead? From the analogy of expression "there," which is to be found in [Numb. xx. 1]: "And Miriam died there," and in [Deut. xxi. 4]: "And shall break there," hence, as from the latter no benefit must be derived, the same is the case with a dead. But whence do we know that so is the case with the heifer? Said the disciples of R. Janai, in verse 8 of that passage it is mentioned: "Atone for thy people," etc., and from the sacrifices which atone, it is known no benefit must be derived.

"*Wine-vinegar*," etc. Is this not self-evident, that because the wine becomes sour the prohibition no longer holds? Said R. Ashi: It comes to teach that if there was sour vinegar in the hands of the heathens, there is no necessity to seal it with two seals, one on the top of the other as it is necessary for wine; and the reason is that the heathens do not offer vinegar to the idols, nor is the fear, perhaps they will change it, to be taken into consideration, as it is to be supposed that the heathen will not trouble himself to break the seal for this purpose. Said R. Ilai: We have learned elsewhere that cooked wine of the heathens is prohibited, and to the objection that this is self-evident, as the prohibition is not annulled by cooking, R. Ashi said: It means to teach us that our cooked wine seals with one seal, and in the possession of a heathen is valid for the reason stated above.

The rabbis taught: Cooked wine and *aluntith* (oil wine) of the heathens are prohibited; however, an *aluntith* of an Israelite when in the possession of a heathen is allowed. As we have learned concerning Sabbath the difference between oil-wine and honey wine (see Sabbath, p. 316, par. "One may make honey wine"). Rabba and R. Joseph both said: Wine mixed with water is not affected when it remains uncovered overnight, and to cooked wine, the prohibition of offering-wine does not apply.

The schoolman propounded a question: How is it with cooked wine? Does the uncovering affect it or not? Come and hear: Jacob b. Ibi has testified that the case of uncovering does not apply to cooked wine.

R. Janai b. Ismael once took sick and R. Ismael b. Zirud and the rabbis came to make him a sick-call, and while sitting there they questioned if the case of uncovering applies to cooked wine. Said Ismael b. Zirud to them: Resh Lakish said in the

name of a great man, who is R. Hyye, that to such the case of uncovering does not apply. And to their question as to the validity of this Halakha, R. Janai b. Ismael made a gesture with his hand as if saying, "upon me and my neck."

Samuel and Ablat were sitting together, and cooked wine was brought for them. The latter, who was a heathen, removed his hand in order not to touch the wine and make it invalid. Said Samuel to him: It was already said that concerning cooked wine no fear of offering is to be entertained.

The servant of R. Hyye had uncovered cooked wine and she came to ask her master, to which he answered, it was decided: to cooked wine no uncovering applies. The servant of Ada b. A'habah had uncovered the mixture of wine and came to ask his master if it is valid, to which he answered: It is decided that the case of uncovering does not apply to mixed wine. Said R. Papa to him: Provided the wine is mixed with much water, but if not, the snake drinks of it, hence such is affected by uncovering. Is that so? It happened with Rabba b. R. Huna, who was on a boat and had wine with him. Once, perceiving a snake coming to partake of it, he said to his servant: Blind the eye of this by making the wine unfit. And he took a little water and put it in the wine; the snake then turned back. The answer is that for raw wine the snake usually risks his life to get it, which he does not do for mixed wine.

But was it not told of R. Janai or Bar Hedia who, while in the City of Akhburi, saw the people there drink mixed wine, the remainder of which they put in a pitcher, covered it with cloth, and put it aside; then they saw a snake putting water into the pitcher until it became full, and then drinking the wine which was coming up to the top of the water (hence you see that a snake drinks out of mixed). The explanation is that it may drink from that which is mixed by itself, but not from that which is mixed by some one else. Said R. Ashi, according to others, Mesharshia: Should one rely upon suppositions in a case which is dangerous? (Therefore there is no difference between mixed and raw wine; neither must be used if it was uncovered, for fear that a snake drank from it.) Said Rabba: The Halakha prevails thus: to mixed wine both uncovering and offering apply, while to cooked wine neither applies.

The servant of R. 'Helkiha b. Tubi had uncovered a *kista* of water and fell asleep nearby; when he came to ask his master if

this water may be used, he answered: The snakes are said to fear a sleeping man, provided it is in the day-time, but not at night. (Said the Gemara): In reality it is not so. The supposition that a snake fears a sleeping man is not substantiated, and the time makes no difference, whether day or night. Rabh vowed not to drink water at the house of Gentiles, saying: They are not careful to cover the water, but in the house of a widow he drank, saying that although she does not know the Halakha of uncovering, she nevertheless uses it, because she did so while her husband was alive. Samuel, however, used to do the contrary. At a widow's house he would not drink, saying that, as she is without her husband, she usually does not care to cover; while the Gentiles, although not particular in covering, are at least particular in cleanliness, and they cover the water that nothing should fall in and spoil it. According to others Samuel did not drink even from the last. R. Jehoshua b. Levy said: There are three kinds of wine to which the case of uncovering does not apply—viz.: (a) wine that is both sweet and bitter; (b) that is so strong that it breaks each leather bag, and (c) wine that will become sweet when warmed in the sun. Rabha said: To wine which begins to become sour the first three days, both cases of uncovering and offering apply, but if after three days, neither case applies. The sages of Nahardea said that even in the latter case uncovering applies, as it happens sometimes that a snake drinks such.

The rabbis taught: To fermenting wine no uncovering applies; and for how many days is it considered fermented? For three days. Nor does it apply to cress-dish (chopped cress mixed with wine or oil). However, the men of exile consider uncovering also here, provided in the mixture vinegar was not used. To Babylonian Khutha'h it does not apply; however, the men of exile do apply it.

Said R. Menashi: If there are traces of snake bites in it, it must not be used. Hyah b. Ashi in the name of Samuel said: To dripping water uncovering does not apply. Added R. Ashi: Provided the dripping is constant. Samuel said: To the opening of a fig when it is torn off, uncovering does not apply, and this is in accordance with R. Eliezer in the following Boraitha, who says: One may eat grapes and figs at night without fear, as it reads [Psalm cxvi. 6]: "The Lord preserveth the simple." R. Saffra said in the name of R. Jehoshua of Rome: There are three kinds of poison coming from the mouth of the snake:

that of a young one sinks, of a middle-aged, remains in the middle, and of an old one, floats on the top. Shall we assume that the snake becomes weaker as it grows older, in spite of this Boraitha: There are three who become stronger as they grow older—viz: a fish, a snake, and a pig? Yea, their strength is stronger, but the poison is weaker. But to what purpose is the teaching that "from a young one it sinks," etc.? To that we have learned in the following Boraitha: From a barrel which became uncovered, although nine persons drank from it and remained alive, the tenth person must not drink, as it once happened that nine men drank from such and did not die, the tenth, however, drank and died; and R. Jeremiah said: That was because the poison sank and was at the bottom. The same is the case with a melon, which became uncovered; one must not partake of it even if nine persons before him partook of it and were not harmed, as it once happened that nine were not harmed and the tenth, who partook of it, died.

The rabbis taught: One must not pour water which has been uncovered in the public streets, and must not water cattle with it. The rabbis taught: One must not pour uncovered water into public grounds, nor wetten therewith one's own house, nor knead clay, or water one's own or the neighbor's cattle therewith, nor wash his face, hands, or feet therewith. But, have we not learned in another Boraitha that he may water his *own* cattle with it? This means but his cat, as the poison of a snake does not harm a cat, which devours a snake. But if so, why not water with it the cat of his neighbor? Because it becomes meagre, and his neighbor might want to sell it at that time. His own, however, he may, because in time it recovers and becomes fat again.

R. Assi in the name of R. Johanan, quoting R. Jehudah b. Bathyra, said: There are three kinds of wine which are prohibited:

From that which was sacrificed to the idol, one must derive no benefit, and its size of an olive defiles a rigorous defilement him who touches it. Wine of the heathen in general (about which it is not certain that it was sacrificed) is also forbidden to derive any benefit, and the size of a quarter of a "lug" defiles just as other beverages which do not defile men and vessels by touching. But from the wine which was deposited with a heathen by an Israelite benefit may be derived, but to drink it is forbidden. But is there not a Mishna: Fruit deposited with a heathen are considered as the heathen's, concerning tithe on

the Sabbathical year? It speaks of the case when the heathen has separated a corner for the wine deposited. But if so, why is it forbidden to drink? We are aware of the following: R. Johanan happened to be in the city Prud (the place where Bar Kapahara was residing), and he asked: Is someone aware of the teaching of Bar Kapahara which would be new to me? And R. Tau'hum of the same city taught before him: If one has deposited his wine with a heathen, he may drink it. To which R. Johanan applied [Eccles. xi. 3]: "On the place where the tree falleth, it will remain," *i.e.*, although the sage is dead, his fruit (teaching) remains. Hence we see that even to drink the wine is allowed? Said R. Zera: This presents no difficulty. R. Johanan is in accordance with R. Eliezer, who permits the drinking also (Sabbath, p. 263), while the Boraitha is in accordance with the sages who do not. R. Hiya b. R. Hiya b. Na'hmani in the name of R. Hisda, quoting Rabh, or quoting Zehra, according to others R. Hisda, said: Abba b. Hama told me that Zehri said: The Halakha prevails with R. Elezer. R. Elazar said: Everything which is deposited with a heathen is preserved if it was sealed with two seals, except wine, which is not considered preserved even with two seals. R. Johanan, however, maintains that two seals preserve wine, too. Both, however, are in accordance with the rabbis. One holds that the rabbis differ with R. Elezer in case it only had one seal, and the other holds they differ with him, even regarding two seals. What is meant by a seal within a seal? Said Rabha: If the cork in the opening of a barrel was besmeared with clay and sealed, it is considered a seal within a seal, but not if there was only one of the two.

If there was a basket over the barrel attached to it, it is considered a seal within a seal, but not otherwise.

If one leather bag full of wine was placed in another, mouth downward, it is considered two seals, but not, if mouth upward. However, if the opening was placed inside, and the outer bag was tied and sealed, it is considered a seal within a seal.

It was taught: Why did the sages forbid date-beer of the heathens? Rami b. Hama in the name of R. Itz'hak said: As a safeguard against intermarriage. R. Na'hman, however, said: Because of uncovering. Uncovering what? If the barrel, we, too, do uncover, and if during the process of brewing, we also do the same. It speaks of those places where they used to clear the water before using it for the beer, and at that time they

usually uncovered it. But if so, let, then, old beer be permitted, as there is no fear of poisoning (which would not have let it become old)? The *old* is forbidden as a safeguard, lest one use the *new*.

R. Papa used to stand outside of the store of the heathen and drink his beer; R. Abayi drank it when it was brought to his house, but not elsewhere; and the reason of both was the safeguard against intermarriage. The latter, however, was more particular, and did not wish to at all interfere with the heathens. Samuel b. Bisna happened to be in the City of Marguan (the Israelites of which were suspected of drinking wine of the heathens), and he drank neither wine nor beer, which was brought to him. It is correct that he did not drink wine, because of the suspicion that it was sacrificed, but why not beer? As a safeguard to wine.

Said Rabh: The beer in question is permissible to everyone, but Hyia, my son, must not drink of it, because he is sick, and it may harm him. Said Samuel: All the reptiles have poison, but their poison does not kill, that of a snake excepted.

The same said to Hyia b. Rabh: Come and I will tell you the good things which were said by your father. The sick heathens who become swollen, and whom uncovered water does not harm, surely ate reptiles, so that their bodies contain poison, which prevents the harming effects of the snake poison. R. Joseph said: The beer-vinegar is forbidden, because they mix into it the dregs of wine which was sacrificed. Said R. Ashi: If it was brought from the storehouse, it is permissible, for if it were mixed with dregs it would be spoiled. (See appendix.)

"*The sages did not admit.*" There is a contradiction from the following: The wine which was placed in the bags of goat-skins by the heathens must not be consumed, but one may derive benefit from it. R. Simeon b. Guda, however, testified before the son of Rabban Gamaliel that his father drank of such, in the City of Akuh, and they (the sages) admitted it? The expression not admitted in the Mishna means the other sages, but his son has admitted. And if you wish, it may be said that to one Tana by the name of Gudah, he has not admitted, but to the Tana Gudeah he has admitted.

"*Skins in which there are holes.*" The rabbis taught: What is considered a holed skin? If it is torn opposite the heart, and is round, and if there is a "Kartub" (a small liquid measure equal to $\frac{1}{4}$ of a lug) it is prohibited, but not if such was not

found. Said R. Huna: Provided it was not salted, but if salted it may be supposed that the salt has absorbed the blood.

"*R. Simon b. Gamaliel*," etc. Said R. Joseph in the name of R. Jehudah, quoting Samuel: The Halakha prevails with him.

"*Meat entering for the idol*," etc. Who is the Tana that holds thus? Said Hyia b. Abba in the name of R. Johanan: It is not in accordance with R. Elazar, who said elsewhere that in general the thought of a heathen is directed to his idol.

"*Meat which comes out*," etc. And what is the reason? Because if it was already with the idol, it is impossible that there was no sacrifice. And this is in accordance with R. Jehuda b. Bathyra of the following Boraitha: Whence do we know that a sacrifice to the idol defiles in a tent? From [Psalms, cvi. 28]: "And they joined themselves unto Ba'al-pe'or, and ate the sacrifices of the dead," and as a dead defiles in a tent, so does the same the sacrifice of an idol.

"*With pilgrims*," etc. Said Samuel: A heathen pilgrim is prohibited only when on his way *to* the idol, because he *goes* to worship the idol, but when here turns there is nothing the matter, as no consideration should be paid to what was done. The reverse is the case with an Israelite. When he goes there, one may interfere in hope to induce him to retract, but when he returns one must not, because as he is enthusiastic he will go again. But is there not a Boraitha to the effect that with an Israelite pilgrim one must not interfere either when he goes or returns? Said R. Ashi: That Boraitha speaks of an apostate Jew, of whom it is sure that he will not retract.

"*Coming from*," etc. Said Resh Lakish: Provided they are not conjoined, but if they are, it is supposed that they will return there.

"*The bags of the heathens*," etc. The rabbis taught: New bags, which are not pitched as yet, are permissible, but those which are pitched are prohibited (if they have absorbed the wine). If, however, the heathen has pitched them and put in wine in the presence of an Israelite, the wine is permissible.

But if the heathen puts the wine in, what is the Israelite's presence good for? Explained R. Papa: The heathen pitched it, and an Israelite put in the wine in the presence of another Israelite. But to what purpose is the other Israelite's presence? Perhaps the Israelite, while busy with pouring in the wine, would not notice that the heathen meanwhile devotes it. R.

Zebid, however, said: R. Papa's explanation is not necessary, as it is said before, the heathen that pours in the wine, but the wine loses its identity when mixed with the pitch, just as water does when poured into clay. Said R. Papa: We may infer from R. Zebid's statement that if a heathen puts wine in an Israelite's salt, it is permissible. R. Ashi, however, opposed, saying that there is no comparison, as in the pitch the wine is lost, but not in the salt, as the taste of it remains. There was a merchant, Bar Abi, who took away pitchers of R. Itzchak b. Joseph, kept wine in them, and thereafter returned them, and he asked in the college what to do with them? Said R. Jeremiah to him: In such a case R. Ami has decided for practice one shall fill them with water for three days and after the water is poured out he may use them. Said Rabha: He must change the water every day. The schoolmen understand that this was said only concerning our bags, but not if the bags were the heathen's. However, when Rabbin came from Palestine he said that there is no difference between ours and theirs. R. Aha b. Rabha meant to say, in the presence of R. Ashi, that this is only concerning bags and not pitchers. Said R. Ashi to him: There is no difference between bags and pitchers. R. Jehudah the second questioned R. Ami: How is it if he has returned the pitchers to the pottery, and they were burned there. May they be used or not? And he answered: Brine extracts what is absorbed by them, so much the more does fire. So, also, was it taught by R. Johanan, according to others by R. Assi, in the name of the former: Pitchers of the heathens, which were returned to the pottery, as soon as the pitch falls off from them, are permissible. Said R. Ashi: Don't teach until it falls off, but even when it weakens so as to fall off they are allowed.

If this was done by burning them out simply with pieces of wood R. Aha and Rabbina differ. According to one it is permissible, and according to the other it is not, and the Halakha prevails with the latter. The schoolman propounded a question: How is it to keep beer in the same? R. Na'hman and R. Jehudah prohibit it, and Rabha permits. Rabbina permitted Hyia b. Itzchak to put beer in them. He, however, put wine in them. Nevertheless, Rabinna did not care to forbid him, saying that this occurred only unintentionally, and he would not do it again. R. Itzchak b. Bisna had vessels made of clay and ordure, in which there was once sacrificed wine, and he filled them with water, put them in the sun, and they burst. Said R.

Abba to him: You have lost them in vain. True, the rabbis said to fill them with water, but did they say to put them in the sun? R. Yusna said in the name of R. Ami: Vessels of natron, in which there was wine, have no remedy. What is meant by natron vessels? Said R. Jose b. Abin: Vessels made of alum crystal. Rupila took away such pitchers from Pumbedith, kept wine in them, then returned them; and when R. Jehudah was questioned as to what to do with them, he said: He kept wine in them only temporarily, therefore he may rinse them with water and they are allowed. Said R. Evira: The pitchers of red earth which do not absorb much, he may rinse with water, and they are allowed. Said R. Papa: The same is the case with the clay pitchers of Michsi. Clay *buchals* R. Asi prohibits and R. Ashi permits. In case the heathen drank from them the first and second time, all agree that they are forbidden; they differ, however, with regard to the third time (*i.e.*, when the first two times an Israelite drank from them; and the Halakha prevails, that if the heathen drank the first and second times, they are prohibited, but if the third, they are not). Said R. Zebid: Vessels enamelled with white and black are permissible, but if with green, they are not, because they contain alum crystal. However, if there were splits in them they all are forbidden.

Maremar lectured: Enamelled vessels, no matter of what color, are permissible. But why is wine different from leaven on Passover, concerning which a similar question was propounded to Maremar, and he prohibited them all? Because leaven is usually used hot, while wine is usually used cold. R. Aqiba happened to be in Ginzek, and he was questioned the following: Fasting a couple of hours only, is it considered or not? And he did not know the answer. Pitchers of heathens are allowed or prohibited? Finally, in what garments did Moses worship the seven days before he consecrated Aaron to the high priesthood? And he, not knowing the answers, came with these questions to college. He was told: A fasting of hours is considered, and if one finished his fasting at sunset, he may recite the prayer of fasting. The pitchers of heathens, after they were empty for twelve months, are permissible. Moses has worshipped the seven days in a white gown. R. Kahanah taught: In a white shirt which had no seam.

"*The pressed grapes*," etc. The rabbis taught: The pressed grapes of which wine was made, with their kernel, are forbidden when they are still wet, but not when they are dry. And which

are to be considered wet? Before twelve months has elapsed, and thereafter they are considered dry. So R. Jehudah in the name of Samuel. It was taught: Rabba b. b. Hanna in the name of R. Johanan said: The prohibition of them extends even to the deriving of any benefit from them, and when they are allowed, they may even be consumed. R. Zebid said: The dregs of wine of the heathens, after twelve months, are allowed. Their enamelled pitchers, after twelve months of non-usage have elapsed, are allowed according to R. Habiba b. Rabha. R. Habiba said: And the same is the case with their thick leather bags. R. Aha b. R. Aika said: The same is also the case with their *pomace* of grapes. And R. Aha b. Rabha said: The same is also the case with their enamelled white and black pitchers.

"*Fish-oil*," etc. The rabbis taught: Fish-oil made by a heathen specialist is permissible. R. Jehudah b. Gamaliel, in the name of R. Hanina his brother, said: The same is the case with *Hillek* (small fish, which have no fins or scales) if they come from a heathen specialist. R. Abimi b. R. Abuhu taught: Fish-oil from a specialist is allowed. He taught it, and he himself explained it thus: The first and the second time when there is considerable fat in it he has to use no wine, so it is allowed, but not in the third time, when wine must be used. There was a boat with fish-oil, which came to the port of Akhu, and R. Aba of the same city appointed a watchman to guard it. Said Rabha to him: Who, then, watched it until now? And he rejoined: Until now? for what purpose was it necessary to watch? surely not for fear perhaps they would put wine in it, as in their place wine costs four-fold as does fish-oil, while here it is the reverse. Said R. Jeremiah to R. Zera: But perhaps while this boat passed the City of Zur, where wine is cheap, they have poured wine in it? And he answered: It would have been a difficulty for this boat to reach Zur, as there are (along the coast from Zur to Akhu) bays formed by protruding rocks and shallow waters caused by melting snows.

"*Cheese of Anuyiki*." Said Resh Lakish: Why did the sages forbid the cheese of Anuyiki? Because most of their calves are slaughtered for the sake of their idols. (Says the Gemara): Why the most, when even if the minority were slaughtered for that purpose, the same would be the case, as R. Mair considers the minority also? The expression "*the most*" was necessary in order to indicate that only a minority are slaughtered not for this purpose, but if it were said "*the minority*,"

then it would be understood that the majority are slaughtered not for this purpose, and as the cattle are also slaughtered not for this purpose, the minority then would be a minority of a minority, to which even R. Mair does not pay any attention. Said R. Simeon b. Elyakim to Resh Lakish: Your reason that the calves are slaughtered for the sake of the idol contradicts your own statement made elsewhere—viz.: that the slaughtering for the sake of the idol is not to be taken into consideration (in opposition to R. Johanan, who says that it is), and he answered: May you in the future be more successful in distinguishing matters. I speak of him who expressly says: I am worshipping the idol with this slaughtering.

"Calls his attention to another thing." [Solomon's Song, 1, 2.] What does this passage mean? When R. Dimi came he said thus: The assembly of Israel said before the Holy One, blessed be He: Lord of the Universe, sweet are to me the words of thy friends (the sages who are explaining the law) more than the essence of the Torah. But what was the reason that he called his attention to this passage? Said R. Simeon b. Pazi, according to others, b. Ami: He called his attention to the beginning of this chapter, "He may kiss me," etc., and the meaning was this: Ishmael, my brother, compress your lips, one upon the other, and hasten not to propound questions. But why? Said Ulah, according to others, R. Samuel b. Aba: This was a new decree, to which the reason could not be given at that time. And what is the reason? Said R. Simeon b. Pazi in the name of R. Joshua b. Levi: It is that perhaps it was uncovered and was poisoned by a snake. If so, why did he not tell him so? This is as Ula said elsewhere. When a new decree was promulgated in the west, they did not give the reason until twelve months had elapsed, for fear there may be one who would not care for such a reason, and would not accept the decree. R. Jeremiah ridiculed this statement, since, according to it, old cheese should be allowed, as R. Hanina said: A dry or an old one is permissible, because poison would not have allowed it to become old or dry. Said R. Hanina: The reason was that there is no cheese in which some skimmed milk does not remain, and this is forbidden, because the heathen mixes all milk with milk of such cattle that is forbidden to eat. Samuel, however, said: Because they curdle the milk with the skin of the rennet of a carcass. But how is it if with the rennet itself, would it be allowed? Did indeed Samuel say so? Is there not

a Mishna: The rennet belonging to a Gentile as well as that of a carcass, is forbidden, and the question: What does a Gentile's rennet mean. Samuel explained: The rennet of those cattle which the heathen has slaughtered is considered as one of a carcass. Hence, the rennet itself is also prohibited? This presents no difficulty, as Samuel's explanation had been made before R. Jehoshua retracted his statement, that the rennet itself is to be considered. And his statement cited above was after the retraction of R. Jehoshua was known, and that Mishna in tract Chulin remained uncorrected.

R. Malchia in the name of R. Aba b. Ahaba said: The reason is that they besmear the top of the cheese with the fat of swine. R. Hisda said: Because they curdle it with vinegar. And R. Na'hman b. Itz'hak said: Because they curdle it with the juice of the trees of "*Orlah*." But, according to R. Hisda and R. Na'hman b. Itz'hak, it should be forbidden to derive any benefit from *them*? This difficulty remains unsolved.

R. Na'hman b. R. Hisda lectured: It reads [Songs of Solomon, 1-3]: "To the smell are thy fragrant oils pleasant," a scholar is equalled to a glass of perfume, which, if uncovered, gives forth a good odor, while it does not if covered. And not only this, but matters the reasons of which were sealed from him, finally become apparent [*ibid.*, *ibid.*]: "The maidens ("*alomoth*") love thee." Do not read "*alomoth*" (maidens), but "*alumuth*" (hidden things). Furthermore, the angel of death becomes his lover, as the word *alomoth* is to be divided into two words, *al-moveth*, which means death. And furthermore, he inherits two worlds: this world, and the world to come, as the same word may be read "*olumuth*," which means "*worlds*."

MISHNA V.: The following things of the heathens are prohibited, but not for deriving benefit from them: Milk which the heathen himself milked not in the presence of an Israelite, their bread and oil. Rabbi in his court, however, permitted the consumption of their oil. Cooked and soaked herbs, in which they usually pour wine, and small salted fish (which is called *trith*), the brine of fish in which there is no fish, and *'hillek*, the brine of *'hilteth*, and *sal-condire*—all these are forbidden to eat, but one may derive benefit from them.

GEMARA: What is the reason for the prohibition of milk? If, *e.g.*, that the heathen might substitute for the milk of a cow that of an ass, there is no fear, for from a cow it is white, while

from an ass it is green; and if because he may mix it with above, let him curdle it; and, as the Master said, the milk of an ass cannot be curdled? Yea; this is when he needs it for cheese, but how shall he test it when he needs it as it is? Even then he can test it by taking part thereof for curdling?

This cannot prove, as there is some bad milk of a cow, which cannot be curdled. And if you wish, it can be said that even for cheese curdling is no test that the milk was not contaminated, as the unclean milk remains in the holes of the cheese (as said above).

"And bread." Said R. Kahanah in the name of R. Johanan: Bread was not permitted by Rabbi and his court, as it was with oil. But is there one who says that it was? Yea; as R. Dimi, when back from Palestine, related: It once happened that Rabbi went to a field, and a heathen brought him fine bread, the size of a "*saah*," and Rabbi exclaimed: How nice this bread is! Why should the sages forbid it? And by this exclamation the people thought that Rabbi had permitted it. In reality, however, he did not. R. Joseph, according to others, R. Samuel b. Jehudah, said: It was not as R. Dimi related, but it once happened that Rabbi went to a certain place, and seeing that there was a difficulty to obtain Jewish bread for the disciples, he exclaimed, "Is there no baker here!" People thought that he meant a heathen baker, but he probably meant a Jewish one. Said R. 'Helbu: Even if he meant a heathen baker, it is permitted only when there is no Jewish baker, otherwise it is not. And R. Johanan said: Even if he meant a heathen baker, it is permissible only in the field, but not in the city, by reason of the fear of intermarriage. Aiban used to bite and consume heathen bread at the boundaries of the field, and Rabha or R. Na'hman b. Itz'hak told his disciples not to have any conversation with him, because he eats heathen bread.

"And their oil." Concerning oil, Rabh said: Daniel has decreed the prohibition, and Samuel said: Because *they* are boiled in forbidden vessels. Said Samuel to Rabh: According to my theory, it is correct that R. Itz'hak b. Samuel b. Martha related about R. Simlayi, who preached in the City of Nezibin, that concerning oil R. Jehudah (Rabbi and his court voted and permitted it). Their reason may have been that the absorbed fat in the vessels which spoils the oil does not affect its validity, and therefore they permitted. But according to your theory that Daniel had so decreed, is it possible that R. Jehudah, the

prince, should abolish the decree of Daniel? Is there not a Mishna: A court must not abolish the decree of another, unless it is greater in wisdom and in number? And he answered: You speak of Simlayi the Ludian, such people do not care to observe the decrees of the rabbis. Said Samuel: Then allow me to send this message to him (Simlayi), and Rabh became confused. Thereupon he said: If they have not given proper attention to that which is written concerning Daniel in the Scripture, should we do the same? Does it not read [Daniel, i. 8]: "Nor the wine of his banquets." * Hence we see that the Scripture speaks of two banquets, one of wine and one of oil. However, he differs with Samuel in the explanation of "resolved in his heart," as according to him (Rabh) "he resolved in his heart, and decreed same for all Israel." Samuel, however, explains it: He so resolved for himself, but not for Israel. But how can we say that Daniel decreed so, after Bali-Abimi of Nirtah said in the name of Rabh: The decrees, concerning their bread, wine, oil, and their daughters were included in the eighteen decrees (which are mentioned in Tract Sabbath). Now, should you say that Daniel's decree was not accepted until after the disciples of Hillel and Shammai came, decreed so, and it was then accepted? Then, how is to be understood the testimony that Daniel has thus decreed? Rabh has testified that Daniel's decree was only for the cities where other oils are to be found, but not for the field. And the rabbis mentioned above decreed that the same should be even in the field. But after all, how could Rabbi abolish their decree despite the Mishna cited above: That one court must not abolish the decree of another, etc.? And, secondly, did not Rabba b. b. Hanna say in the name of R. Johanan, that even in cases where one court may change the decree of another, it cannot do so with regard to the above eighteen decrees, as concerning them, even if Elijah with his court should come and abolish them, he must not be heeded? Said R. Mesharshia: The reason is that the decrees in question were spread among the majority of Israel; as to oil, however, its decree was not accepted by the majority of Israel. As so said Samuel b. Aba in the name of R. Johanan: Our masters investigated concerning oil, and found that the prohibition was not accepted by the majority, therefore, adhere to the rule declared

* Leeser translates "which he drank"; the Talmud, however, takes it literally, as the term "mishte" in Hebrew means banquet.

by R. Simeon b. Gamaliel and R. Eliezer b. Zadok, that a court must not enact anything which the majority of the congregation could not possibly follow.*

R. Jehudah the second leaned upon the shoulder of R. Simlayi when walking in the street, and said: Simlayi, you were not in college yesterday, at the time we permitted oil of the heathens. And he answered: I hope that you will soon permit their bread also. Rejoined R. Jehudah: Then the people would name us the *all-permitting* court, as so they named R. Josh (Tract Idieth Mishna). Then to Simlayi's remark: R. Josh has permitted three things, and you, master, have only permitted one, and should you permit one more, it will be only two. Jehudah answered: I have already permitted another thing concerning the validity a divorce attains after twelve months had elapsed before the husband returns; and it happened that before the elapse of such period the man died, and I have permitted the woman to remarry.†

"Cooked," etc. Whence is this deduced? Said R. Hyia b. Aba in the name of R. Johanan, from [Deut. ii. 28]: "Food shalt thou sell me for money, that I may eat; and water for money shalt thou give me, that I may drink," which means, like water, which does not, since its creation, change by fire, eatables are not changed since their creation, by fire. (But that which was changed is not permissible.) But as there is not mentioned "*fire*" in the Scripture, this is but a decree of the rabbis, and the verse is brought only as a hint to this. R. Samuel b. Itz'hak said in the name of Rabh: To everything which can be consumed raw, the prohibition of cooked by a heathen does not apply. So it was taught in the college of Sura. In the college of Pumbeditha, however, it was taught as follows: R. Samuel b. R. Itz'hak in the name of Rabh said: To everything which is not served on the table of noblemen to relish the bread, the prohibition of "cooked by a heathen" does not apply. And what is the difference between the two versions? Small fish, mushroom and disa (a thickly cooked barley or meal). All these three cannot be consumed raw, but they are not served on the tables of noblemen. Hence, according to the first version, if

* The text here treats of the eighteen decrees mentioned in [Sabbath page 24] which we have omitted. We also call the attention of the reader to the appendix at the end of same tract.

† The text discusses here the three things which Josh b. Joezer testified in the cited Mishna, Idieth, which will be found there in the proper place.

prepared by a heathen, must not be consumed, and according to the second, it is permissible.

R. Assi said in the name of Rabh: To small salt fish cooking of a heathen does not apply. Said R. Joseph: If the heathen roasted it, an Israelite may rely upon it for aneb tabshilin.* But if he has prepared from this a mush of harsana (a dish of small fish with flour) it is forbidden. Is this not self-evident? Lest one say that the fish is the main thing of this dish, it comes to teach us that the flour is the main thing. R. Johanan said: If a heathen singed the head of an animal, it is permissible to partake of it even from the ear (although the ear is nearly cooked by the singeing). Said Rabbina: From this we may infer that if he threw a tent-pin in the stove (to dry it), and an Israelite has deposited upon it a pumpkin, it may be used. Is this not self-evident? Lest one say that the heathen intended to cook the tent-pin (hence the pumpkin would be cooked by him), he came to teach us that his intention was only to dry and not to cook it. R. Jehudah in the name of Samuel said: If an Israelite placed meat upon live coals and a heathen came and turned it, it is permissible. But let us examine the case. If without turning, it would not be cooked, then it was cooked by the heathen, and must not be permissible; on the other hand, if it would be cooked without turning, then its permission is self-evident. It speaks of the fact that if he did not turn it, it would cook in two hours, but by turning, it was cooked in one hour; and lest one say that the hastening of the cooking be taken into consideration, he teaches us that it is not so.

But did not R. Assi say in the name of R. Johanan that, when the food has been cooked to the extent that Ben Drusai† habitually eats it, the heathen may then complete its cooking, but not otherwise, and should not the above-mentioned fried meat be accordingly prohibited? This quotation intends to say as follows: If the meat was put into the pot by the Israelite and then placed upon the fire by a heathen, it is permissible. There is a Boraitha to this effect: The Israelite may put the meat upon the coals and let the heathen do the turning till he returns from the synagogue or college. Similarly, a Jewish woman may place the pot upon the fire and then leave the heathen woman do the skimming till she returns from the syna-

* See Erubin.

† Ben-Drusai, a certain robber who used to eat meat only one-third cooked.

gogue or bath-house. In these cases there is nothing to fear. The schoolmen propounded a question whether that meat is permissible which was put upon the coals by a heathen and turned about by an Israelite? Said R. Na'hman b. Itz'hak: The answer thereto can be inferred *a fortiori*—viz.: if the completion of the cooking by the heathen's hand is allowed, so much the more is it so, if by the hand of Israelite. It was taught so, too: Rabba b. 'Hana, according to others, R. A'ha b. b. 'Hana, said in the name of R. Johanan: It is only then prohibited when the heathen prepares the food all alone, without the aid of the Israelite. As to bread, Rabbina said: The Halakha is thus: When the Israelite heats the oven and the heathen places the bread therein, or *vice versa*, or, finally, the heathen does both the things and the Israelite was but fixing a little the fire during the heating, the bread is allowed. However, fish salted by heathens are allowed by 'Hiskia, but prohibited by R. Johanan; and an egg roasted by a heathen Bar Kapara allows, but not R. Johanan. But when R. Dimi came from Palestine, he said that in both fish and egg 'Hiskia and Bar Kapara allow, and R. Johanan does not. R. Hyie Parvah called once on the Exilearch, where he was asked whether it is allowed to eat an egg roasted by a heathen, and he replied that 'Hiskia and Bar Kapara allow it and R. Johanan prohibits it; the rule "The majority rules" is to be followed. Thereupon exhorted R. Zebid: Do not listen to R. Hyie, for Ahayi says that in this case the Halakha prevails according to R. Johanan. The Exilearch's servants became therefore so enraged that they poisoned R. Zebid with a drink of vinegar, from which he died.

The rabbis taught: Kaprises, Kaplututh, Hamtlia, warm water and roasted ears of corn coming from the heathens are allowed; roasted eggs are prohibited. Oil was allowed by R. Jehudah, the prince, and his court by vote. There is a Boraitha: Hamtlia is called also Peshlia and Shietta. But what, indeed, is it? Rabha b. b. 'Hana said in the name of R. Johanan: It is now forty years since it was imported from Egypt; he himself said, it is already sixty years. In reality, both concur, for R. Johanan made his statement twenty years ago. The preparation thereof is as follows: Take parsley-seed, glue-seed, juice of fenugreek; keep them all in lukewarm water until the seed coats burst; then fill with water new earthen pots, and, on putting therein some red earth, plant in it the seeds; now go to bathe, and no sooner do you come back than the planted seeds

will have borne their fruit, which is highly refreshing, so that on eating thereof you are cooled up from top to toe. Said R. Ashi: I was told by R. 'Hanina that all this is but a mere fable.

The rabbis taught: If dates of which beer was already once brewed be warmed anew in other vessels, the question arises as to whether these vessels are big or small: if big, the dates in question are prohibited; if small, they are allowed, for in small vessels the heathen surely cooks nothing unclean. What determines the size of vessel? R. Janai said: A vessel is said to be small when through its mouth the swallow is not able to pass. But could not the bird be cut into pieces and then made to pass through the opening of the vessel? Well, the foregoing determination is to be understood as follows: The opening of the vessel must be so small that the head of the said bird could not enter. But is there not a Boraitha: Dates are allowed regardless of the size of the vessel they are in? Yea; nevertheless there is no implicit contradiction here, for he who prohibits the big vessels is of the opinion that if the taste left by the old vessel were even injurious to the food, it is nevertheless prohibited; while the others who allowed it maintain that if the flavor left by the old vessels be favorable to the food, it is prohibited, but if unfavorable, it is allowed; therefore they have also allowed in this case the big vessels of the heathens. R. Sheshith said: A heathen's cooked oil is prohibited. Wondered R. Saphra: Why, there is nothing to fear in this case, for were the heathen to put into the said oil fat he would thereby impart to it an insipid odor; nor can the prohibition be based upon the mere fact that it was cooked by a heathen, as we have learned above: All that may be eaten in a raw state, may also be eaten when cooked by a heathen, and oil is eatable uncooked; as for the absorption by the vessel, it makes the taste of the oil bad, and hence it cannot be prohibited therefor. R. Assi was asked whether dates cooked by a heathen are permissible. Sweet dates, that are eatable when raw, are certainly allowed, but not bitter ones, which are not eatable when raw. The chief point here is: What about dates that are neither sweet nor bitter (and are, in case of necessity, eatable when raw)? And he answered: A distinguished man, Levi, has already prohibited them. Sthithah (a dish prepared from young ears of corn) of a heathen, Rabh allows, the father of Samuel and Levi prohibits. (Says the Gemara): If prepared of wheat or barley flour, all agree that it is allowed. A food of peas and vinegar is declared prohibited also by

Rabh. Their point of difference concerns solely a food of flour and water, which the father of Samuel and Levi prohibits, fearing that, if this were allowed, people would later eat also foods prepared with vinegar; Rabh, on the other hand, does not entertain this fear. Others word this discussion as follows: Pea flour prepared by the heathen with water is prohibited by Rabh, who fears lest food with vinegar be eaten; only foods prepared of wheat or barley flour are permissible, as for their preparation no vinegar is required. The other party, however, prohibits also these foods, fearing lest one might then allow oneself also peas prepared with vinegar.

Rabh said: Barsillai sent to David two kinds of this Shthit-hah, as it reads [II Sam. xvii. 28]: "Bedstead, pans, earthen pots, wheat, barley, flour, ears of corn, beans, lentils, oatmeal." That nowadays we buy of the heathens in the markets of Nahardea these articles in the basketfuls, is a sign that Samuel and Levi's prohibition is disregarded.

"And pressed preserves into which they habitually put wine." Its benefit is, according to R. Hiskia, only then allowed when it is not known that there is wine in it. But if it is definitely known that there is wine in it, it is prohibited. Why then do the rabbis allow the use of muries which, we know, all prepare with wine? Because here wine is used merely to destroy the fishlime of the muries, while in the above it is used to render the preserves more palatable. However, R. Johanan said that even when it is known that there is wine in the preserves their benefit is none the less permitted. What difference is there between muries and preserves, that R. Mair prohibits the use of the former, but allows that of the latter? In case of the muries which is taken with bread, one eats the wine contained therein, while in the case of preserves you consume only the preserved fruits, the wine remaining in the vessel.

"Pressed fish cut in small pieces and Hilac are forbidden." What is Hilac? R. Na'hman Hanan b. Aba said in the name of Rabh: Hilac is Sulthenuth. This fish, though it has the marks of the clean fish, is prohibited, because it so closely resembles the other unclean fish with which it is drawn out that it becomes impossible to distinguish it.

The rabbis taught: Those fishes which, when young, do not exhibit their signs of clean fish, but grow them later, as is the case with the Sulthenuth and the Epitz, are allowed to eat. Such fishes that show the signs of the clean order when fished

out, but lose them later, such as the Akunas and Apunas, Chotospeteis, Achspeteis and Utanas, are allowed. R. Abuhu heralded at Cæsaria that it is permitted to buy of anybody the fish oil and rye, for it is imported only from Pelusium and Aspamia (Spain), where there are no fishes of the unclean order. Abayi likewise allows to buy of heathens the fish Zachanthra from the river Dahab. Why is this permitted? Presumably because the bed of the river is of such a composition that fish of the unclean order can not live there. Said Rabbina: Now that the two rivers Gusa and Ganda have been united with the Dahab river the Zachanthra is again prohibited (as the former two shelter unclean fish). Abayi said: The sea-donkey is allowed, but not the sea-ox; and you remember this by the following mark: the unclean (on earth?) is clean, while the clean is unclean. R. Ashi said: Separnuna is allowed, Kadeshnuna is not; according to others he said that Kaharnuna is forbidden. R. Aqiba, when in Ginsek, was offered a fish that resembled the Hipusha, which is of the unclean order; he took a basket, put therein the fish, then, upon removing it from the basket, he found scales there, and allowed the fish. R. Ashi applied on a similar occasion in Matduria the following test: he held out the fish, which resembled the unclean Zehrpeha, against the sun-rays, and perceived scales, whereupon he allowed it. He happened to be once in another town, where he was offered a fish similar to the unclean Separnuna, so he had it covered with a white vessel, and, as he discovered scales on the walls of the vessel, allowed the fish. Rabba b. 'Hana came once to Arka Dagma, where he was given the fish Zachanthra; but as he heard the house servants call it Bati, he thought it may be an unclean fish, and refrained from touching it; in the morning, on examining the fishes, he found among them some of the unclean order, whereupon he applied to himself the verse: "No wrong can come unawares to the righteous" [Prov. xii. 21].

"*And the berries of the Chalthith are forbidden.*" This prohibition is based upon the following fact: These berries must be cut off with a knife from which they imbibe what may have penetrated it from some prohibited food, although the master says that if by the withdrawal the food loses in taste, such food is permitted; here, however, the strong sap of the Chalthith berries restore the fat possibly extracted from the knife, hence they are forbidden. R. Levi's slave used to sell Chalthith; upon the death of R. Levi, R. Johanan was asked whether it

was allowed henceforth to buy of the slave the Chalthith, to which he replied: We always repose in the slave the same confidence which we showed his master (we must thus trust also after the death of his master that he will not sell unclean for clean things). R. Huna b. Miniumi, having bought once blue wool for tshitze from the house of R. Amram the pious who was dead already, betook himself to R. Joseph to ask him whether the use of the said wool is allowed; as he was unable to give a satisfactory answer, R. Huna went away, when he chanced to meet Hanan the tailor, to whom he disclosed his perplexity and the tailor said: How could the poor Joseph know this? I, myself, bought once such blue wool for the same purpose in the house of Rabnah, the brother of R. Hyys b. Aba; it was after the death of Rabnah, so I asked R. Mathna whether or not the use of the wool is allowed, and he knew no answer; I then went to R. Jehudah of Hagruna, and he said: At last you resort to me with a question. So said Samuel: We are to trust the wife of a scholar as we have trusted her husband. Such is the opinion also of the rabbis, who teach that the wife enjoys our confidence on the same basis with her husband, which relation holds good also with regard to master and slave; upon the death of the man his house claims our confidence until sufficient reason appears to call for the withdrawing of it therefrom. The same is the case with a stationery selling blue wool for tzitzes, you may buy here so long as there is no just reason for not buying.

The rabbis taught: The widow or daughter of an Amharez, who is to marry a scholar, likewise the slave of such who is to be sold to a scholar, must take the oral oath that they will observe the commandments and prohibitions of the sages. On the other hand, if the converse is the case, they are each free from this oath, since they are now as trustworthy as ever before; this, however, is but R. Meir's view, while R. Jehuda finds the oath necessary also in this second case. R. Simeon b. Elazar said: I knew a woman who would aid her husband, who was a scholar, to put on his Tephilis; upon his death she married a contractor,* whom she would aid in putting on his amulet. Rabh said: Fat, meat, wine, and blue wool for *tzitzes* should when sealed with only one seal, never be forwarded through a heathen; but Chalthith, bread, muries and cheese may be forwarded with one seal. In case of bread, the heathen will surely not replace it,

* This is explained in our "History of Amulets, Charms and Talismans." See there.

as this could be easily discovered, the difference between fresh and stale bread, between wheat or barley bread, being too salient, and there is no reason to believe that as there is one seal he will exchange a bread for its equal. But why in the case of cheese Rabh finds one seal sufficient, while for fat, which is not dearer than cheese, he requires *two*? Said R. Kahana: Rabh did not mean fat, but fish cut in pieces and lacking the marks by which they might be discerned from meat. But if such be the case, they could indeed be taken and exchanged for meat? Rabh considers two sorts of meat: fish-meat and meat proper. Samuel, however, put it thus: Meat, wine, blue wool that are to be forwarded through a heathen, require each two seals; muries, Chilthith and cheese, only one seal; fish is like meat, hence needs no special mention (and bread he does not quote at all, for here is nothing to fear).

The rabbis taught: One should not buy of a tradesman in Syria wine, muries, milk, salcondrit salt, Chilthith, cheese, unless the seller is positively known to be a specialist, otherwise he is suspicious of mixing something forbidden into the said articles. However, if an Israelite is visiting such a tradesman in Syria, he is allowed to eat everything served at the host's table, for in the house nothing forbidden is used there. This corroborates what R. Jehoshua b. Levis said—viz.: An Israelite may accept one of the foregoing articles as a present from a Syrian tradesman, provided he gives it from his household stock, because in the house nothing unclean is used there. What is salcondrit salt mentioned above? R. Jehudah said in the name of Samuel: It is the salt used by all the nobles of Rome. The rabbis taught: Black salcondrit is prohibited, but not the white sort. So R. Meier; R. Jehudah said the contrary: White is forbidden and black is allowed. R. Jehudah b. Gamaliel in the name of R. Hanina b. Gamaliel said: Both the sorts are forbidden. Said Rabba b. b. 'Hana in the name of R. Johanan: He who prohibits the use of the white salt is prompted thereto by the fact that some put into it the *white* parts of the intestines of unclean fish; on the other hand, that some put into the black salt the black parts of unclean fish, is sufficient reason to him who forbids it, while these two facts justify the third party to prohibit the use of both salts. R. Abuhu said in the name of R. Hanina b. Gamaliel: There once lived an old man, a heathen, in our street, and he used to grease with pork-fat this salt which he was selling.

"Is forbidden." The word enumerated is calculated to exclude other articles; which, then, are these? According to Hiskia, preserves into which the majority are known to omit wine, is excluded even for benefit; and according to R. Johanan, also muries and cheese from Beth-Unirka. R. Meier's opinion is cited here without the mention of his name.

MISHNA VI.: The following things are allowed to eat, too: Milk milked by a heathen in the presence of an Israelite, honey and honey-cake from the beehive. Others think grapes, even when trickling, are not capable of defiling, not even as moisture; preserves into which as a rule wine and vinegar are not entering; pressed fish that is not all cut, fish-brine in which there is a fish, the leaves of Chalthith; soft olives closely packed in a barrel. R. Jose prohibits them if their kernels fall out easily. The locusts are forbidden when coming from the grocer's basket, but are allowed when they come from the pantry; the same is the case with heave-offering.

GEMARA: This Mishna bears out what the rabbis teach elsewhere—viz.: An Israelite sitting near the herd of a heathen who is milking milk, may drink it without any fear that the heathen has adulterated it. How was the case? If there is in the herd no milk-giving animal of the unclean order, it is obvious that the milk is allowed, but if there be one why should the milk be allowed now that the Israelite is unable to see which animal the heathen is milking? The rabbis intend to teach thus: The Israelite must occupy such a position that upon rising he could see the heathen milking, in which case it is allowed, for the heathen will be afraid to mix in unclean milk, as the Israelite might at any moment rise and see what he is doing. The rabbis emphasize this in order to dispel the belief that the milk is forbidden by reason of the Israelite's sitting position; the possibility, they hold, of his rising and observing the heathen's doings renders the milk allowed.

"The honey is allowed." This could not possibly be forbidden, as there is not reasonable fear that the heathen will mix in it foreign stuff which would surely spoil the honey. Nor is there any reason to fear that the honey may be cooked, for even if this be the case, the honey is allowed, as the basis of the previously established rule that whatever is eatable in its raw state is allowed also when cooked by a heathen. Finally, there can be no fear that the honey having been possibly kept in forbidden vessels may have absorbed the

vapor imbibed by the latter, since this would spoil the flavor of the honey.

"*Also grapes even when trickling,*" etc. This is apparently contradicted by the following: Shamai says, if one gathers grapes for the wine-press, they are, when trickling, subject to defilement to an extent as if water has been poured upon them. Hillel, who was at first inclined to hold the contrary, agreed at last with Shamai's opinion; hence, the moisture is defiling? This is no contradiction; when one puts the grapes into the press it is for the purpose of making wine, and if the grapes are moist, it is readily seen; while here it is a case of eating grapes when one intently looks for dry ones, and when these trickle too, no heed is taken, since they are used for eating and not for making wine.

"*Pressed not all cut,*" etc. The rabbis taught: When the head and backbone are whole, it is not all cut; "Fish-brine in which the fish is," means, when there are in the brine one or two worms called Chilbith, it is allowed. Now, if this is allowed with one Chilbith in it, why does the statement read: one or two? In a closed barrel one is sufficient, while in an open one two are required (because it may be supposed that one fell in from some other vessel). It was taught: R. Huna says it is allowed only when its head and backbone are recognizable. R. Na'hman said: Only when either of the two is recognizable. Whereupon R. Uqha b. Hama objected: We know that fish with scales and fins are allowed to eat; now, how is it possible to recognize an allowed fish by its head or backbone? Said Abayi: The fishes here in question are the Arah and Palmuda, which are of the clean order, but whose heads resemble those of the unclean. R. Jehudah said in the name of Ula: R. Huna and R. Na'hman have here in view the fish-brine, and not at all the fish, so that the one says: The fish-lac is allowed when the head of its fish is seen, while the other one maintains that the backbone, too, must be recognized. R. Seia said: I was in the habit of eating fish-brine with bread upon recognizing in it either the head or the backbone of its fish; now that I heard what R. Jehudah says in the name of Ula, I began to eat it only when I recognized both. Said R. Papa: The Halakha prevails: The said fishes are allowed only when both head and backbone are recognizable. To this an objection was raised from the following Thosephtha: Fishes cut in pieces and cooked are allowed in all their parts if the marks of the clean order were found, and be it

only on one part of a piece or on one piece among hundreds. A heathen brought once to market a barrellful of cut fish where a piece was found with marks of the clean order on it, and R. Simeon b. Gamaliel allowed the whole barrellful, which case all but corroborates the foregoing objection. R. Papa gave then this interpretation: All the pieces of that barrel were equal. But if so, entire statement would appear superfluous? Lest one say it should be feared perhaps another kind of fish happened to be in there, it teaches us that it is not so. A boatful of Zahontha was once brought to a fish-pond; R. Huna betook himself there to inspect them, and upon perceiving some scales in the boat, he allowed the whole. Rabha, finding it astounding that by reason of a few scales one should allow all the fish, regardless of the possibility that there might be among them fish void of scales, heralded that these fish are forbidden. R. Huna b. Hanina heralded the contrary. Said R. Jeremiah of Diphthi: I was told by R. Papa that R. Huna allowed only the fish-brine and not the fish itself. R. Ashi, however, said: I was told by R. Papa that R. Huna allowed the fish, too. As to myself, I cannot prohibit the fish after hearing from R. Papa that R. Huna allows them; nor can I allow them, however, after having learned from R. Jehudah in the name of Ula that only such fish are allowable of which both head and backbone are recognized. R. Hinna Hanina b. Aida, while once at the house of R. Ada b. 'Ahbah, said: If a ship-cargo consisting of barrels with fish-brine is brought to Israelites and the Chalbith is found in one of the barrels, they all are allowed if they were open (for it is plausible to assume that there was Chalbith in the other barrels as well, but, they being open, crept out). But if the barrels were tightly covered up, only the one with the Chilbith in it is allowed. Thereupon R. Ada asked him: Whence do you know this? From three men of great erudition: Rabh, Samuel and R. Johanan.

R. Bruna said in the name of Rabh: Fish-entrails as well as fish-rye you may buy only of a specialist. Said Ula to R. Duthai of Biri: Since Rabh speaks of entrails and rye, it is manifest that also unclean fish have rye, otherwise he would not treat of the two in the same connection. But I am able to prove the contrary from the following: The unclean fish are viviparous, while the clean ones are rye-bearing. Well, was the reply, strike the word rye from Rabh's statement. Hereupon said R. Zera: It is not necessary to strike it out, for the

fact is that unclean fish are also rye-bearing, but so that their offspring is mature in the rye before it is ejected out of the body, while that of the clean fish is brought about by the sand. But why is it requisite that rye be bought only of a specialist now that we have signs whereby to distinguish the clean from the unclean? Have we not learned that the marks which serve to distinguish the clean from the unclean eggs of birds, are also distinctive of clean and unclean eggs of fish? But how is this possible when according to law the signs of fish are the scales and fins? The above is then to be thus understood: When the eggs are elongated, with one end pointed and the other round, it is a mark of clean ones, but if the sides are both pointed or both round, it is of the unclean order. If the yolk of the egg is on the surface and the white in the middle, it is a sign of uncleanness; the converse is a sign of cleanness. If, however, the yolk and white are intermingled, it is a sign that it comes from reptiles, and is therefore unclean. Rabha said that Rabh's view must be thus interpreted: If the fish-rye is entirely squeezed so that the said signs are no longer discernible.

And if there be no specialist, what then? Said R. Jehudah: If the vendor says, I have pickled the fish and know them to be clean, he is trusted. R. Na'hman adds: He must show the sort of fish pickled by him and their entrails. R. Jehudah instructed the waiter Ada: The vendor who says, I have pickled these fish, is to be trusted.

"*The leaves of Chalthith are allowed to eat.*" This, being, as it is, self-evident, since these leaves are not cut with a knife, is stated here in order to indicate that such a leaf is allowed even when a bit of the root is on it. If not for this specific statement, it would be plausible to think that a leaf with a piece of root on be forbidden by reason of the apparently rational supposition that the root may have come from some other vessel where it possibly was cut with a knife.

"*Very soft olives.*" Although this is likewise self-evident, its statement is none the less necessary in order to prevent the belief that, since the olives are soft, wine may have been put in them to bring about this softness.

R. Jose said: What kind of olives are these? Said R. Jose b. 'Hanina: Olives whose kernels fall out when you merely keep them in your hand, it is thus manifest that the olives were kept in wine in order to make them so soft.

"*The locusts,*" etc. The rabbis taught: Locusts, Kaprises,

Kapluthuth brought from the store or from the locality where they are prepared, or from a boat, are allowed; but those that are sold by the small tradesmen are forbidden, for they spill wine upon them. The same is the case with apple-cider, which is allowed when coming from the store, but forbidden when bought of the small tradesmen, who mix wine in it.

The rabbis taught: Rabbi suffered once from pains in the stomach, so he asked if one could tell him whether the apple-cider of the heathen is prohibited or not; said R. Ismael b. R. Jose: My father had once suffered likewise from such pains, and having taken some apple-cider seventy years old, bought of heathens, he felt relieved. Said Rabbi: You knew this and let me suffer so long! Thereupon apple-cider was sought for and found by a heathen in the quantity of 300 pitchers seventy years old already; Rabbi drank therefrom and was cured. Whereupon he said: Praised be the Omnipotent who put his world in the hands of the guardians!

"*The same is the case with it.*" How is this to be understood? As R. Sheshith said: When a priest is suspected of selling heave-offering under the pretense that it is not terumah, one is prohibited from buying of him whatever he sells; but what he brings from the pantry, or in baskets, or from the place of production, is allowed to buy of him; for here he is afraid to falsify, lest the rabbis, on being informed thereabout, deprive him of everything.

CHAPTER III.

RULES AND REGULATIONS CONCERNING THE DERIVING OF BENEFIT FROM PROFANED IDOLS AND IMAGES OF HEATHENS AND ISRAELITES.—CONCERNING UTENSILS ON WHICH ARE ENGRAVED THE SUN, THE MOON AND OTHER PLANETS.

MISHNA 7.: All images are prohibited, for they are worshipped at least once a year, so says R. Mair. The sages, however, say: Only those that have in their hand a staff, a bird or a sphere. R. Simeon b. Gamaliel says: And that has something in its hand.

GEMARA: If it be true that these images are worshipped at least once during the year, why do the rabbis allow their use at all? Said R. Itz'hak b. Joseph in the name of R. Johanan: At the native place of R. Mair the heathens had the custom of worshipping each image once a year, in other places this was not the custom, and as R. Mair lays down his precept on the basis of the minority of cases (in order to exclude misconceptions), he accordingly prohibits the images; while the rabbis who do not follow this principle, allow to derive benefit from them. R. Jehudah, however, said in the name of Samuel: The Mishna here is concerned not with ordinary images, but with such as are wrought to honor kings. Rabba b. b. 'Hana said in the name of Johanan: R. Mair's prohibition concerns images erected in the gates of the place. It was taught, Rabba said: The rabbis allow only the use of city images, as these are but ornaments and not idols, but they prohibit the images of the villages which are worshipped idols.

"*The sages say*," etc. This prohibition is based upon the following reasons: The staff in the hand of the idol is an indication that it submits itself to the whole world. The bird in the hand of the idol indicates that, like the bird, it sacrifices itself for the world. Finally, the sphere is to indicate that it sacrifices itself for the whole globe. Later on the prohibition was extended also to idols with a sword in hand, a crown on the head, or a seal-ring on the finger. Formerly the belief was cur-

rent that the sword is no divine emblem, but that of a robber; but it was learned later that an image with a sword symbolizes him who has sacrificed himself for the whole world. As for the crown, it was regarded an insignificant wreath, but later experience showed it to represent a king's diadem. Finally, the sealing was always believed to be the token of a slave, but later experience taught that an image with such a ring represents him who resolved to die for the whole world.

MISHNA II.: If one finds fragments of images, he is allowed to use them. However, if he finds fragments in form of a hand or a foot, they are prohibited, for such are worshipped.

GEMARA: Samuel said: Even fragments of a worshipped idol are allowed. But does not the Mishna call for fragments of images? The Mishna appends the prohibition as regards even the hand or foot of an image, wherefor it uses the word image also before; but in fact implies the allowance of fragments of an idol, too. But why should these be prohibited, being, as they are, only fragments, and such are allowed by Samuel? Samuel explains this prohibition of the Mishna thus: If one finds a hand or a foot which he perceives is not broken off an idol, but has the form of objects specially prepared for worship, it is then prohibited, for the heathens erect a kind of altar for such objects, where they put them for worship.

It was taught: R. Johanan prohibits an idol that was broken by itself (*i.e.*, without the coöperation of a human being), while R. Simeon b. Lakish allows it. The former advances the reason that the broken idol was not yet profaned by any one, while according to the latter, the breaking is sufficient profanation, for people would say: How could this idol save others when it cannot save itself? R. Johanan objected to Resh Lakish, it reads [I Sam. v. 4, 5]: "And the head of Dagon and both the palms of his hands were cut off upon the threshold. . . . Therefore do the priests of Dagon . . . not step on the threshold of Dagon," etc. (whence it is obvious that an idol, even when broken by itself, is still held sacred by the heathens!) Hereupon the other replied: This proves nought against my opinion; the heathen, in the cited case, said that the supreme god has abandoned the Dagon, dragged up to the threshold of the temple, and only then he was reconciled, wherefore they regard the threshold as sacred, but not more the Dagon. Then R. Johanan went on to object: The Mishna allows the using of fragments from images, whence it follows that fragments from images but

not from actual idols are allowed; and R. Simeon b. Lakish rejoined: Thus, you must needs infer that only broken images are allowed to the exclusion of whole images that are forbidden, since the Mishna here is not concerned with idols; and this is R. Mair's opinion, quoted without the mention of his name. This admitted, the following may be advanced against R. Johanan's view, remembering that we conclude from the words of R. Mair to those of the rabbis: R. Mair prohibits whole images, but allows fragments therefrom; hence we say: The rabbis prohibit whole idols, but fragments therefrom they, too, allow. Why, then, does R. Johanan forbid idol fragments? Simply because images do not have the same relations as idols and are not, therefore, comparable with them, for as to images it is wholly uncertain whether or not they were worshipped. Assuming, then, that they had been worshipped and we afterward found a broken image, are we not justified in further assuming that some one has broken it purposely, whereby it has been indeed profaned, and thus its use is allowed? On the other hand, regarding real idols, it is certain that they were worshipped; what is uncertain here is whether the found broken idol was of itself broken or by the coöperation of a human being. Now, it is well known that an *uncertainty* cannot negate a *certainity*; and it is on the basis of these considerations that broken images are allowed and broken idols are forbidden. R. Johanan was further arguing: It is taught that a heathen can profane the idol of his fellow heathen as well as his own, while an Israelite cannot profane the idol of a heathen. Why, then, should we not consider an idol profaned by an Israelite as one broken of itself? Said Abayi, The foregoing teaching is to be thus understood: Only then is the idol not profaned, when the Israelite by means of hammer exerted pressure upon its face. But have we not learned that such pressure, even if not attended with breaking, suffices to profane the idol? Well, this is to say that when the heathen does it, but not when an Israelite, who, in order to profane an idol, must break off a piece therefrom. Rabba, however, said: Properly speaking, the idol is profaned when the Israelite presses in its face; however, the rabbis feared, lest the Israelite should preserve such an idol before its face is pressed in by him, and then, upon becoming the possession of an Israelite, it cannot be any longer profaned. R. Johanan advanced yet another objection: It was taught: When a heathen uses the stones of Markuliss to pave therewith a street or a theatre, an

Israelite is allowed to tread upon such pavement; but he is prohibited therefrom if an Israelite paved with these stones. Why should not the stones be regarded like an idol that breaks of itself? This prohibition was promulgated for the same reason indicated above by Rabha. He made a further objection from the following: If a heathen breaks off a piece from an idol for his own use, the idol is thereby profaned and the Israelite is therefore allowed to use it as well as the severed piece. If, however, the heathen did it with a view to embellish the idol, it is not profaned thereby, and is consequently prohibited; the piece, however, is allowed. But if this be done by an Israelite, both idol and piece are forbidden; because this case is considered analogous to that of an idol broken of itself? This prohibition is likewise based upon the foregoing declaration of Rabha.

Then R. Simeon b. Lakish raised the following objection to R. Johanan's opinion: A bird's nest on the top of a tree belonging to the temple is prohibited to derive benefit therefrom, but if one has derived such, no sin-offering is obligatory. However, such a nest when on a tree of a grove is allowed to be pulled down by a pipe and to be made use of; now, as in all probability the birds use for their nests the wood of the tree they inhabit, these nests are allowed, whence it would follow that the use of a self-broken idol is likewise allowed? Nay, not at all: Here, in the case of the bird's nest that is allowed, such nests are spoken of for the building of which it is known with certainty the birds take the materials from other trees and not from the idol grove. R. Abuhu in the name of R. Johanan, however, said: In the Boraitha it is not the nests, but rather the young birds of the nests that are concerned. The young birds are allowed, provided their nest is pulled down by a pipe (since climbing upon the tree, if allowed, may lead also to the using of the forbidden tree itself). Said R. Jacob to R. Jeremiah b. To'hlipha: Let me explain to you the Halakha in question: The birds in the nests of trees belonging to the temple as well as groves, are allowed, for they fly around; but the eggs in these are forbidden, for they, remaining as they do in the place, derive use from the tree; hence, if I take the eggs, I likewise derive some use from the tree indirectly. Said R. Ashi: Young birds unable to fly are subject to the same rule with the eggs.

MISHNA III.: If one finds vessels with the image of the sun, moon, or of a dragon on them, he must throw them into the salt lake. R. Simeon b. Gamaliel said: Only when these

vessels are of a distinguished character they are forbidden, while insignificant vessels with such images on are allowed.

GEMARA: This Mishna would lead to the conclusion that the heathens worship only the sun, the moon, and the dragon. However, I am in a position to prove that they worship yet other objects. There is a Thosephtha: If one slaughter an animal in the name of the sea, the rivers, the desert, the sun, the moon, stars, planets, or the name of the archangel Michael, or even in that of the smallest gnat, it is considered an offering to the dead. Abayi solved this difficulty thus: The heathens, it is true, are worshipping many an object, but as regards images they worship only those of the objects mentioned in the Mishna; other images serve but to decorate houses and towns. R. Sheshith, who was gathering Mishnaioth for explaining them, taught thus: The images of all the planets are allowed, excepting those of the sun and the moon. All statues are allowed, excepting those of a human being. All pictures are allowed, excepting the image of a dragon.

The master said: The images of all the planets are allowed, etc. How is the case? If to make these images, this is expressly prohibited, as it reads [Exod. xx. 23]: "You shall not make beside me"—that is to say, not to make any representations of my servants in heaven. Hence, what is allowed by the master is not the making, but the finding of such images, which is in accord with the Mishna inasmuch as it prohibits only those of the sun and moon. But again, is not the finding of a statue of a person allowed in the Mishna by implication, while he forbids it? Must we not say, then, that it is the making that is concerned here and is in accord with R. Huna b. Jehoshua? Assuming then that the allowance concerns the making, we are confronted with another difficulty: The last statement prohibits the reproduction of a dragon, which is by law allowed; we should then of necessity have to teach that it is the finding that is allowed, which is in accordance with the Mishna, so that of the three statements in the Boraitha the first and third refer to the finding, while the middle one to the making? Thereupon said Abayi that it is so. Rabha, however, asserted that the three statements have all reference to the finding, and as for the statue of a person, he says, the Boraitha is in accordance with the following: R. Jehudah prohibits also found vessels with the image of a nurse or of a serapis on them. The nurse signifies Eva, who was nurse to the whole world; serapis signifies Joseph, who

was a prince and supplied the whole world with bread, thereby appeasing mankind. The human image and that of a nurse are however, prohibited only when having respectively a measure in the hand and a son in the arms whom she is nursing. The rabbis taught: How does the prohibited dragon image look? Said R. Simeon b. Elazar, it has scales between the joints. R. Assi confines these to the neck joints only. Said R. 'Hama b. Chanina: The Halakha prevails with R. Simeon b. Elazar. Rabbah b. b. 'Hama said in the name of R. Jehoshua b. Levi: I was walking with Eliezer Hakaphar the great, when he happened to find a ring with the image of a dragon on it. While standing still before the ring he noticed a heathen boy pass, and spoke not to him; later an adult heathen came passing by, and to him he said: profane this ring (break a piece off it), and as the heathen did not obey, he hit him till he profaned the ring. This incident taught him three things: (1) A heathen may profane his own idol as well as that of a stranger; (2) only he is capable of profaning an idol, who knows the nature of idol and idol worship, and (3) one may compel the heathen to profane an idol. R. Hanina, however, ridiculed this, saying: Was not R. Eliezer aware of the following Boraitha: When one saves something from a lion, a bear, a leopard, or from the hands of burglars, from a river, or picks up what the sea-waves thrust upon the shore, or while crossing a stream, or simply in the street, the theatre, or generally in a place where many people pass, all this, be it what it may, he can consider his own, for the owner having lost his property in this manner or in such a place, has surely abandoned the idea of finding it. In the light of this consideration it is obvious that the heathen owner of the ring, having lost it in the street, has renounced the hope to find it, and thereby profaned it as an idol; why, then, was it according to R. Eliezer necessary to profane it again? Abaye explained it thus: The owner of this ring has, it is true, given up the idea of getting it back as property, but continues to consider it an idol which, if found by a heathen, will be worshipped, and if by an Israelite, he will surely sell it to a heathen; hence the fact of being lost does not profane the idol, and R. Eliezer was in the right.

"*R. Simeon b. Gamaliel says,*" etc. Which objects are the distinguished and which the insignificant ones? Said Rabh: Vessels that are not made wet are of the former sort; Samuel, however, maintains that vessels used to eat in are of the insig-

nificant, while those used as ornaments are of the distinguished kind. Yea, it was taught, there is a Boraitha in accordance with Samuel: Distinguished are the vessels found on arm-bands, nose-bands and finger-rings, while of the insignificant sort are, kettles, pans, pitchers, bed-clothes, towels (and the images found thereon are allowed).

MISHNA *IV.*: R. Jose said: One may grind the images and scatter them to the wind, or sink them into the sea. Thereupon it was objected: They might turn into dung, and it reads [Deut. xii. 18]: "And there shall not cleave to thy hand aught of the devoted things."

GEMARA: There is a Boraitha: R. Jose met the objection by quoting [ibid. ix. 21]: "And your work of sin, which ye have made, the calf, I took and burnt it in fire, and stamped it, grinding it very small, until it was as fine as dust: and I cast the dust thereof into the brook that descendeth from the mount." The rabbis, however, rejoined: This does not corroborate your view. Moses cast the dust of the golden calf into the water not to destroy it thus, but in order that he might give this mixed water to the Israelites to drink, thus testing who of them worshipped the calf, in the same manner as the test of the bitter water was applied by the priest to detect whether a woman has committed adultery (conf. Numb. v. 18). This is clearly shown from the following [Exod. xxxii. 20]: ". . . he strewed it upon the water and made the children of Israel drink of it." Thereupon replied R. Jose, quoting as follows [II Chron. xv. 16]: ". . . he removed Ma'chah his mother from being queen, because she had made a scandalous image for the grove, and Assa cut down her scandalous image and had it ground up, and burnt it by the brook Kidron," which passage clearly shows that it is allowed to grind up the idol and scatter it to the wind. In the vale of Kidron, he was answered, there is no vegetation. But have we not learned that the blood of the sacrifices from both the inner and outer altar after uniting in the aqueduct was flowing into the vale of Kidron, where it was being sold as dung for the gardens; when one took some of this blood without paying therefor he was to bring a sin-offering; hence, there were gardens in the vale of Kidron? Yea, but there are there also great expanses void of all vegetation. R. Jose was then further arguing, it reads [II Kings, xviii. 4]: ". . . and stamped in pieces the copper serpent that Moses had made," etc. And it was retorted: This is no corroboration of your view, for it reads

[Numb. xxi. 8]: "And the Lord said unto Moses, Make (to) thyself a serpent"; here the word (to) 'thyself' indicates that Moses was to make the serpent of his own metal, whence it follows that when in later times the Israelites began to worship it, the serpent did not become an idol whose use is forbidden, for others' property, even when worshipped, cannot become an idol whose use is prohibited; accordingly, King Hiskia was not obliged to destroy the serpent in question, but had in some way or other to render it impossible to be the object of worship for the Israelites. Rejoined R. Jose, hence [II Sam. v. 21]: "And they left their idols there; but David and his men scattered them"; hence, scattering suffices (and that R. Jose interpreted the word *Vaissuom* = scattered them—correctly, may be shown yet from R. Joseph's interpretation of [Is. xli. 16]: "Scatter them so that the wind carry them off.") He was again answered: Nor does this quotation bear you out, for it reads [I Chron. xiv. 12]: "And they left their idols there, and David had them burn with fire." Now that the first-cited verse is from II Samuel, and this one from I Chronicles, the two cannot be understood literally; but the right inference is that word *vaissuom* means: he picked them up, *i.e.*, he carried them off in order to make use of them. The apparent contradictions of the two quoted verses are explained by R. Huna thus: At first David ordained to burn the idols, since the Israelites could not possibly profane them; but before this order was executed, the heathen, Ithai the Gethite, had come and profaned the idols, whereupon their use became permitted, and therefore David had them carried away. Similarly we find [II Sam. xii. 30]: "And he took the Crown of Malkam from off his head; its weight was a talent of gold and had precious stones, and had it put upon the head of David"; now, how could he make use of the crown of an idol? It was again Ithai the Gethite who, according to R. Na'hman, had first profaned it. But look here, how could David's head carry a crown of a talent? R. Jehudah in the name of Rabh explains this figuratively to mean: The crown was worthy of adorning the head of David. However, R. Jose b. 'Hanina said that the crown was kept in the air by the force of a magnet, and David was sitting beneath it, so that it looked as if he had it on. But R. Elazar said: David actually had the crown on his head, but it was not of a talent weight, as it consisted only of precious stones, its worth amounted to that of a talent in gold.

It reads [Psalm, cxix. 56]: "*This* was accorded to me, because

I observed thy commands." What is the word "this" to emphasize here? David wants to point out *this testimonial* he obtained for the said observance. What testimonial? Said R. Jehoshua b. Levi: This is the crown which had the peculiarity to fit only (to) him who possessed the kingdom, and the fitting was on the spot where the Thephelin are carried. [II Kings, xi. 12]: "And he brought forth the King's son, and put the crown upon him, and (gave him) the testimony." The crown is the princely diadem, but what is the "testimony"? Said R. Jehudah in the name of Rabh: This crown was itself testimony in the same time, as it fitted only him to whom the kingdom belonged, *i.e.*, to the house of David.

It reads [I Kings, i. 5]: "And Adoniyah, the son of Chag-gith, exalted himself, saying, I shall be king, and he procured himself a chariot and horsemen and fifty men who ran before him." Said R. Jehudah in the name of Rabh: Adoniyah imagined that the crown will fit him, but this was not the case. What kind of distinctive marks had the mentioned forerunners? We were told that their spleens were cut out, and the flesh was removed from their footsoles in order that they might run with greater speed.

MISHNA V.: Peroklas, the son of a philosopher, asked once R. Gamaliel at Ako, who was then bathing in the bath of the goddess Aphrodite: Your law prescribes [Deut. xiii. 17]: "Let nothing of the devoted objects cleave to thy hands"; why, then, do you bathe in the bath of Aphrodite? And he answered: Such questions are not answered—at a bathing place. After he had left the bath he said: I am not come into her domain, but it is she that is come into mine; truly, people do not say: The bath is erected to adorn the Aphrodite, but the Aphrodite is to ornate the bath; moreover, you would not agree for any amount of money to appear before your idol when you are naked or urinating. The Aphrodite, however, stands on the channel, and everybody urinates in front of her. The law says their gods, *i.e.*, to say such toward whom one behaves with dignity inspired by something divine; while whatever does not inspire such a behavior, is allowed.

GEMARA: Why did R. Gamaliel at all answer *in the bath*? Has not Rabba b. b. Hana said in the name of R. Johanan: Everywhere but in the bath and toilet it is allowed to speculate upon subjects of the Law? Is it, you think, because he answered him not in the holy tongue? Has not Abayi said that

indifferent matters may be spoken of in the holy tongue and be it in the bath or toilet room, while holy subjects must not be discussed in these places, not even in another tongue (than the holy one)? There is a Boraitha: R. Gamaliel gave, indeed, no answer, until he had left the bath, when he said: In a bathing place one is not to answer. R. 'Hama b. Joseph said in the name of R. Oshia: R. Gamaliel gave Peroklas an evasive answer; but I (Hama) say it was not evasive. The evasiveness of the answer apparently consisted in that he said, this (Aphrodite) stands on the channel, and everybody urinates in front of her; thereby R. Gamaliel wanted to prove that the Aphrodite is profaned and he may, therefore, use her, which is not the case; because Rabha said: The front site of the very idol Peor is used as a toilet-room, and yet it is not profaned thereby; consequently, the Aphrodite is not profaned either by the fact of urinating before her. None the less, I am about to prove that R. Gamaliel's answer was, after all, not evasive. The Peor and the Aphrodite are incomparable; the worship of the former consists in *excrementing* before it, while that of Aphrodite was not of this kind, wherefore she is actually profaned thereby. Abayi, however, said: The evasiveness lies in his saying, I am not come into her domain, but she is come into mine, whereby he surely meant that if he came into her domain, she would be prohibited, which is not the case, since we have learned that a garden or a bath-house belonging to an idol, is allowed when offered gratis, but not for pay. Thus R. Gamaliel was allowed to bathe there even if the place belonged to the Aphrodite, hence, the evasiveness of his answer; but I say this was not evasive because assuming that the bath belonged to the Aphrodite, R. Gamaliel could not go in there, for the heathens would have considered it a honor if so distinguished a personage had gone to their bath and be it gratis. R. Simi b. 'Hyee said: The evasiveness in the answer did not consist in what has been here recited, but in what R. Gamaliel said further: It stands on the channel and everybody, etc., whereby he intends to indicate that the Aphrodite is profaned, whereas we have learned that by spitting or urinating before the idol, or by dragging it in the dirt, one does not profane it; but I (Simi) say it was not evasive, as such act as described here one may have committed once when moved perhaps by anger, but then he might become reconciled; while there, in the case of the Aphrodite, this takes place daily and is therefore a real profanation. Rabba b. Ula

said: R. Oshia thought to have found the evasive point in what R. Gamaliel said: People do not say that the bath-house is erected to adorn the Aphrodite, but, etc., whence it would follow that if the reverse were the case, the visiting of the bath would be forbidden, whereas we have learned: When one says, this house or this goblet be devoted to the idol, he said nothing, for only such objects as are actually sacrificed to the idol, are forbidden. Hence, the bath in question would not be prohibited. And I, Rabba, say: R. Gamaliel's answer was after all not evasive, because admitting that the bath-house is not offered as a sacrifice to the idol, it is none the less put up as a decoration for it, and then it would indeed be prohibited.

MISHNA VI.: The mountains and hills worshipped by heathens are allowed to use, but not the things brought upon them, for it reads [Deut. vii. 25]: "Thou shalt not covet the silver or gold that is on them, so that thou wouldst take it unto thyself." R. Jose the Galilean says, it reads [ibid. xii. 2]: "Their gods on the mountains," but not their mountains as gods; "their gods on the hills," but not their hills as gods. Why, then, is a grove prohibited? Because it is established by the hand of man, and whatever is made by human hand is forbidden. Hereupon said R. Aqiba: I should explain and interpret this statement thus: Wherever you find a high mountain, an elevated hill, a leafy tree, there is surely an idol there.

GEMARA: What is the point of difference between the opinion expressed by the first Tana of the Mishna and that of R. Jose? Said Rami b. 'Hama in the name of Resh Lakish: It concerns the covering of mountains, which the former prohibits by reason of its having been brought up on the mountain, while the latter allows it because, being, as it is, fastened to the mountain, it is to be treated as the mountain itself. R. Sheshith, however, said: Nay; R. Jose, too, prohibits it, and their point of difference is in the following: A tree worshipped after it has been planted and grown to be big, is, according to the first Tana of the Mishna, allowed by reason of its being worshipped after it has taken root on the mountain, while R. Jose prohibits it because it was planted by human hands. This view is shared also by R. Jose b. Jehudah, who says, it reads [Deut. xii. 2]: "Ye shall utterly destroy all the places whereon . . . (they) served their gods, upon the high mountains, and upon the hills, and under every green tree," whence it follows that the gods on the mountains, and not the mountains themselves, are for-

bidden; similarly with the hills. Lest the inference be drawn that what is put under the tree is forbidden but not the tree itself, it reads in the next verse: "Their groves ye shall burn with fire," *i.e.*, the tree is likewise prohibited. But why is it stated: "Under every green tree"? This is explained in the sense of R. Aqiba's statement in the Mishna. Now, how does the first Tana of the Mishna, who allows the tree, explain the verse, Their groves, etc.? He understands this to mean such groves that were originally planted for worship, and they are forbidden, but trees not purposely planted for worship are allowed even when worshipped later. On what does R. Jose b. Jehudah base this, his view, if not on the verse "Their groves," etc.? On the following [*ibid.* vii. 5]: "Their groves ye shall cut down," whence it is obvious that only what is cut down is forbidden, but not the roots, and this can be only with a tree worshipped after it has been planted. Now the question arises, how does the first Tana of the Mishna infer from this last verse? What R. Jehoshua b. Levi said: As the Israelites came into the promised land, they were ordained to cut down all the groves they might find before, and to burn the trees after the conquest of the land had been completed. Wherefore the one verse speaks of hewing down, and the other of burning, the groves. As R. Joseph reads [*ibid.* vii. 5]: "Ye shall tear down their altars," and there is here no call for carrying them off, hence they must be left where they are; "Ye shall break their pillars," and no mention is made of carrying them off. But how can R. Joseph say that these objects be left in their places, when it is obligatory to burn all things belonging to the idol? R. Huna said: Prosecute first and then burn. Whence is this order of events known to R. Joseph? From [*ibid.* xii. 2]: "Abed-theabdun," the one meaning literally: to destroy, ye shall destroy, hence it is a reference to two successive events. As to the first Tana, he understands this redundancy as calculated to indicate that both idol and all its belongings, the subterranean included, be utterly annihilated. While R. Jose b. Jehudah infers this radical destruction from [*ibid.* xii. 3]: "And ye shall annihilate their names from the same place." The first Tana, however, explains this as to mean: A town or place bearing the name of an idol should be renamed. Here is a Boraitha to this effect. R. Eliezer says: The verse, Ye shall annihilate their name, etc., means that while annihilating an idol it is obligatory to search also under the ground for its belongings. Said R.

Aqiba to him: This obligation is inferred from the foregoing redundancy of "to destroy and you shall destroy," while the last-mentioned verse is to indicate that a town bearing the name of an idol must be renamed. As to the nature of the new name, it must not be indifferent, *i.e.*, neither a honor nor a disgrace to the idol, for it reads [ibid. 7]: "Thou shalt utterly detest it and thou shalt utterly abhor it for it is accursed," hence, the name must always be either a detest or abhorrence. *E.g.*, if the name was originally Beth Galia, *i.e.*, House of revelation change it to Beth Karia, *i.e.*, House of concealing; Ein Kol, *i.e.*, The all-seeing eye, change to Ein Kotz, *i.e.*, the thorn-eye.

The schoolmen propounded the following doctrine in the presence of R. Sheshith: Mountains and hills worshipped by heathens are allowed, but the worshippers should be executed by sword. Worshipped shrubs and ferns are forbidden and their worshippers are to be executed. Said R. Sheshith: Your doctrine is in accordance with R. Jose b. Jehudah, who said: A tree even if not planted with the purpose of worshipping it, is forbidden if worshipped afterward; in like manner are worshipped ferns and shrubs prohibited, though not destined for worship when planted. But what prompts R. Sheshith to interpret the schoolmen's proposition regarding shrubs and ferns as meaning that these were not planted expressly for worship? Because as they are treated of together, he finds it more natural to say: Just as mountains and hills have not been created for worship, in like manner have not the ferns and shrubs been sowed and planted for worship.

It was taught: If stones absolved fortuitously from a mountain rock that was worshipped, is their use allowed or not? Two opinions, one affirmative, the other negative, are held as regards this question, the contending parties being the sons of R. 'Hyie and R. Johanan. However, the affirmative side contends that the stones are treated as the mountain which, if worshipped, is allowed by reason of its not being made by man. The objection that the mountain is immovable while the stone is movable, may be met thus: Worshipped cattle, though movable, is, except for the temple, allowed, for it does not owe its origin to man, hence the same may apply to the stone in question? If you were to dispute the comparison, one of the terms compared being possessed of life while the other one not, it may be answered that the mountain is also a lifeless being, but is allowed; the conclusion returns, for a mountain is not like cattle and *vice versa*;

but their common point is that they are not made by man, hence the inference that all objects not made by man are allowed, and the stones here are of this category.

Asked Rami b. 'Hama: Is it allowed to use the stones of a worshipped mountain for an altar, or it is here a case analogous to that of a worshipped cattle which cannot be offered as sacrifice, though it is allowed to slaughter it and to eat the meat thereof? The two are hardly analogous: the cattle is itself sacrificed, while here the stones are first blasted off, and besides they are not sacrificed as such. Therefore the two cases cannot follow the same rules. Rabha decides the case by an *a fortiori* argument—viz: The law permits to make common use of a prostitute's remuneration, regardless of whether it is of a movable or immovable nature, but it is prohibited to use even the latter for God, as it reads [Deut. xxiii. 88]: "Thou shalt not bring unto the house of the Lord either the reward of a prostitute nor the exchange for a dog"; whence the conclusion: since the movable worshipped object is forbidden even for common use, the more so will an immovable worshipped object be forbidden for God. Said R. Huna b. R. Jehoshua to Rabha: Since the provision of the Law with reference to the immovable remuneration of the prostitute is not specific, the process of your *a fortiori* argument may rather be reversed, *i.e.*, we may reason from the rigorous to the lenient thus: We know that worshipped movable objects are prohibited even to man, and yet the immovable is allowed for the temple, because it reads: "Their gods on the mountains" to exclude the mountains which are not regarded as gods and which are therefore allowed; consequently, since the prostitute's reward, which is not treated so rigorously as worshipped mountains, is even if movable allowed to man, the more should it be allowed, in its immovable form, for the case of the temple. This, my view, can by no means be objected to from the phrase *into the house* of the foregoing verse, which you might attempt to interpret thus: If one give to the prostitute as her reward a tree or a stone grave, these objects are not to be used for the amelioration of the temple; because the said phrase has a totally different meaning, as is shown from the following Boraitha: "Thou shalt not bring it into the house of thy Lord," whence it follows that it is allowed to purchase for the prostitute's reward a red cow, for such one is not brought into the Lord's house, but was burnt outside the city; so said R. Eliezar, while the sages held: The phrase *into the house*

teaches that it is prohibited to take the said reward in order to buy for it gold wherewith to decorate the walls of the temple. Rejoined Rabha: As in this case the reasoning may be pursued both from the rigorous to the lenient and from the lenient to the rigorous, we must take account of the established rule to reason from the rigorous to the lenient, and not *vice versa*. Said R. Papa to Rabha: Ye cannot prove the foregoing rule to be inconvertible, as we find a case where it was proposed to reason from the lenient to the rigorous: when the day of preparation to Passover happens to be on a Sabbath and there was one who, having become unclean through contact with a dead body, counts on this Sabbath the last day of his uncleanness, so that, in order to cleanse him, the water of ashes of the red cow must be sprinkled upon him, an act which is not otherwise allowed to perform on Sabbath, R. Eliezer allows the performance of this act in this case in order that the unclean one receive his cleansing, as it was his duty to eat from the Easter lamb. R. Aqiba, however, forbids it. Thus you see that while R. Eliezer reasons from the rigorous to the lenient (compelling thereby the unclean to eat from the Easter lamb), R. Aqiba reasons from the lenient to the rigorous (freeing thereby the unclean from this duty). Hereupon rejoined Rabha: This case is not apt to prove anything; the opinion of neither one is correct; it was R. Eliezer himself who once taught to R. Aqiba that sprinkling of the ashes on Sabbath is forbidden, but he then forgot all about it, so that his disciple, R. Aqiba, attempted to gently remind him in the above controversy; but as he did retract his view, R. Aqiba said to him: All your reasoning cannot convince me, for you told me yourself that the sprinkling on Sabbath is in this case forbidden.

MISHNA VII.: If a house situated close by a worship-house of an idol crumbles down, its owner is prohibited from rebuilding it, but he must recede four ells into his property and then build; but if the house and the said worship-place have the wall in common he should count in a half of the thickness of the wall. Stones, wood, and rubbish thereof are defiling as reptiles; for it reads [Deut. vii. 26:] "Thou shalt detest it." R. Aqiba said, it is defiling like a menstruant woman, for it reads [Isa. xxx. 22]: "Thou wilt cast them away like Dovoh (menstruation)," *i.e.*, as a menstruant woman defiles by carrying, so an idol, too.

GEMARA: But if the wall recedes four ells the idol will

thereby become more spacious! Said R. 'Hanina of Sura: This space should be made a toilet-room, or a hedge of thorns be fenced between the idol and the vacant space.

MSHNA VIII: There are three kinds of houses: (1) a house originally built for idol worship is prohibited; (2) if calcimined, repaired or somewhat renewed for idol-worship, then it is necessary to take off it only the new additions; (3) a house into which an idol was placed but thereafter removed from it, is allowed.

GEMARA: Rabh said: A house that is worshipped is prohibited; whence it is manifest that he shared the opinion that a movable object rendered immovable (like a house that is made up of movable materials) and then worshipped, must be treated as if it were still movable, and is therefore forbidden. And when the Mishna limits the prohibition only to a house originally built for idol-worship, thus allowing by implication a house built without such express purpose, it is because it treats of a house which was immediately upon its completion destined for idol-worship, but has not yet been worshipped, and prohibits it none the less; while Rabh forbids it after it has been worshipped. But if such be the case, the Mishna would have four points to treat of instead of three! The answer is that a house originally destined for idol-worship and a house that was already worshipped are treated of alike, hence the Mishna regards but three laws.

MISHNA IX: There are three kinds of stones: (1) a stone originally hewn for a statue is prohibited; (2) if calcimined and decorated, or otherwise somewhat renewed for idol-worship, then only the new additions must be taken away; (3) if one had placed an idol upon it but it was afterward removed, it is allowed.

GEMARA: R. Ami said: A calcimined and decorated stone is forbidden only when the lime penetrates it through its crevices. However, since the provisions of the houses precede those of the stones, and a calcimined house is forbidden it would appear natural to prohibit a stone, too, even when the lime has not penetrated it. But the fact is that the house is forbidden also because the lime penetrates its walls; otherwise it would not be forbidden. However, as the Mishna makes no mention of this circumstance, we could suppose thus: When a house once calcimined is afterward again calcimined and only thereafter used for idol-worship, the lime could not penetrate such

a house, and yet it is prohibited; hence, R. Ami's words must be understood as follows: The stone is allowed provided the lime that penetrated its crevices when calcimined has been afterward removed. And if not for this, R. Ami's statement, it would have been plausible to believe that such a stone, the lime having penetrated it, must be treated as one originally hewn for a statue and is therefore forbidden.

MISHNA X.: There are three kinds of groves: (1) a tree originally planted for idol-worship is prohibited; (2) if it was clipped and trimmed or somehow otherwise altered for the idol, only the alterations must be removed; (3) a tree under which an idol was put, but thereafter destroyed, is allowed.

GEMARA: Said the disciples of R. Janai: The clipped and trimmed tree spoken of in the Mishna is prohibited only when branches were engrafted thereon, but not when it was merely trimmed. Now that the Mishna makes no mention of this restriction, the foregoing statement must be thus understood: If branches are engrafted in such a tree but then removed, it is allowed; and if not for this statement one could entertain the opinion that a tree in this condition must be treated as one originally planted for idol-worship, and is therefore forbidden.

R. Samuel said: When a worshipped tree sends forth, after being worshipped, new twigs, they, too, are prohibited. R. Elazar objected thereto on the ground that the Mishna prohibits the tree only when clipped and trimmed or somehow otherwise altered, without mentioning aftergrowth. This apparent contradiction (between Samuel and the Mishna) is thus explained: The Mishna gives the opinion of the rabbis, who allow a tree not purposely planted, but afterward used, for worship; the Mishna accordingly allows all that grew on the tree after its being worshipped; while Samuel shares the opinion of R. Jose b. Jehuda, who forbids such a tree unconditionally, and therefore he prohibits its aftergrowth, too. This explanation R. Ashi opposed: Is it at all necessary to assume that Samuel differs with the rabbis? Maybe they, too, hold that the branches growing after the worshipping are forbidden? The point of difference in the respective opinions of the rabbis and R. Jose consists in that the former allow the roots of the worshipped tree on the basis of the verse, "Their groves ye shall cut down," hence, only this is forbidden that can be cut down, but not the roots; while R. Jose prohibits also the roots on the ground of "Their groves ye shall burn with fire"; hence, wholly destroy, root as

well as stem. And lest one say: The rabbis based their opinion upon the verse referred to by R. Jose, who himself made use of the rabbis' verse, whence it would follow that he, thus allowing the roots, too, differs with the rabbis only in respect of the aftergrowth, which he forbids, while they allow it, R. Ashi would meet this objection as follows: This cannot be proven, since R. Jose has never positively cited the verse "Their groves ye shall cut down," the imputation is therefore unfounded; hence, we may say that it is not his opinion. However, the above-quoted verses admit of an explanation in a reversed manner, notably: R. Jose prohibits the roots which the rabbis allow, but as for the branches, newly grown after the worship, the rabbis, too, prohibit them; hence, Samuel is of the same opinion with the rabbis. Also this argument was objected to thus: If such be the case, according to whom is the statement that prohibits the trimmed and clipped tree, thus allowing by implication the aftergrowth? It is not according to the rabbis prohibited, as they prohibit it even if the tree is not trimmed; nor is it in accordance with R. Jose, the author, as he prohibits not only the aftergrowth, but also the roots. (Said R. Ashi): The Mishna can indeed be explained in the sense of either party; for R. Jose forbids the roots of the tree only when they are not cut and trimmed; but as soon as the tree has been clipped and trimmed, it is manifest that the tree was the object of worship, not in its present shape, but only in that appearing after the trimming; this R. Jose forbids, but the roots in such case he, too, declares allowed. Now, in the sense of the rabbis, the Mishna says: "If it was clipped and trimmed," and it was thought that this statement runs contrary to the opinion of the rabbis, who prohibit aftergrowth. But the fact is that the Mishna uses this expression, lest the belief be entertained that the clipping and trimming cause also the roots to be forbidden; hence the expression of the Mishna: "Only the alterations must be removed, all the rest is allowed."

MISHNA XI.: What is a grove? A tree with an idol under it. R. Simeon said: Any tree that is worshipped. In Cidon there was once a tree that was worshipped, and a heap was found under it. R. Simeon said: Search this heap. The heap was searched and an image was found underneath; whereupon he decided: As they worship only the image, we may allow the tree.

GEMARA: The Mishna asks now what is an idol-grove;

have we not learned in the preceding Mishna that there are three sorts of idol-groves? This is true; however, in reference to the first two kinds, all agree, while with regard to the last kind, the other sages differ with R. Simeon, who upholds that it cannot be at all called an idol-grove. What, then, is the criterion whereby to distinguish a tree as an idol-grove? Said Rabh: When priests sitting under a tree abstain from eating its fruit, it must be an idol tree. Samuel said: A date tree is to be regarded an idol when priests who are picking its dates say: "These dates are for the house of Nezraphi"; because they prepare of these dates beer in which they indulge in the said house. Said Amemar: I have heard from the elders of Pumbeditha that the Halakha prevails with Samuel.

MISHNA *XII.*: It is not allowed to sit down in the shade of such a tree; if, however, one chanced to sit there, he is clean. Nor is it allowed to pass under it, and if one did pass he is unclean. If its branches inclined upon the public grounds and one passes under it, he is clean.

GEMARA: "*If one chanced to sit down he is clean.*" Is not this self-evident, since he did not touch the tree? Said Rabba b. b. Hana in the name of R. Johanan: This is merely to state that sitting in the shade of the height of the tree does not defile. Shall we assume that he is allowed to sit down? Nay; it comes to teach us that even if he sat down under the tree itself, he is also clean.

"*Nor is it allowed,*" etc. The reason of this uncleanness is this: It is positively to be assumed that under such a tree there are always remnants of idol sacrifices which are, according to R. Jehudah b. Bethira, capable of defiling him who is with them under the same shelter. As in the following Boraitha, R. Jehuda b. Bethira said: We know that idol sacrifices defile whatever is with them under the same shelter, from [Psalm, cvi. 28]: "And they joined themselves unto Ba'al Pe'or, and ate the sacrifices of the dead." Here the sacrifice to the idol is compared to that of the dead; hence, as latter is defiling, so is former.

"*If its branches,*" etc. The schoolmen propounded the following question: How should this expression be understood, as meaning he *already* passed, or that all going is allowed? Said R. Iz'hak b. Elazar in the name of 'Hiskia: The latter is intended by the Mishna, while R. Johanan thinks the former meaning is the proper one. These two views may, however, be

reconciled thus: R. Iz'hak has in view the case where there is no other road, hence, necessity allows all going under the tree, while R. Johanan has in view the case where there was yet another one.

In the place where R. Sheshith lived there was such a tree, and whenever he had to pass by it he, being blind, said to his guide: Pass me by as quickly as possible. (Says the Gemara): If there was yet another road he was not allowed there, and if not, he had the right to pass by here. What was, then, the speeding by necessary? The answer is that there was but this only road, and R. Sheshith, who was a prominent scholar, wanted (on his own account) to pass it as quickly as he could.

MISHNA XIII.: Under such a tree is allowed to sow herbs in the winter, but not in summer. Lettuce is not allowed to sow in either winter or summer. R. Jose said: Even herbs must not be sowed in winter either, for their leaves, when falling down, would turn dung for the tree.

GEMARA: The statement of R. Jose makes it manifest that he is of the opinion that two causes of which one is allowed and the other one prohibited do, when working together, bring about a forbidden effect. (In the case before us there are two causes fostering the growth of the herbs: the dung and the soil; former is forbidden, latter allowed; hence, he prohibits the effect.) On the other hand, the rabbis who do not share this opinion allow the herbs. However, in another place (iv. Mishna of this chap.) we find these two contending parties interchange their respective views. It is true, the apparently contradictory tenets of R. Jose may be reconciled thus: He allows where the idols were ground down, as the effect here cannot even become dung, but in the present case the falling leaves surely turn into dung, hence his prohibition. But how should we explain the rabbis' contradiction? It may be explained as R. Mari b. R. Kahana said: "In proportion as the hide rises in price, one loses on the meat." In like manner it can be said here of the herbs: What the dung promotes, the shade of the tree hinders; hence, as there is no use of the leaves, the rabbis allow. Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Jose.

Once a garden was ameliorated with the dung of an idol; R. Amram let interrogate R. Joseph as to how one should behave with regard to the fruit of this garden, and the answer was: R. Jehudah said in the name of Samuel, the Halakha prevails with R. Jose.

MISHNA XIV.: To derive any benefit of wood obtained from an idol-grove is prohibited. The stove heated therewith must be destroyed if new yet, but if old already, it must be cooled off. Bread baked therewith is prohibited for any benefit; if it was mingled with other bread, they are all forbidden. R. Eliezar says: The worth of its benefit should be cast into the salt lake. However, the rabbis responded: There is no redemption in case of idol-worship. The same is the case with a loom made of this wood and with the garment wrought therewith. If such a garment was mixed up with other garments and these again with others, the benefit of them all is forbidden. R. Eliezar, however, said: Cast their worth into the salt lake, and he was answered: There is no redemption from idol-worship.

GEMARA: The Mishna must lay down both the cases of the benefit of wood, for bread-baking and for garment-making; for if the former case alone were stated, there would be reason to think that R. Eliezar allows the use of the bread only when its worth has been cast into the sea, for as soon as the bread is entered in the oven, the prohibited object, the wood, is, properly speaking, no more, having been consumed by the fire; while in the case of a garment made with the aid of such wood, his prohibition is absolute, since the wood is all the time in existence. On the other hand, if the Mishna treated only the garment-making, there might rise the belief that the garment is forbidden by reason of the perennial existence of its instrument, while bread, where the wood was consumed by the fire, the rabbis agree with him. Hence, the establishment of both the cases. Said R. 'Hisda: I was told by Abba b. R. 'Hisda that Siera said, the Halakha prevails with R. Eliezar. Said R. Ada b. Ahaba: R. Eliezar, notwithstanding this his doctrine, prohibits the use of the wine in all the barrels if one cask of forbidden wine was mingled among them. R. 'Hisda, however, asserts that this wine, too, is allowed by R. Eliezar, provided its worth has been cast into the sea. It once happened that a cask of forbidden wine was mixed among other casks of allowed wine; whereupon R. 'Hisda was interrogated as to how to behave in this case, and his answer was to cast four zuz into the river and then we will allow the wine.

MISHNA XV.: How is the idol-worship of a tree profaned? If the heathen cuts down from it dry twigs or fresh branches, a staff or a rod, or even if he takes from it only a leaf, it is pro-

faned. If, however, all this be done in the interest of the tree, it remains forbidden; and if not in its interest, it is allowed.

GEMARA: The question as to how to behave toward the dry twigs and other pieces cut off the tree is discussed by R. Huna and R. Hyya b. Rabh. The one allows and the other forbids the use of these objects. This positive view is borne out also in the following Boraitha: When a heathen trims his idol, the question arises, does he do it in order to use the thus obtained wood, or in order to adorn the idol? If former be the case, both the wood cut down and the idol itself are allowed, while in the latter case the wood is allowed but not the idol. If, however, the trimming was done by an Israelite, all is forbidden, irrespective of the aim in view, because the idol of an Israelite can never be profaned. It was taught: If an idol broke down by itself, what is to be done? Rabh said: Each and every piece of it must be singly and severally profaned before its use is allowed, while Samuel maintains that an idol can be profaned only in its ordinary shape. But how is this to be understood; does not the contrary seem to be the case? Samuel means to say, then, that only an idol that is in its ordinary shape needs be profaned. The point of difference, however, here is concerning an idol not broken by itself but one that is made of small pieces, such that even a layman could put together or take apart. It is of such an idol that Rabh says it is not profaned when out of its joints, because even a layman can restore it, while according to Samuel it is not considered as an idol as soon as it loses its shape.

CHAPTER IV.

CONCERNING OBJECTS USED FOR IDOLS.—THE MANNER IN WHICH AN IDOL IS PROFANED SO AS TO BE ALLOWED FOR USE.—THE DISCUSSIONS BETWEEN THE ELDERS OF ROME ON THE ONE HAND AND R. LAMALIEL, THE PRINCE, ON THE OTHER.—HOW TO PREPARE WINE IN THE POSSESSION OF A HEATHEN FOR ISRAELITES.

MISHNA I.: R. Ismael says: Three stones near one another and beside the Merkules are prohibited; two stones in this position are allowed. The sages, however, said: Only the stones that are close by it are prohibited, but those that do not appear to be so are allowed.

GEMARA: The opinion of the sages is easily explained, as they hold that the heathens worship also the fragments of their idols, accordingly they prohibit only the stones that are perceptibly near the idol. But R. Ismael's opinion presents some difficulty—viz: If he upholds the view that pieces are also worshipped, he should forbid also two stones; on the other hand, if he believes that the heathens do not worship broken idols, he should consistently allow also three stones near the Merkules! Said R. Itz'hak b. Joseph in the name of R. Johanan: The limit of proximity required in the Mishna is set down at four ells; now, R. Ismael believes that the heathen might make of the three stones a small Merkules beside the big one, but not of two stones; while the sages who do not entertain this belief merely regard these stones as fragments of the Merkules, hence they forbid only those that are visibly belonging to it irrespective of their number.

It once happened that the palace of King Janai was destroyed; thereupon came heathens and erected therein a Merkules; later on others came who did not worship the Merkules, took the stones and paved a street therewith. Some of the sages abstained then from treading upon these stones, while others were passing there; hereupon said R. Johanan: The son of the saints treads on them, should we abstain therefrom?

Who was this son? R. Menahem b. Simai, so called because he would refrain from even looking upon the face of a coin. But why, this notwithstanding, were some shunning that street? Because they guided themselves by the opinion of R. Gidel, who said in the name of R. 'Hyia b. Joseph, quoting Rabh: Though the idol is capable of being profaned, yet the idol-sacrifice is not, and this admits of proof from here: "They clung to the Baal Peor and ate sacrifices of the dead idols," where a comparison is drawn between an idol-sacrifice and a corpse, to indicate that just as the latter remains but a corpse, so does the sacrifice remain unalterably an idol-sacrifice. In accordance with this, those sages who regarded these stones as idol-sacrifices, refrained from treading thereon, while the others held that stones cannot be regarded as sacrifices, since only those objects are regarded as sacrifices that were actually offered in the temple, which has never been the case with stones.

R. Joseph b. Aba narrated: Once Rabba b. Jeremiah, when visiting us propounded the following Boraitha: If a heathen takes stones from a Merkules and paves therewith the street, the Israelites are allowed to walk thereon; if, however, an Israelite did it, they are prohibited therefrom. And there is no artisan that could set right this Boraitha. (The difficulty is explained further on.) Said R. Sheshith: I, though not an artisan, will nevertheless attempt to explain it: The intricacy here implied is what R. Gidel said concerning the incapacity of an idol-sacrifice to be profaned, and is removed by reminding what has been shown above—viz: that these stones cannot be considered sacrifices.

R. Na'hman says in the name of Rabba b. Abuhu, quoting Rabh: If the worship of an idol consists in the rapping before it with a cane, and one breaks a cane before the idol in its honor, he is liable; furthermore, if it was yet a new idol never before worshipped, this act is considered a worship and renders the idol forbidden as well as the broken stick which is regarded a sacrifice. If, however, one threw a stick before an idol the worship of which consists in the throwing of sticks, the stick is not forbidden, but the thrower is liable. Thereupon said Rabha to R. Na'hman: The stick broken before the idol resembles the slaughtering in the temple, and is therefore forbidden; why, then, should not the cane thrown before the idol resemble the blood sprinkling in the temple, and be also forbidden? And he answered: Nay; the blood separates into drops through the

sprinkling, while the stick, even when thrown, remains whole. If such be the case, why should, then, rejoined Rabha, stones be prohibited when thrown before the Merkules? Answered R. Na'hman: I myself, knowing no answer to this, inquired of Rabba b. Abuhu, who, likewise ignorant of it, asked R. 'Hyia b. Rabh, who addressed this question to his father, Rabh, and he said: These stones are forbidden because when thrown before the Merkules they enlarge it, thereby themselves becoming idols. Said Rabha: This explanation is plausible if we admit that the idol is prohibited immediately upon its completion, *i.e.*, before it was worshipped; but, as we know, there is yet the other opinion prohibiting it only after it was worshipped. How, then, according to this latter view, can the stone be forbidden? Said R. Na'hman: A stone thrown to Markules is, while being thrown, considered a sacrifice, and, upon falling in heap with the other stones, an idol; wherefor it renders prohibited also the stones lying there from before, for they were worshipped by its being thrown, and the stone itself is forbidden as soon as another was cast upon it in token of honor and worship. Rejoined Rabha: According to this explanation, the last stone would be allowed, inasmuch as it has not yet been worshipped. Said R. Na'hman: When you are only able to recognize the last one, go freely and take it. R. Asha, however, explained the matter thus: Each stone, by the fact of being thrown, is (as it is not worshipped otherwise) itself a sacrifice, and in the same time an idol for the other stone following; hence these stones are all forbidden.

R. Abuhu said in the name of R. Johanan: That one is not liable for slaughtering a blemished animal to an idol is deduced hence [Exod. xx. 20]: "Whoever offers to the gods beside the Lord be excommunicated," whence it follows that liability attaches only to such objects as are fit to be sacrificed to the Lord. Said Rabha: What kind of blemish has R. Abuhu in view? Hardly that of the eyebrows, since an animal with such a defect was accepted by the descendants of Noah for a sacrifice in the temple of the Lord; hence he has in view such animals that lack a limb, and agrees in this respect with R. Eliezar, who said: Whence do we know that the descendants of Noah are prohibited from offering an animal that lacks one of its limbs? From [Gen. vi. 19]: "And of every living thing, of all flesh, too," etc. Living thing means such living being that wants none of its limbs, for from such animals sacrifices shall be offered in

times to come. Thereto was objected: The expression "living" means to exclude but such animals that have a defect wherewith they cannot survive a full year. (Rejoined R. Eliezar): Such have already been excluded implicitly by the expression [ibid. vii. 3]: "To keep seed alive upon the face of all the earth," since they can neither bear nor produce offspring. But, was retorted, how is it according to those who do not share this opinion as to the reproductive incapacity? To them the word, *ihloch*, with thee, sufficiently indicates that Noah was ordered to take only animals resembling him in organization, and, *i.e.*, without defects. And for aught we know, Noah may have been himself defective? By no means; the Scripture calls him *tamim*, perfect; and that this attribute does not refer to his conduct is shown by the fact that he is called also *sadik*, upright. But maybe that he was perfect in conduct and upright in his dealings? Nay; this is no convincing argument that Noah may have been defective, for, had he been such, he, following the order, would have surely taken in only animals resembling him. But now that you make use of the *ihloch* to prove that Noah's animals were of necessity normal, what is the other phrase, To keep seed, etc., good for? This was meant to remind Noah that the animals are not for keeping him company, but for reproducing their species; hence he must not take in old or castrated ones.

R. Elazar said: If one slaughter an animal to Markules, he is liable, notwithstanding that Markules is worshipped by stone-throwing; for it reads [Lev. xvii. 7]: "They shall offer no more their sacrifices unto evil spirits, after which they have gone astray," hence no blood sacrifices even to such "evil spirits" that are worshipped otherwise; as the usual worship is prohibited already in [Deut. xii. 30], "How did these nations serve their gods? even so will I do likewise."

MISHNA II.: Money, garments, utensils found on the head of an idol are allowed; vine with grapes on, wreaths of corn ears, wine, oil, fine flour, and whatever is offered upon the altar, is prohibited.

GEMARA: Whence is this deduced? said R. Hyya b. Joseph in the name of R. Oshia: from [Deut. xxix. 16]: "And you saw their abominations, and their idols of wood and stone, silver and gold which they had with them"; and again [ibid. vii. 25]: "Thou shalt not covet the silver or gold that is on them." From the two wordings, "with them" and "on them" we con-

clude that whatever is found with or on the idol without being an ornament thereof is allowed, but is not, if an ornament. But why not draw the conclusion that, just as all that is with the idol is forbidden, so also is all that is on it, regardless of its being an ornament or not? If such be the case, the "on them" would be superfluous. But why does the Mishna allow money which is then, doubtless, for decorating purposes? Said the disciples of R. Janai: It is allowed only when it is hung in a sack round the neck of the idol, which makes the latter look like a carrier, and this is surely no ornament; furthermore, as to garments, they are allowed only when they lie folded on the head of the idol, which makes it look like a washwoman. Regarding utensils, R. Papa said: It means here that they lie on the head so as to disfigure the idol. R. Assi b. Hyya said: All objects within the curtain of the idol are prohibited, even water and salt; while outside the curtain only decorating objects are forbidden.

MISHNA III.: The use of a garden or bathing-place belonging to an idol is allowed when it is gratis, but is forbidden when it is for remuneration. If they belong to both the idol and some people, their use is allowed unconditionally, whether gratis or for pay. The idol of a heathen is forbidden from the very beginning, while that of an Israelite is not forbidden until after it has been actually worshipped.

GEMARA: "*Their use is allowed unconditionally,*" etc. Said Abayi: "For pay" means that the idol-worshipper and not the priest is remunerated, while "gratis" means that neither is getting anything.

"*The idol of a heathen is forbidden from the very beginning,*" etc. The Mishna expresses here the opinion of R. Aqiba without, however, mentioning his name. For we have learned, it reads [Deut. xii. 2]: "Ye shall utterly destroy all the places whereon the nations you are about to drive out," etc.; this verse has reference to all the utensils employed by the heathens in their worship. If this be so, one could conclude that even such vessels are forbidden that were begun for idol-worship, but are not yet finished, or such that though finished, have not as yet been brought into the temple of the idol; wherefore it says in the quoted verse "in their worship," whence it follows that only what was employed at the worship is forbidden. It is in view of this that the sages prohibit the idol of a heathen not until after it was worshipped, and that of an Israelite from the

very beginning. So said R. Ismael; R. Aqiba, however, said the very contrary of what the sages maintain—viz: an idol of a heathen is prohibited as soon as prepared, while that of an Israelite only when already worshipped.

The master said: The verse [Deut. xii. 2] has reference only to utensils employed by the heathens in their worship. But does the verse speak of utensils when it speaks of places? The answer is this: The verse in question cannot possibly refer to the places, as it is stated right after: "To their gods on the mountains," whence it was concluded that the gods but not the mountains are forbidden; consequently, neither can here be meant the places, hence it is the *objects* in the places that are meant, and such objects can be no other than the utensils in question. But further above it is said: The sages prohibit the idol of a heathen not until after it was worshipped. How could the sages commit themselves to such an inference from a verse where the vessels, and not at all the idol, are concerned? The answer is that the verse says, "All places where the nations worshipped their gods." Now, as previously explained, "the places" mean the vessels on them, hence, just as the vessels are not prohibited until after they were employed in idol worship, so also the idols are forbidden only after they were worshipped. On the other hand, R. Aqiba, who does not compare the vessels to the idols, may say that the particle *eth* divides the verse into two distinct parts. As to R. Ismael, he explains his position thus: As the idol of a heathen is forbidden only after its being worshipped, it is common sense that that of an Israelite should be forbidden from the very beginning; otherwise what difference would there be between the two? Surely not that the idol of an Israelite be altogether allowed, as it reads [Deut. xxvii. 15]: "Cursed be the man who maketh a carved or molten image," etc.; hence the curse is imposed upon the making of an idol. Well and good, but this verse does not prove as yet that the *use* of the idol is forbidden! It was answered that it is further expressly stated: "The idol is detestable to the Lord," hence, prohibited. Now, how does R. Aqiba assert his position? Said Ula, from [ibid. vii. 25]: "The graven images of their gods ye shall burn with fire," etc., which "images" surely means the likeness of the idol as soon as it is graven. As to R. Ismael, he understands this verse in the sense given to it by R. Joseph, who said: Whence do we know that a heathen may profane his idol? From "The images of their gods," etc.,

which means that the idol is prohibited so long as the heathen treats it as a god, but becomes allowed as soon as he no longer treats it so, *i.e.*, breaks up some piece thereof. On the other hand, R. Aqiba proves that the heathen can profane the idol from the same source used by Samuel—viz. [ibid.]: "Thou shalt not covet the silver or gold that is on them," and ends, "Thou shouldst take it unto thyself"; this apparent contradiction he explains thus: Do not covet before the idol is profaned, but after its profanation you may take it. But again, whence does R. Aqiba know that the idol of an Israelite is not prohibited until after worship? Said R. Jehudah, it reads [ibid. xxvii. 15]: "Cursed be it, and putteth it in a secret place." This phrase, "in secret place," means, pours out before the idol his secret thoughts; hence, R. Aqiba concludes that it is forbidden only after such worship. R. Ismael, on the other hand, explains this phrase in the sense of R. Iz'hak, who says: This phrase teaches us that the idol of an Israelite must be wholly destroyed and put in a secret place; while R. Aqiba endeavors to prove this obligation by what R. 'Hisda said in the name of Rabh [Deut. xvi. 21]: "Thou shalt not plant unto thyself a grove, any tree near the altar of thy Lord," signifies that just as an altar that becomes out of use must be removed out of sight by being buried under ground, so also the groves (that are spoken of here in connection with the altar) must be put in secrecy. R. Ismael, however, infers from this verse what is said by Resh Lakish (Sanhedrin, p. 15, par. Resh Lakish, to the end).

R. Hamnuna questioned: What is the law concerning a vessel that, after a piece had been broken off it, was again made fit for use and then dedicated to idol-worship? Before proceeding to answer this question, one must know to whose idol this vessel was devoted; if to that of a heathen, both R. Ismael and R. Aqiba consider such vessels as serving vessels, which are forbidden not until after they have actually been used in the worship. Thus, the question must refer to the idol of an Israelite, and, since R. Aqiba, who prohibits the idol of an Israelite only after worship, will doubtless do the same as regards the serving vessel in question, it can be treated only in the light of R. Ismael's opinion, so that it is necessary to know in the first place whether such serving vessels are subject to the same rules as the vessels of a heathen's idol are. If yes, they are forbidden after the use; but if they follow the rules of an Israelite's idol, they are forbidden from the very beginning. But why does

R. Hamnuna ask concerning a repaired and not a newly-made vessel? The answer is that his question has, in fact, reference to the problem of old defilement. As the following Mishna (Kelim, xi. 1): "Of metallic vessels the flat and hollowed ones are subject to defilement; if, however, they were defiled and broke they become clean. But if they were again made into vessels, the old defilement returns." Now, R. Hamnuna was in doubt as to whether this Mishna is concerned with biblical defilements only, or also with rabbinical defilements. But if so, why does not R. Hamnuna put his question regarding rabbinical defilements in general? His desire was that his question, embrace also the other point—viz: Does a rabbinical defilement return? And should you decide that it does not, then the question arises: How is the case with idolatry? Shall we assume that, because of the rigorousness of idolatry, a rabbinical be equivalent to a biblical or not? This question remains undecided.

R. Johanan asked R. Janai: I should like to know whether or no food offered to an idol, if profaned, loses thereby its defilement (which lay therein by reason of its being of the idol)? But why does he ask about food and not about vessels? Because he knew that the remedy for devoted vessels is a legal bath, which abolishes also the defilement. Furthermore, R. Johanan does not ask whether or no an idolized food, if worshipped and then profaned, still defiles; because he knows that a profaned idol is no longer forbidden, hence, its defilement is also abolished. But he put up the foregoing question merely because R. Gidel said somewhere above that all objects sacrificed to idols can never be profaned, so he wants to know now whether R. Gidel's theory applies to the prohibition which is biblical, but not to the defilement which is rabbinical, or to both? Also this question remains undecided.

R. Jose b. Saul asked Rabbi whether the vessels used (in the temple of Egypt) in the house of Chania, are allowed for use also in the temple of Jerusalem? This question suggests that R. Jose shared the opinion of those who say: The temple of Egypt was not considered an idol temple. It was, however, taught that the priests who served in the Chania temple are not allowed to serve in that of Jerusalem, the less so are those who served at idol-worships. He thus wanted to know whether the vessels follow the same rules as the priests; or since the priests are endowed with intelligence they were fined. But the vessels

destitute of intelligence should not be fined, or there is no difference? Hereupon said Rabbi: Yea; they are prohibited and there is a verse from Scripture to corroborate this, but I forgot it. R. Jose thus objected, it reads [II Chron. xxix. 19]: "All the vessels which King Achez had cast aside . . . have we put in order and sanctified." Does not "put in order" mean a legal bath and "sanctify" to bring back to sacredness, whence it is obvious that even such vessels that were used in idol-worship are allowed to be brought into the temple for use, after passing through the legal bath (the more so are allowed the vessels of the Egyptian temple)? Thereupon said Rabbi: The blessing of the Lord upon you: you have recalled to my memory the forgotten verse! "Put in order" means to hide them, and "sanctify" to substitute them by other vessels. Is Rabbi's interpretation supported by the following Mishna (Midath, i. 6): There was a pantry in the temple, where the Maccabees heaped up the stones of the altar defiled by the Greeks; and R. Sheshith said: The Greeks have defiled the altar by their idol-worship, and though these stones are allowed for private use, yet they were not used in the temple. (Similar was the case with the vessels of the Egyptian temple, which were allowed only for private use)? Said R. Papa: From the case of the Maccabees is no support at all, since the stones there were prohibited even for private use, the Maccabees guiding themselves by [Ezek. vii. 21]: "And I will give it up into the hands of the strangers . . . and they shall pollute it"; so that they could not do otherwise, for, in order that the stones be again allowed, they must be first profaned by breaking them, which is not permitted to do, as by law "*whole* stones must be used to build an altar"; nor could the stones be sawed into two (thereby becoming profaned), since the law forbids "to bring iron thereon"; so that as there was no means to profane the said stones, they were of necessity set aside. But why did not the Maccabees have the stones profaned by a heathen and make of them private use? They could not do even this, for as R. Oshia said: The sages wanted once to forbid all use of gold and silver, because the enemy carried off the gold and silver of the temple, it was, namely, feared that the money coined therefrom might reach the Israelites, and by law it is prohibited to make use of what belongs to the sanctuary. It was, however, objected: How could the sages have conceived such a wish, the gold and silver of Jerusalem forming but an infinitesimal part of those in the whole world, and the smallest can never render

prohibited the greatest part. Abayi explained the words of R. Oshia thus: The sages wanted to forbid not all the gold and silver, but only the gold and silver dinars issued by both the kings Hadrian and Traion, on which the image has become of late undiscernible, and which were surely coined of the gold and silver of the temple. However, when their attention was called to the verse, "And will give it into the hands of strangers," etc., they abandoned the idea, seeing that an object once profaned is allowed for private use. Now, as to the altar, it was a sacred place to bring offerings to God, which is not the case with the gold and silver; hence it is below dignity to use its stones in private.

MISHNA *IV.*: A heathen can profane his idol as well as that of his neighbor. An Israelite cannot profane that of a heathen. The idol once profaned, all that pertains to its service is abolished; on the contrary, if only the pertainings were profaned, they alone are allowed, but not the idol.

GEMARA: Rabbi taught to Simeon his son: A heathen may profane his idol as well as that of his neighbor; said he to him: Master, in your youth you used to teach that a heathen profanes his idol as well as that of an Israelite. (Says the Gemara): Can then an Israelite's idol be profaned? Was it not said above that such can never be profaned? Said R. Hillel b. R. Wells: He spoke then of the case where the heathen owned the idol with the Israelite in partnership. But let us see what was the reason of both his statement in his youth and in his advanced age. In his youth he thought that if an Israelite worships an idol, he does it with the knowledge of the heathen, hence the heathen, when profaning his part, profanes also that of the Israelite; while in his later days he came to the conclusion that the Israelite is worshipping on his own account, hence the heathen profanes only his own part, that of the Israelite remaining unprofaned.

There were others who taught the statement of R. Hillel as concerning the latter part of our Mishna: An Israelite cannot profane that of a heathen. And to the question, is this not self-understood? Said R. Hillel b. Wells: It refers to a case where an Israelite and a heathen are the joint owners of the idol, in which case the former can profane neither his nor the heathen's part, while the latter may his own part but not that of the Israelite. Others, however, bring this, R. Hillel's explanation, in connection, not with the Mishna, but with the Boraitha fol-

lowing. R. Simeon b. Menasia said: The idol of an Israelite can *never* be profaned; and this "never" R. Hillel b. Wells interpreted to mean that, when an Israelite and a heathen are the joint owners of an idol, the latter, by profaning his own part, does by no means profane the other's part, though it may be assumed here that the Israelite is a partner to the idol only out of complacency to the heathen. And he comes thereby to teach us that an Israelite worships an idol not on the knowledge of the heathen, but on his own.

MISHNA V.: How is an idol to be profaned? By cutting off the tip of its ear, the point of the nose, or the ends of the fingers, or by disfiguring its face with a hammer, even if thereby nothing is broken off. But if he only spat or urinated before it, dragged it about in the dirt, or cast such upon it, it is not profaned. If a heathen sold or pawned his idol it is profaned according to Rabbi, but not according to the sages.

GEMARA: "*Disfiguring its face with a hammer,*" etc. Why should it be profaned when nothing of it was lost thereby? Said R. Zera: Because it has thus been made unrecognizable.

"*But if he only spat,*" etc. Whence is this deduced? Said 'Hiskia, from [Is. viii. 21, 22]: "And when they shall be hungry, they will become enraged and curse their king and their god . . . and they will look unto the earth," etc., which means: Though the heathen curse his king and god and look up to the true God, he will still turn his eye back to the earth to worship his idol.

"*If a heathen sold,*" etc. In respect of this part of the Mishna Zeera in the name of R. Johanan and Jeremiah b. Abba in the name of Rabh expressed thus their respective opinions. The one says: The decision of the sages regards only the case when the heathen sold or pawned the idol to a *heathen* jeweller, but if to a Jewish one all agree that it is profaned; while the other holds that they differ also regarding the latter case. The schoolmen asked: According to the latter view, how should the Mishna be interpreted? Does Rabbi mean here that the idol in question is profaned *only* or *even* when sold or pawned to a Jewish jeweller, but if to a heathen he agrees with the sages? Come and hear. Rabbi said: My view is correct in case the idol is sold to be destroyed, and that of my colleagues, if to be worshipped. But broken and worshipped must have here some specific meaning, for otherwise we should obviously have no two opinions on the subject. And indeed, Rabbi in-

tends to say: An idol sold to an Israelite who will surely not worship, but *break* it, while the sages speak of an idol sold to a heathen who will surely not break, but *worship* it; hence they differ in both cases? Nay; it may be said that Rabbi's statement means this: My view is accepted by my colleagues, when the idol was sold to be destroyed, as they differ only when sold for worship—to a heathen jeweller.

The rabbis taught: If an idol is pawned by a heathen, or it is buried under the ruins of an old fallen house, or is stolen by burglars, or, finally, is left standing alone by the heathen, who went to the sea-countries, the question arises whether or no the heathen had in mind to come back to it, as such was the case in the time when Jehoshua had war with the Amorites; if he had, the idol is not profaned. It is obvious that all the four cases must needs be stated. The first case implies that the heathen wants to have the idol back, while in the second, the idol being left under the ruins, the heathen may be thought as renouncing it, whereby it is profaned; hence the second statement. In like manner does the third case imply something different from the contents of the preceding cases: The ruins can possibly be removed, but a burglary is less likely to be returned. Finally, the fourth case teaches us again something new—viz: while in the third case the heathen may yet think that the idol fell into the hands of *heathen* thieves and they will worship it, or even if they be Israelites, they will sell it to heathens, they themselves, having no use of it; in the fourth case he abandons the idol of his own will, since he has not taken it along with him. Hence all the four cases must be taught. Now, the concluding sentence of the Boraitha must be thus understood: If the heathen has his mind to come back as the Amorites did, it is necessary to treat the idol in the same way as it was treated at those times—namely: Not to regard it as profaned, but rather to annihilate it altogether. But did the Amorites ever return? There was nothing of the kind! The answer is that if he has in mind to return, his idol must be treated as in the war of Jehoshua (though the Amorites have not returned). But if so, why the comparison with Jehoshua's times? The Boraitha intends to teach by the way yet what R. Jehudah said in the name of Rabh: If an Israelite erects a brick to worship it, but does not worship, and a heathen comes and worships it, it is prohibited, notwithstanding the rule that no one can render a thing unlawful that is not his own; here the motive of the Israelite is

determining. How does R. Jehudah substantiate this his opinion? Said R. Elazor: He bases it on the proceedings of the Israelites upon their entering the promised land; for it reads: "Their groves ye shall burn with fire"; here, too, one could then wonder and say: The holy land, having been promised by God to Abraham and his descendants, belonged to the Israelites and not to the Amorites; how, then, could the latter have rendered unallowable these groves that were not their own? If you are ready to assume that these groves had sprung up before the promise, then you must regard them as the idol of a heathen, whose profanation, as we have seen above, suffices! Why then did not the Israelites compel the heathens to profane it and then use it? Why were they ordered to burn it down? In view of all this the verse, "Their groves," etc., must be thus explained: The promised land is indeed regarded the ownership of the Jews, and as Israel, by his worship of the golden calf in the wilderness, exhibited his inclination toward idol-worship, the grove is considered the idol of a Jew, worshipped by heathens only in accord with the Jews, and as such can by no means be profaned, but must be annihilated. And the case here with the brick is perfectly analogous. However, is the conclusion from the golden calf to the grove warranted? The Israelites might have been inclined exclusively toward calf-worship? Nay; they declaimed at that time before the calf: These are your *gods*, O Israel! whereby they must have meant a *variety of gods*, toward which they felt disposed. Finally, that the prohibition was extended to *all* groves and not only to those that were the contemporaries of the calf and which the Israelites repented, is due to the fact that there was no possibility to distinguish between old and newly-planted groves.

MISHNA VII.: An idol abandoned by its worshippers in time of peace is allowed, but is forbidden when abandoned in time of war. Altars erected for kings are allowed, for the idol is put on them only when the kings pass.

GEMARA: R. Jeremiah b. Abba said in the name of Rabh: The House Nimrod has the same regulations regarding idols as those abandoned by the owner in time of peace, because, though scattered all the world over as if driven about by war, it had the choice to return home and get its idols, and by not doing so it showed a lack of interest in them, hence they are allowed.

"*Altars erected for kings*," etc. Are they not, after all, altars of the idol? Said Rabba b. b. 'Hana in the name of R.

Johanán : It means to say that the priests prepare the altars for the king, but he takes another road, so that no idols nor offerings come upon these altars. Ula, on his return from Palestine, alighted on one of such altars that was broken; R. Jehudah, on noticing this, asked him why he acted thus after both Rabh and Samuel had forbidden all use of such an altar when broken; and even he who says that broken idols are no longer worshipped and hence are allowed, does not assert the same with regard to altars, as it would be disgraceful to worship a broken idol, but upon a broken altar an idol may always be put. Hereupon replied Ula: My respect for Rabh and Samuel is so great that I should readily fill my eyes with the ashes of their corpses; none the less I cannot help refuting this opinion, for R. Johanán and Resh Lakish said: An altar upon which idols are habitually placed is, when broken, allowable; furthermore, even he who holds that fragments are worshipped allows such an altar, as he namely says: The broken idol is always, even when broken, worshipfully regarded by the heathen, while no godliness is even imputed to an altar—it is but a mere stand for idols—so that as soon as it is broken, it is set aside without any regard. The following Boraitha expresses the same view of R. Johanán and Resh Lakish: An altar used as a stand for idols is, when partly broken, allowable; however, an altar used for sacrifices is, when broken, forbidden, until most of its stones fall apart.

Which are the marks distinguishing the altar for sacrifices from that used as a stand? R. Jacob b. Aidi said in the name of R. Johanán: The latter kind consists of but *one* stone, while the former of several stones. 'Hiskia adduces a verse to this effect [Is. xxvii. 27, 9]: "When he maketh all the stones of the altar as limestones, that are beaten in pieces, when there shall not arise again any groves and sun images," *i.e.*, only when they are turned to lime no image is put on them, nor sacrifice, then only is their use allowable.

There is a Boraitha: If one worships one's own animal, it is prohibited from being used as a sacrifice in the temple, but not if it is his neighbor's. There is a contradiction from the following Thosephtha: All cattle is regarded as worshipped, immaterial whether the worship took place by mistake or intention, by compulsion or free will. Now, what other could be the meaning of compulsion than that one forces into his house an animal of a stranger and worships it? Hence, cattle of a stranger is prohibited, too, through worship. Thereupon said

Rami b. 'Hamma: The word compulsion means that heathens compelled him to worship his own animal.

R. Zera opposed: Does not the Scripture free a culprit by compulsion? [Deut. xxii. 26]: "And to the damsel ye shall do nothing," etc. Therefore said Rabha: The prohibition of worship was general, but from the expression [Levit. xviii. 5]: "He shall live in them," whence the rabbis infer but not "he shall die in them," compulsion was excluded; however, thereafter it reads again, "He shall not profane my holy name," whence the rabbis infer that even if compelled, which, too, would apparently contradict each other. The explanation is that compulsion imposed privately is excused, but if publicly, one must not yield to it. Said the rabbis to Rabha: There is a Boraitha that supports your opinion: The altars of idols remain prohibited even after the evil decrees of the government have ceased. Rejoined Rabha: If only this, it cannot be a support to my opinion, for there may have been an apostate Jew who worshipped it willingly. Said R. Ashi: Do not say "may have been," as it is *certain* that there was such, and therefore the prohibition remains forever. 'Hiskia, however, said that the above-mentioned forcing of the neighbor's animal to worship means if he pours wine between its horns for the idol, and not worshipped by bowing to it. R. Adda b. Ahaba, however, opposed: Can, then, this be called worship? One can worship an idol, while by pouring wine on the animal for the idol he makes it only for an altar, and a living creature is not forbidden when used in the service to the idol.

Therefore said R. Adda b. Ahaba: 'Hiskia must have meant: When the animal is itself made some idol and then the wine poured to honor it, it is forbidden, which view coincides with what Ula said in the name of R. Johanan when returning from Palestine: Although strange cattle is rendered forbidden by worship, yet it is prohibited as soon as some act has been performed on its body. Said R. Na'hman: Go tell Ula that R. Huna taught us this, having explained this Halakha long ago in Babylon: An animal resting in the proximity of an idol becomes unallowable, as soon as one cuts through its gullet or windpipe for the sake of the idol, and be it the ownership of another one. Now, upon what can this view be based? The report of the Boraitha concerning the barring of priests, who were compelled to become such of an idol, from services in the Jerusalem temple, contains hardly an analogy of compulsion; because a priest

could flee and thus save himself, while an animal destitute of intelligence could not. Nor can the Mishna, treating of the Maccabees, who set aside the altar-stones upon which the Greeks committed some act to honor an idol, be adduced as a basis, for R. Papa explained it already, saying [Ezek. vii. 22]: "I turn my face from them, that they may pollute my treasure," shows that the temple was profaned by the arrival of the Greeks, and hence was no longer the ownership of God, but considered as that of the Greeks. Thus, the view in question can be based but on this passage [II Chron. xxix. 19]: "And all the vessels which King Achaz had cast aside . . . have we put in order and sanctified"; and the master said that they were hidden and substituted by others, *i.e.*, they were prohibited. Now, these vessels were not the ownership of Ahaz, and hence by his worship he could not possibly profane them; we must thus assume that he committed with them some act of honor to the idols, whereby he rendered them forbidden, and here is applied the same rule in respect of cattle.

R. Dimi, on his return from Palestine, said in the name of R. Johanan: Although the sages taught that, when one bows to uncultivated ground, saying: This be my god, the ground is thereby not forbidden; yet if he dug graves, pits or caves as an idol, the ground is prohibited. R. Samuel b. Jehudah, on his return from Palestine, said in the name of R. Johanan: It is true the sages said that an animal worshipped by others than its proprietor is not forbidden; yet the animal obtained by the idol-worshippers in exchange for an idol is forbidden. Rabin, when back from Palestine, said: Concerning this topic R. Ismael b. R. Jose and the sages have expressed two opinions, but it is not known who said which. The one prohibits an animal exchanged for an idol, but allows the second animal obtained in exchange for the first. The other opinion prohibits the second animal, too, basing itself upon [Deut. vii. 26]: ". . . lest thou become accursed like it"; hence, it appears that whatever comes from the accursed is *like it*, and is accordingly forbidden.

MISHNA VII.: The Jewish elders were asked by the philosophers at Rome: If God is displeased with idol-worship, why does he not destroy the idols? And they replied: If the heathens worshipped but things not needful to the world, he would surely annihilate them; but the fact is that they worship the sun, moon, stars and planets; should then God destroy his world on account of these fools? Then retorted the others:

Let God destroy the unnecessary objects and leave the others that are needed for the preservation of the world. Replied the elders: If he did so, the idol-worshippers would but be confirmed in their belief and say: Here you see that these are gods, for they are indestructible.

GEMARA: The rabbis taught: The philosophers once questioned the elders at Rome: If your God is displeased with idol-worship, why does he not destroy the idols? And they replied: If the heathens worshipped but things not needful to the world, he would surely annihilate them; but they worship the sun, moon, stars and the planets; shall he destroy the world because of the fools? But the Lord allows the world its natural course, and as to these fools who spoil it, they will not escape punishment—in other words, when some one steals wheat and sows it, the seed should not bear fruit by reason of its being stolen; but nay, God lets nature her course, while to the thief will be meted his due. In like manner, adultery is not barren on its own account, but the culprit is not spared. Resh Lakish says something to this effect: The Holy One, blessed be he, says: Not only do the wicked of this earth forfeit my coin, but they force me yet to put my stamp thereon.

A philosopher once asked Raban Gamaliel: Your law says [Deut. iv. 24]: "For the Lord thy God is a consuming fire, yea, a watchful God"; why is it that he is so watchful with regard to the worshipper and not to the idol? Said Raban Gamaliel: I will answer your question by a metaphor: Suppose a king's son names his dog with the father's name and swears, whenever he does, by the life of this dog; the father, once informed about this, will he get angry at his son or at the dog? Naturally enough, at the son. Thereupon said the philosopher: You call the idol dog, which is not feasible, since the idol has loftier gifts. You ask which are these? Why, once a conflagration consumed all our city, and the idol temple remained intact. Answered R. Gamaliel: I shall use again a metaphor: A province once revolted against the king; against whom do you suppose he used his weapons, against the living or against the dead? Naturally enough, against the former. Said the philosopher: You style our gods dogs and dead; well, then, when they really are so worthless why does not God annihilate them altogether? Yea, he would surely do it, was the reply, were they not of objects useful to the preservation of the world, such as are the sun, moon, stars, planets, mountains and

valleys, for it reads [Zeph. i. 2, 3]: "I will remove utterly all things from off the face of the earth, saith the Lord. I will remove man and beast; I will remove the fowls of the heaven, and the fishes of the sea, and the stumbling blocks of the wicked." That is to say: The Lord wonders, shall I do this when the heathens worship man, too? I should have then to destroy the whole universe!

Agrippus, the general of Rome, said to Raban Gamaliel: "The Lord, thy God, is a consuming fire," etc. In our everyday life we find it to be the rule that a potentate is but jealous of his equal, a sage of another sage, a hero of another hero, a rich of another rich; now, then, if God is jealous of an idol, the idol must be of some power! R. Gamaliel explained it to him with the following metaphor: If one who has a wife, takes yet another one, the former will not be jealous unless the new wife be a nothing compared with herself.

An Israelite named Zunan said to R. Aqiba: I know just as well as you do that the idols are nothing, yet I should like to know, how is it that so many cripples are cured by the idols in their temples? Replied R. Aqiba: Listen to the following parable. There lived once in a town a pious man who enjoyed the unlimited confidence of his fellow townsmen so that they would deposit with him money and were it without any witness, with the exception, however, of one who would leave with him nothing without witness. It once happened, however, that this exceptional man left something in the hands of the other without any security; thereupon said the wife of the latter: Now we shall revenge on that distrustful man his mistrust to us, let us deny that he has a deposit with us; retorted her husband: Because of the short-comings of his understanding shall I put my reputed name on stake? No; this I shall never do! The same is the case with debility, disease and pains visited upon man; they are under oath assigned a certain time, no more, no less, during which to torture a man; it is further predestined by what man or what medicine the disease be eliminated. Now, when its time is off, the afflicted goes to the idol-temple; the disease protests, saying: because the man takes recourse to the idol, I should not abandon him, but as I am bound by oath I should not break it on account of this foolish man; thus the disease leaves him and he believes that it was the work of the idol. R. Johanan explained it from [Deut. xxviii. 59]: "Then will the Lord render peculiar thy plagues . . . and sicknesses

sore and *neemonim*'' (literally trustful); *sore*, for the man suffers therefrom, and *trustful*, for it never breaks its oath.

Rabha b. R. Itz'hak said to R. Jehudah: There is an idol in our town, and whenever there is drouth by us, it comes in dream to the priests, saying: Sacrifice a human being to me and you shall have rain; and this condition fulfilled, it in reality begins to rain. Thereupon said R. Jehudah: You may esteem yourselves fortunate that I am yet among the living, for were I dead, I should not be in a position to communicate to you what Rabh said thereabout—viz.: it reads [ibid. iv. 19]: "And that thou lift not up thy eyes unto the heavens, and thou seest the sun, and the moon and the stars, all the host of heaven, and be misled to bow down to them . . . which Lord thy God hath assigned unto all nations it"; you see from here that God has given some power to some worshipped objects for the purpose of barring their worshippers from the world to come. And this is what Resh Lakish says elsewhere, it reads [Prov. iii. 34]: "If it concern the scornful, he will himself render them a scorn, but unto the lowly lives he gives grace," whence, if one comes to defile himself, the door is opened to him, while when one comes to cleanse himself, he is supported.

MISHNA VIII.: It is allowable to buy a wine-press from a heathen even while he takes grapes therefrom and puts them into the heap of grapes. The wine is not considered offered ere it reaches the reservoir, while upon reaching it all that is in it is (provided the heathen touches it) forbidden, the rest is allowed. It is allowed to tread but not to gather the grapes jointly with a heathen. It is forbidden both to tread and to gather with an Israelite who prepares the wine while he is unclean; it is, however, allowed to help him convey empty casks to, and then filled ones back from, the press. It is forbidden to assist a baker, who, in a state of uncleanness, prepares his bread, in kneading or ordering, but one may help him carry the bread to the dealer.

GEMARA: R. Huna said: As soon as the wine trickles from the grapes, the touch of a heathen renders it unallowable. It was objected thereto from the Mishna: It is allowed to buy a wine-press," etc., whence it is manifest that the wine on beginning to trickle is not forbidden. Whereupon it was rejoined: R. Huna understands that the press in question is propped up at the bottom, and that an Israelite filled it first with grapes, the heathen having added some not until later. Come and hear another objection! The Mishna goes on to say: . . . while

upon reaching the reservoir all the wine that is in it is forbidden, the rest is allowed, whence, only the wine that flows down is forbidden; said R. Huna, the sages have afterward retracted this Mishna, as in the following Boraitha: The rabbis held originally that it is not allowed to gather grapes jointly with a heathen, for what the latter gathers is unclean and defiles by touch the grapes gathered by the Israelite, which are considered wine. They further warned against contributing toward the conditions defiling the fruit in Palestine, as well as against assisting an Israelite who defies the rules of cleanness, in treading the wine-press, because one must not help a transgressor in his work; while the heathen may be aided, for he is not bound by the rules of clean and unclean. Finally, the wine does not become offered by the sole fact of treading, for R. Huna's opinion on this point has been rejected. However, the sages, as said above, retracted this view, asserting: Assistance to a heathen in treading is forbidden, for the grape-juice is offered wine immediately upon trickling, so that the assisting Israelite would get remunerated for working on what is not allowed; Such is also R. Huna's opinion. Nor is it allowable to gather or tread grapes with an Israelite who defies the rules of cleanness, for every Israelite is obliged to give from his fruit Teruma to the priest, and here the clean grapes are rendered unclean by the others, thus defiling also the Teruma, which is not allowed as to a heathen, it is allowed to gather with him, as he is free from Teruma, and fruits exempted from Teruma may be caused to be defiled even in Palestine.

"*The wine is not considered offered ere,*" etc. Concerning tithe, however, there is a Mishna that it is obligatory as soon as the grape-pits swim up, since this is an index of wine. Said Rabha: This presents no difficulty; as regards tithe we have the opinion of R. Aqiba, while the Mishna is in accordance with the other sages; as a Mishna states: In the case of tithe, the index of wine is its flowing into the reservoir. R. Aqiba, however, says: It is the swimming up of the grape-pits. Hereupon it was asked: How should this *swimming up of the pits* be understood? Does it refer to the case when the wine, after filling the reservoir to a certain point, causes the pits to rise to the surface, or to the case when the wine is already in the casks, and during its fermentation the pits come up to the surface? Come and hear the following Boraitha: It is called wine when the pits swim up; accordingly, it is allowed to drink the wine from the

press as well as from the pipe connecting it with the reservoir, whence it is obvious that the first of the two cases is referred to. But has not R. Zebid taught this Boraitha in the name of the disciples of R. Oshia, as follows: It is called wine when poured into the reservoir and when the pits swim up, while R. Aqiba requires its being put yet into the casks; from here it is apparent that the sages as well as R. Aqiba are involved in a contradiction, from which to extricate them is necessary to interpret the former version of the Boraitha in the light of R. Zebid's Boraitha. Now, taking account of the Mishna, we shall have *three* opinions regarding the here-disputed point. The Mishna declares it wine when it reaches the reservoir; the sages when, the wine being therein, the pits swim up; finally, R. Aqiba, not before it is in the casks? The answer is that the Mishna may be so interpreted as to agree with both the other views, since the sages and R. Aqiba differ only in as far as the index of wine for *tithe* is concerned, while the Mishna treats of the index of wine to become offered which is very rigorous. As to Rabha, however, he must rest satisfied with the three opinions as opposed to one another, as he makes no difference between the said cases.

"*What is in it is forbidden, and the rest is allowed.*" R. Huna explains this as follows: The rest in the press is allowed only when the cleansing basket through which the wine passes on its way from the press to the reservoir in order to be cleaned of the husks, is not again emptied into the press. But why should the contents of the basket be forbidden, the heathen having touched only the wine in the reservoir? There can hardly be another reason than that the wine of the upper vessel and flowing into the lower one be considered as a whole, and that the flow thus connects the two wines into one? And yet this question, as to whether or no the flow be a connecting link between the two wines in the above sense, propounded elsewhere, has found no satisfactory answer. And as our foregoing discussion has not been resorted to in this connection, it must not be assumed that the flow is no connecting link, but as R. 'Hyia explains it: When the two vessels are full of wine so that, their mouths being near, the wines touch each other, they are regarded as one wine. Accordingly in our case the reservoir must be so full of wine as to touch the basket, so that when the contents thereof are emptied into the press, what is in the latter also becomes forbidden.

It is related of a boy who in his sixth year was well versed in the Tract Idolatry. Once he was asked whether an Israelite and a heathen may jointly tread a wine-press? His answer was in the affirmative, notwithstanding R. Huna's negative view. And to the objection that the heathen renders the wine forbidden by his touching the grapes, the boy retorted: Have the hands of the heathen wrapped up with cloth, so that he might not touch the grapes with *bare* hands. Finally, upon being further asked that the heathen may touch the grapes with his feet, he replied that touching by foot is not considered.

It once happened that an Israelite and a heathen jointly hired and worked a wine-press in the City of Nahardea; R. Samuel, asked as to how to behave with regard to this wine, hesitated to answer until after three festivals during which the sages were in assembly; for he wanted to first propound this question to them. The question arises, why was he anxious to hear the opinion of the sages? If because he expected to find one of them entertaining the opinion of R. Nathan, then we must say that he wanted to prohibit all benefit of this wine; for it was taught: If the heathen measures out the wine with the hand or foot, Israelites must not drink it, but it may be sold to heathens; while R. Nathan prohibits all benefit of wine measured by hand. But now that R. Nathan makes no reference to the measure by foot, it must be assumed that Samuel was not waiting for his opinion, but he rather expected to find one of the sages in favor of R. Shimon's view, which allows the wine, even to consume, provided it was not touched by the heathen intentionally.

It once happened at Biram that a certain heathen climbed up a palm-tree to get down some branches. On coming down he unwittingly touched with one of the branches a cask of wine. Rabh was asked on the point, and he prohibited Israelites from drinking this wine, allowing, however, its sale to heathens. Thereupon R. Kahana and R. Assi interposed: Have you, master, not yourself taught that even a one-day-old child of a heathen renders the wine prohibited when touching it? And in this case there is surely no intention involved! Answered Rabh: I prohibited only to *drink* it, but not to sell it and use the money thereof.

The text says: Rabh holds "that even a one-day-old child of a heathen," etc. R. Shimi b. Hyya advanced the following objection: When one buys slaves from a heathen, has them circumcised but not bathed in the legal bath, the place they tread

on as well as what they spit out, is unclean. Precisely the same is the case with the acquired children of a female slave; but according to others the children are clean. In the case of wine the same rule holds: Adults render it forbidden by touch, but not children. What is an adult? When already familiar with the nature of idol-worship, and is considered a child before that period. We see, then, from this Boraitha, that contrary to Rabh's position, a child does not make the wine unallowable by mere touch? The answer is that the "child" spoken of in this Boraitha is one born of a female slave in the house of an Israelite; as to other children, inclusive of slaves bought of a heathen, Rabh's precept holds good. But here is another question. The Boraitha says: The same is the case with the children of a female slave, which would suggest the inference that there is no difference between a slave bought, or one brought up in the house of an Israelite. The answer is that this phrase refers only to their spittle and the place trodden on by them. However, this explanation is correct according to him who says that these are unclean, but what according to him who declares them clean? He comes to teach us that adult slaves bought, circumcised and then legally bathed, do not make the wine forbidden by touch, just as the children of a female slave. The Boraitha states this in order to exclude the opinion cited by R. Na'hman in the name of R. Samuel to the effect that when an Israelite buys slaves from a heathen, has them circumcised and legally bathed, they none the less render the wine forbidden all the time, till they cease to mention the name of the idol and wholly forget it. And how long is this time? R. Jehoshua b. Levi set the limit of this period at twelve months.

In the town Mechusa a heathen once happened to enter the house of a Jewish wine-seller, who answered his question as to whether he sells wine, in the negative. The heathen, noticing on the table a little wine in a vessel with which the Jew used to serve wine, put his hand right into it, saying: Is not this wine? The host, excited over this misdeed, emptied the vessel back into the cask; so that he had to consult Rabha what to do with the wine? He advised him to sell it to heathens. When R. Huna b. 'Hinna and R. Huna b. R. Na'hman heard of this incident, they said that all benefit of this wine is forbidden. Thereupon, Rabha heralded that the wine may be sold to heathens; while the both Hunas let herald the opposite. Some time after, R. Huna b. R. Na'hman happened to be in Mechusa where

Rabha resided; so Rabha instructed his servant not to admit anybody at the time when Huna will be by him, since they, two, will be busied with the settlement of an important dispute. R. Huna, on coming to him, opened, indeed, the foregoing question, and, to his great astonishment, Rabha said that all use of that wine is forbidden. And to the question: Has not the master allowed such a case, he answered: In this particular case it was the wine in the cask that I allowed, but the wine touched by the heathen and poured back into the cask I prohibited, requiring rather that its worth be cast into the sea. It is true, I once allowed also the other wine, but during my sojourn at Pumbedita, Nahmani (Abayi) adduced so many Boraithas and conclusions of other sages against my tenet, that I withdrew my former opinion, and now I prohibit the wine poured back; for among others, Nahmani told me of such a case in Nahardea, and Samuel prohibited the wine; in another case at Tiberia, R. Johanan has likewise forbidden. I attempted to argue: Samuel and R. Johanan may have been led to such stringency by the fact that at those places the population is ignorant, in which case rigorous legislation is commendable; but he replied: Do you think that Mechusa is more enlightened than Nahardea and Tiberia? He also called my attention to the following Thosephtha: It once happened that the excise collectors poured back into the cask the wine left after they had had a drink; one of them drew also some wine with a lever, putting the lever back in the cask, and the sages prohibited this wine for all benefit.

R. Johanan b. Arza and R. Jose b. Nehorai were once sitting together indulging a little in wine, when a man came in. They told him to pour in for them; but no sooner had he fulfilled their order than they discovered that he was a heathen. Thereupon one of the two said: The wine is absolutely forbidden, while the other asserted that it is even allowable to drink. Said R. Jehoshua b. Levi: Both had their respective opinions well grounded; the former must have reasoned thus: The man knew us to be of the sages, and he could easily notice that we were going to drink wine, which, when ordered by us to pour in, he would, in his thought, render prohibited. While the other one must have reasoned the other way—viz.: The man, knowing us to be of the sages, surely thought that we drank no wine, since otherwise we should not order him, a heathen, to pour in for us, hence the wine is allowed. But, against the latter it may be asked: Did not the heathen see that it was wine? Nay, it

all took place in the evening. Neither could he discern it by *smell*, as it was new wine, which has no smell. That he did not touch it is certain, for the wine was in a bottle; and the shaking of the wine by a heathen is prohibited only when done intentionally, which was not here the case.

R. Assi questioned R. Johanan: Does a heathen render the wine prohibited by pouring water into it? Yea, was the answer; for a Nazarite must be told: Go around, go around, but do not approach the vineyard in order not to yield to temptation and eat from its fruit. R. Jeremiah, when once in Sabatta, noticed that the heathens there are wont to dilute the wine that the Jews drink, and he reminded them of the foregoing warning to a Nazarite. It was taught likewise in the name of R. Johanan, according to others R. Assi, in his name: Wine diluted by a heathen is forbidden by reason of temptation as above.

Resh Lakish was once in Bozrah (a town conquered by the King David in the province of Moab). He saw the Jews there eat fruit without having separated the tithe thereof, and he told them that this is not allowed. He further noticed that the Jews were wont to drink the water consecrated by the heathens, and prohibited it, too. Later he happened to visit R. Johanan to whom he related his observations and prohibitions, and R. Johanan told him: Go right back and allow all you have prohibited, because you mistook Bozrah for Betzer which was conquered by Moses, and where the tithe is thus obligatory; and as to the water there, it is public ownership which, as such, cannot be prohibited at all.

R. Hyya b. Abba made once a journey to Gabla, where he observed that Jewesses were pregnant from heathens, who, though circumcised, were not yet legally bathed. He further saw that the Jews were drinking the wine diluted by the heathens; he also noticed that Jews were eating *Turmus* (fig-bean) cooked by heathens. He, however, did not interfere. When he later reported this to R. Johanan, the latter said: Go right back and have it publicly announced that their children are bastards, the wine is to be regarded *nessech* (idolatrous libation), and the *Turmus* is forbidden like all other things cooked by heathens, because the inhabitants of Galba are uneducated. With reference to the children, R. Johanan expressed the same opinion elsewhere, saying that one is not considered a proselyte unless he is both circumcised and legally bathed, hence the above are still considered heathens; and Rabba b. 'Hana said in the name

of R. Johanan: When a heathen or a slave seduces a Jewish girl, the offspring is regarded as a bastard. The wine he prohibited by reason of temptation as said above, and the *Turmus*, because they are there uneducated, otherwise it would be allowed.

R. Kahana was once asked whether it is allowed to hire a heathen for conveying grapes to the wine-press of an Israelite; his answer was in the negative, by reason of the temptation above-mentioned. R. Yemer objected to him from this Tosephta: The grapes carried by a heathen to the press, be it in a basket or any other vessel, are allowed even when trickling. Said R. Kahana: This is no weighty objection, for here it treats of grapes *already carried*, which I, too, should allow, but not to hire one originally for such work.

Once a citron chanced to fall into a cask of wine; a heathen seeing this, hurried to take it out with his hand, and R. Ashi ordered to hold his arm fast in order to prevent it from moving, then to open the faucet and have the wine flow into another vessel, when it will be allowed for sale. The same R. Ashi said that wine made prohibited by the touch of a heathen is not allowed to be sold to other heathens; the heathen, however, who touched it, may be made to pay for the wine by considering the thing in a manner as if the heathen had spilled or in some other way destroyed the wine, when it would be legitimate to recover the loss. This, his opinion, he corroborates by the following Boraitha: If a heathen renders the wine prohibited by touch, not however, in the presence of an idol, all benefit of it is forbidden. But R. Jehudah b. Baba and R. Jehudah b. Bethira say it is allowed, and on the following grounds: In the first place, because the act was done not in the presence of an idol, and secondly because the Israelite may say to the heathen: The wine is not your ownership, hence you cannot make it forbidden. Now, though we do not agree with the two Jehudahs, the inference is nevertheless justified that the Israelite may make the heathen pay.

It once happened that the bung burst out of the hole of a cask with wine, and a heathen ran by, put his hand upon the bung-hole to stop the escape of the wine. Thereupon said R. Papa: The wine above the bung is forbidden, the rest is allowed. R. Papa was further teaching: The wine of leather bags carried by a heathen who is followed by a supervising Israelite, is allowed if it so fills the bags that it cannot shake at all, but if not so full, it is forbidden. If, however, the wine be in open

pitchers, the converse is the case, because out of a full pitcher the wine may overflow upon the hands of the heathen, and then touch back the wine inside the pitcher, while with the pitcher that is not full this cannot be feared. R. Ashi maintains that even the wine in a leather bag that is not full cannot be made prohibited by shaking, for it is not customary to offer wine by shaking. If the heathen put wood upon the grapes in the press in order to squeeze the wine out by this pressure, R. Papa allows the wine, while R. Ashi, according to others R. Simi b. Ashi, prohibits it; all, however, agree in that the wine is allowed when the wood is pressed down by means of a wheel, for the work is done but by a derivative of his force, but when the heathen exerts the pressure by his feet, only R. Papa allows, while the others forbid the wine.

Once a heathen pressed the wine by means of a wheel, yet R. Jacob from Nahar Pekod declared the wine prohibited. At another time a cask with wine happened to burst, and a heathen was holding it together until the wine was emptied into another barrel; Raphran b. Papa, according to others R. Huna b. R. Jehoshua, allowed to sell the wine to heathens. It was prohibited to drink it, because the cask burst lengthwise, so that it was necessary to hold it together, but if it had burst crosswise it could have been held together by pressing the upper part; in this case the wine would have been allowed even to drink, because the pressure of a stone could have done the same service.

Once a heathen was found in the press of an Israelite; though there was no wine in it, yet it was moist, and the question came up as to what to do with the press? R. Ashi decided it thus: If the humidity of the press was so great that an object could therein become so moist as to moisten another object, the press must be first rinsed with water and then scrubbed with ashes two times, while by a smaller degree of humidity one rinsing suffices.

MISHNA IX.: A heathen standing near the wine reservoir renders the wine forbidden, provided he has a lien on it, but not otherwise. When a heathen falls into a wine-reservoir and is then brought up (dead), or when a heathen measured the wine with a pipe, dragged therewith a hornet out of the wine, or, finally, tapped his hand on the cask against the ebullitions of the fermenting wine—all which cases have actually occurred—the wine should, according to the rabbis, be sold; R. Simeon allows to drink it. If the heathen, while enraged, cast the cask

into the reservoir, as it once happened, the sages allowed the wine.

GEMARA: Said Samuel: The lien spoken of in the Mishna must be had on the wine itself; and R. Ashi proved this by quoting another Mishna, which says: When one works a heathen's wine in accordance with the rules of cleanness (so that he might sell it to Israelites), leaves it then in the premises of the heathen, but under the supervision of an Israelite, and the heathen writes a note to him stating, "I have received of you money," the wine is allowed; if, however, the affair takes place this way: The Israelite attempts to take out the wine and the heathen refuses it until he get the money, which case once occurred at Beth-Shean, the sages declare this wine prohibited, because it is yet the ownership of the heathen. But if the lien had been on the Israelite's property, even the wine included, it does not matter.

"*When a heathen falls,*" etc. According to R. Papa this means that the heathen is brought up dead, otherwise all benefit of the wine is forbidden, because the heathen celebrates his escape, and thanks on this account his idol, wherefore the wine is considered offered.

"*When a heathen measured the wine with a pipe, etc., the rabbis allow to sell it, R. Simeon also to drink it.*" Said R. Ada b. Ahba: Blessed be the head of R. Simeon who, unlike the rabbis, goes to extremes—viz: If he prohibits, he prohibits to derive all benefit therefrom, and if he allows, he allows it even to drink. Said R. 'Hisda: I was told by Abba b. 'Hannan that so said Zera, that the Halakha prevails with R. Simeon. (Says the Gemara): After all, the Halakha does not prevail with him.

MISHNA X.: If an Israelite, who had cleansed the wine of a heathen, left it in the latter's premises, in a house opening into a public ground, in a town where heathens and Jews live, the wine is allowable; but if there live only heathens, the wine is not allowed, unless a Jewish watchman take care of it. However, the watchman must not continually stay there, but may go and come. R. Simeon b. Elazar says: All heathen premises are of the same account. If one cleanses the wine of a heathen, leaves it in his premises (as above), and the latter writes him a note stating, "I have received money from you," the wine is allowed. But if the case be such that when the Israelite wants to take out the wine the heathen refuses, requiring to be paid first (as it once occurred at Beth-Shean), the sages prohibit the wine.

GEMARA: Why should the Mishna forbid the wine in a town where Jews do not reside, since in any town you find Jews coming there now and then for traffic? Says Samuel: The Mishna has in view but such towns that are provided with walls and gates, so that no one can enter it without special permission, and the heathen is thus in a position to know whether or no there is an Israelite in town. R. Joseph said: It suffices that the wine be so kept in a house that any Israelite could see from his window into the heathen's yard, and the house must not needs be opening into a public place. In like manner it is sufficient that there be in the proximity of the house a little elevation where people are wont to assemble, or that a date-tree be there, since in this case the heathen may fear lest someone should climb up the tree for dates and descry his doings in the same time; but if the top of the tree be cut off, its influence is discussed by R. Acha and Rabina, the one saying that the tree, now that it bears no fruit, exerts no influence upon the heathen, who, thinking that nobody will climb it up now, may break the seal and take out some of the wine; while the other says: People are still now and then climbing upon such tree in order to look for their strayed cattle, and hence it is yet fear-inspiring to the heathen.

The rabbis taught: When an Israelite buys or rents a house in the courtyard of a heathen, where also an Israelite lives, and puts there his wine, it is allowed even if not sealed and locked up. But if the other Israelite lives in the same town only, the wine is allowed only when sealed and locked. However, if a heathen hires Jews to prepare wine for sale to Jews, and this wine remains in the premises of the heathen, a Jew living in the same house where the wine is kept, it is allowed, provided it be sealed and locked by a Jew who should himself have charge of the key and seal. Said R. Johanan to him who cited before him this Boraitha, read the last passage thus: The wine is allowed even when not sealed and locked, provided only an Israelite lives in the same house. If, however, an Israelite lives in the same city but not in the same yard, the wine is forbidden even when sealed and locked; so says R. Meier, while the rabbis say: An Israelite must either sit there and watch, or come there at certain times. The question now arises, to which case the rabbis refer, as there are four cases in the Boraitha? To assume that they refer to the last case would be to assume a redundancy, since R. Mair said the same; nor can it be assumed that

they refer to the third case, where the wine, when sealed and locked by a Jew, is allowed; because, as R. Johanan allows it even when not sealed and locked, there would be no reason to account for the exceptional rigor of the rabbis in this case. Hence, it is manifest that they refer to the second case, which allows the wine put up in the house of a heathen, when both there lives a Jew in the same town and also when the wine is sealed and locked; and it is here that the rabbis add the limitation that an Israelite watch the wine, or come to it at certain times. But what is gained by the last point? When the Jew is to come there only at *certain* times, the heathen will know it and find his time to break the seal and do what he pleases? The answer is this: We must assume that the Jew is to come there *at times* and not at *certain* times, so that the heathen will know nothing definite.

"*R. Simeon b. Elazar says, all heathen premises,*" etc. The schoolmen propounded a question: What does R. Simeon intend with this doctrine, to make the regulations of wine more rigorous or more lenient? R. Jehudah said in the name of Zeira, the latter is the case, while R. Na'hman said in the name of the same authority the former was intended. In order to make R. Jehudah's opinion plausible, it is necessary to insert the following in the Mishna: The same prohibition is imposed upon wine brought into the house of another heathen, because of fear lest the latter should go to the proprietor and say: You are free to come to my house and do with your wine as you please; I will not betray you provided, however, you promise to serve me in the same way in case I will have Jews prepare wine; it is in this connection that R. Simeon b. Elazar said: Are, then, all premises of the same account? We see that if the wine is left in the premises of the proprietor, an Israelite must watch it; if, however, the wine is stored with another heathen, this watch is not requisite, as I do not believe that the heathens would enter such mutual agreements with one another. On the other hand, in order to make R. Na'hman's view of R. Simeon's position plausible, the following wording must be given to the inserted passage: The prohibition is only then in force when the wine is left in the premises of the proprietor with a Jew watching it; but if the wine is left with another heathen, the additional watch is unnecessary, as we do not believe in the mutual agreement of the heathens. To which R. Simeon b. Elazar says: All heathen premises account alike, hence as the

watching by a Jew is there requisite, it is so here, too, for I fear, indeed, that the heathen may enter some mutual understanding. There is a Boraitha in accordance with R. Na'hman: R. Simeon b. Elazar says, all premises of heathens are of the same account, for we fear lest they deceive us.

It once happened that Israelites bought of Parsik, the viceroy, the grapes of a vineyard in order to prepare wine therefrom; they then left the wine with Parsik's gardeners without having paid for it. Hereupon the disciples of Rabha's college wanted to allow the wine on the ground that there cannot possibly be a mutual agreement between the viceroy and his gardeners. Said Rabha to them: Just in this case there is much to fear, because if Parsik wants to falsify the wine, he will meet no barrier.

Once a few casks of wine belonging to an Israelite were lying in the street, and a heathen was found standing among them; Rabha, upon being asked what is to be done with the wine, said: If this man is known to be a thief, the wine is allowed, for he will fear to touch the wine in the open street, lest he be suspected of stealing it; but if he is an honest man the wine is forbidden, because of the reasonable fear, maybe he touched it.

CHAPTER V.

RULES AND REGULATIONS CONCERNING WAGES AND LIBATION WINE.

—EFFECTS OF SUCH WINE WHEN FALLING ON FRUIT OR MIXING WITH OTHER WINE.—UNDER WHAT CIRCUMSTANCES WINE MAY BE LEFT WITH A HEATHEN.—CONDITIONS UNDER WHICH JEWISH WINE IS SOLD TO HEATHENS.—DETERMINATION OF QUANTITY OF LIBATION WINE MIXED WITH OTHER WINE.—HOW VESSELS OF HEATHEN ARE TO BE ALTERED TO MAKE THEM FIT FOR A JEWISH TABLE.

MISHNA *I.*: The wages of a Jewish laborer hired by a heathen to work with him wine for libation are prohibited. But if he was hired for some other work and was then told: Bring this cask of offered wine from one place to another, the wages are allowed. If a heathen hires of a Jew an ass to carry on it such wine, the reward is forbidden; if, however, he hired it to sit thereon, it is allowed even if he had with him his wine-flask.

GEMARA: The reason why the wages are prohibited is hardly that all the benefit of offered wine is forbidden, because the following speaks against such a reason—viz.: Although *arlah* (the fruit growing on a tree within the first three years after it has been planted) is prohibited, likewise the fruit of a field sowed in a vineyard *kelaim* (variegated seeds); yet if one sells these fruits and with the money thus obtained betroths himself to a girl, she is regarded his legitimate wife. Nor can it be said that the wages follow the same rules with the wine, just as the money obtained from the sale of an idol is subject to the regulations governing the latter; because, as it is known, the money gotten for the fruits growing on the Sabbathic year is subject to the rules of the fruits themselves, and yet we learned that, if one invites the laborer, saying: Take this *dinar* and gather herbs for me to-day, this reward is forbidden; but if the invitation is made thus: Gather for me herbs to-day, the reward is allowed when this case takes place on the Sabbathic year. Hence, wages are allowed after all! Said R. Abuhu in the name of R. Johanan: This is a fine which the sages find necessary to impose upon driver and offered wine. In the case of wine, as said above in the Mishna, and in the case of drivers in the following Boraitha: The reward obtained by drivers for transporting fruits grown on the Sabbathic year is considered

Sabbathic. Now, what does this mean: The reward is *Sabbathic*? It cannot possibly mean that the reward is made in fruit of the Sabbathic year, for the proprietor of the fruit would thus meet a debt with fruit which is by law allowed [Levit. xxv. 6]: "For food," but not to traffic with. Neither can this expression be interpreted to mean: The reward is as holy as the fruit of the Sabbathic year, because of the Mishna cited above: If one says: Gather for me fruit to-day, the reward is allowed. Said Abayi: It speaks of a reward paid with the Sabbathic fruit; and as to the difficulty of "food and not for traffic" it can be answered that he gives him the fruit as a present, and not as reward, as we find a similar case in the following Mishna: One must not say to his neighbor: Carry this fruit for me to Jerusalem, of which take a part as your reward; but he may say: Carry it to be eaten in Jerusalem, and there they present each other the fruit as a present. Rabha, however, said: It means that the reward becomes holy like the Sabbathic fruit itself, and the difficulty that it is allowed to a laborer is not considered, for the rabbis do not care to fine him for such a trifle.

The schoolmen propounded a question: How is it when the heathen hires a Jewish laborer to prepare wine in general? Shall we assume that, since all use of this wine is prohibited just as that of offered wine, the wages are by implication not allowable, or that the wine in general is not so rigorously treated by reason of its differing from the offered wine in that it does not defile an Israelite by touch, while the latter does so, and hence, that the wages in this case be allowed? Come and hear! A heathen once hired a Jewish boatman to convey for him some wine to a certain place and paid him for the labor in wheat. The laborer appeared then before R. 'Hisda asking him what is to be done with the wheat? The answer was: You must burn it and bury the ashes; hence, such wages, too, are prohibited. The disciples of R. Janai were wont to borrow on the Sabbathic year fruit from the poor and to pay them back in fruit the succeeding year. R. Johanan was interrogated as to the legitimacy of this act, and he found it in accord with the law.*

R. Na'hman, Ula, Abimi b. Papa, and R. Hyya b. Ammi were once sitting together and discussing the following point: If an Israelite is hired to break the casks that contained offered wine

* The text treats here of the question as to whether the reward of a harlot is allowed in case she was paid after; which we deem not in place here and therefore omit it.

of which some remnant may now flow yet, is he allowed to receive payment for his work or not? The possible reason for a negative answer is that the laborer desirous to get work wishes for the existence of whole casks, and thereby also for that of the prohibited wine left therein; while on the other hand the reason for a positive answer is that he by his labor *destroys* the wine. Thereupon decided R. Na'hman: The laborer may without any scruples break the casks and get paid therefor; in addition to it, he may yet earn the blessing of Heaven! The following Boraitha corroborates R. Nahman's decision: The Israelite is prohibited from assisting a heathen in ploughing a field sowed with *kelaim* (variegated seeds), but he is allowed to weed out various seeds so that only one kind be left, for he thereby diminishes the unallowed.

At some other time the same sages were together discussing the question as to whether or no the use of the money obtained by a heathen from the sale of an idol is all forbidden to an Israelite (just as it is in case the Israelite sells an idol)? Said R. Na'hman: It seems to be allowable, because once there came some heathens to Rabba b. Abuhu and declared themselves willing to embrace Judaism, whereupon he replied: If this is your intention, it is incumbent on you first to sell out all you have, for as soon as you have become Israelites, your wine and idols are prohibited to sell. Whence it follows that they are allowed, even after they become Israelites, to use the money gotten from selling the idols when yet heathens. The others objected to this inference, saying: In this case the intention of becoming an Israelite renders surely their idols profaned. Hereupon R. Na'hman recited the following Boraitha: If a heathen pays his debt to an Israelite in money, which he obtained from the sale of an idol or offered wine, the Israelite is allowed to accept it; if, however, the heathen asks his creditor to wait until after he has sold his idol or offered wine, the Israelite is prohibited to accept the money. Hence, in the former case, the money is allowed. And why is it forbidden in the latter case? Because, said R. Sheshith, the Israelite would then apparently wish for the existence of a prohibited object till it gets sold. But is there not a Mishna that, a proselyte and a heathen having inherited their father, a heathen, the former may say: You take the idols and I the money, you the wine and I the other fruit in exchange; but as soon as an object enters the control of the proselyte all exchange is forbidden? Now, you see

that, though the proselyte doubtless wishes for the existence of the prohibited objects, the exchange is originally allowed. Said R. Papa: The sages treated exceptionally this case of a proselyte with leniency in order not to encourage his return to heathendom. Yea, there is a Boraitha to this effect: The decision in favor of the proselyte is limited only to the case of inheritance, but does not concern partnership.

The above-mentioned sages happened to be once more together and to discuss the following question: Can a citizen-proselyte, a heathen settled down in the land of Israel, on having taken upon himself not to practise idol-worship only, profane an idol, or only an actual idol-worshipper can do this? R. Na'hman said: In all probability the latter is the case. An objection was raised from the following Tosephtha: An Israelite who found an idol in the market, may, before taking possession thereof, ask a heathen to profane it, but not after he had taken possession of it; and the reason is that the sages have established a rule that a heathen may profane his own idol as well as that of his neighbor immaterial whether he worships it or not. Now let us see what does the last expression "whether he worships or not" mean; if it means a heathen, it is superfluous, as it was already stated that a heathen may profane his neighbor's idol although he has not worshipped it; we must then say that it means a citizen-proselyte, hence the latter can profane? Nay; it may speak only of a heathen, and as to the apparently superfluous expression, it may be said that the first part speaks of the idols of one kind, *e.g.*, both of the kind Peor or Markules, while the last part has in view two different idols, *e.g.*, one of Peor and the other of Markules, and nevertheless the heathen may profane even the one in whose worship he does not believe. Another objection was raised: Who is called a citizen-proselyte? He who took upon himself before three scholars not to practise any idol-worship, so said R. Mair; while the sages define him to be one who binds himself to observe the seven commandments accepted by the descendants of Noah. According to some anonymous teachers, such proselyte is only he who accepts all the commandments of the Torah except eating the meat of carcasses. Such a proselyte may be left alone for some short while in a room where Jewish wine is kept; however, it is not allowable to store such wine in his house even when the majority of the city inhabitants be Israelites. He may be employed as watchman of such wine even where the heathens

make up the majority of the population. His oil is subject to the same regulations. But can oil be prohibited by itself? Nay; reverse the statement and read: Wine is subject to the same regulations with oil; while with regard to all other things this proselyte is on equal terms with the heathen. R. Simeon, however, holds that the wine of such a proselyte is regarded as offered wine. According to others, however, R. Simeon allows the wine even to drink. Now that this Boraitha declares this proselyte on equal terms with the heathen in all other respects, it is indicated that he can profane an idol, which contradicts R. Na'hman's view. Retorted R. Na'hman b. Itz'hak: This equalization refers but to the law regulating both the transferring and renouncing of his ownership (explained in Erubin).

R. Jehudah sent once a present to the heathen Abidrana on one of the heathen feast-days, justifying this his action thus: I know that Abidrana does not worship idols. Said to him R. Joseph: Your reasoning appears fallacious, because of the above-cited Boraitha that he, a *proselyte*, must take upon himself before three scholars to renounce all idol-worship, which condition is wanting in your case. Rejoined R. Jehudah: This Boraitha intends but to say that this one condition binds the Jewish community to support this proselyte in case he becomes poor. Thereupon the other objected: Has not Rabba b. b. 'Hana said in the name of R. Johanan that a citizen-proselyte who fails to let himself circumcise during twelve months is to be regarded as a heathen heretic? Accordingly, you should not have given a present to Abidrana, who is not circumcised. Answered R. Jehudah: R. Johanan surely meant that a proselyte who fails to keep his promise to be circumcised within twelve months is a heretic.

Once Rabha wanted to give on a heathen feast-day a present to the heathen Bar Sheshach, who he knew was no idol-worshipper. But when he came into his house he saw him sitting in a bath of rosewater, and surrounded by indecent and disgraceful girls. Upon noticing Rabha, the heathen exclaimed: Have you Jews in prospect such pleasures in your paradise? And Rabha answered: Much better than these. Do you really mean, said the other, that there are greater pleasures than this? Retorted Rabha: In the heat of all your voluptuousness you can't help fearing lest the king disturb you and mar your pleasure; while we expect to be free from such fear in paradise! Well, said the heathen, if others do, I, for my part, do not fear

the king. No sooner had he uttered this than a messenger came from the sovereign and said to Bar Sheshach: Go in all haste to the king, as he wants to speak to you! Then Bar Sheshach, addressing himself to Rabha, said: May the eye that wishes to see evil jump out of its orbit; whereupon Rabha said: Amen! And the eye of Bar Sheshach jumped out immediately. R. Papi said: Rabha should have applied this verse in answer to Bar Sheshach—viz. [Ps. xlv. 10]: "Kings' daughters are among those dear to thee: the queen standeth on thy right hand in fine gold of Ophir." R. Na'hman b. Itz'hak would have preferred this verse [Is. lxiv. 4]: "No eye had seen a god beside thee, who could do [the like] for the one that waiteth for him."

"But if he was hired for some other work," etc. It is apparent from here that the wages are allowable even when the laborer had been ordered to carry the wine *before* he finished the other work; and yet there is a Tosephtha: When the heathen tells his Jewish laborer, after he has finished his day's work, to carry a cask of offered wine from one place to another, the wages are allowed, but the remuneration for the carrying is not; but if the heathen ordered him to do this sometime during the day's work, the whole pay is forbidden. Hence this apparently contradicts the Mishna? Said Abayi: The Mishna, too, implies the same limitation. Rabha, however, interprets the Mishna to allow the wages even when the carrying was done in the middle of the other work, and meets the apparent contradiction thus: The Tosephtha teaches: When a heathen tells his Jewish laborer: Carry 100 casks from this to that place and I will pay you 100 *perutoth*, and it was then found that ninety-nine of the casks were with oil while one was with offered wine, all the wages are prohibited, for it is the last forbidden cask that completes the claim for wages. The Mishna, however, intends to teach that, when the laborer works per cask, he is allowed to receive the wages and to reject the pay for so many forbidden casks he had to carry. This exposition of the subject coincides with the following Boraitha: A Jewish laborer hired to carry 100 casks among which one was found to contain offered wine is prohibited from all his wages; if, however, he was hired to be paid per each cask, he should cast away the pay for this one prohibited cask, while the other pay is allowed.

"If a heathen hires of a Jew an ass," etc. This rule, which is obviously implied in the first statement, is mentioned by the Mishna merely for the sake of its second part—viz.: If, how-

ever, he hired it in order to sit thereon, the reward is allowed even when he had along with him the wine-flask.*

The father of R. A'ha b. R. Ika, who was a wine-dealer, sold once wine to heathens. He had to bring it over across a river and empty it into their casks, retaining his for his trouble. This subject was brought before Abayi, and he said: What R. A'ha's father is doing is certainly allowed, for the wine is not prohibited unless already in the casks of the heathens.

MISHNA II.: If offered wine be poured on grapes, they must only be washed and are allowed. If, however, they were cracked, they are prohibited. Again, when such wine be poured on dates and figs, they are forbidden if the wine impart them a pleasant flavor. Bithus b. Zonan brought once dried figs in a ship, and a cask of offered wine happened to burst, the wine spilling upon the figs, but the sages who were asked on this point declared them allowable. The rule is: A prohibited thing renders another one forbidden if it imparts to it a pleasant flavor, but if not, it is allowed, *e.g.*, vinegar poured over grit.

GEMARA: The decision of the sages in the case of Bithus is apparently in contradiction with the prohibition immediately preceding it. The explanation, however, is that the Mishna is not complete, and must read as follows: If the wine imparts them a good flavor they are forbidden; but when it causes them to become insipid, they are allowed; which latter took place in the case of Bithus.

Once such wine was spilt on a heap of wheat, and Rabha, when asked on the point, allowed to sell the wheat to heathens and to use the money thereof. Rabba b. Levi objected to this decision by reason of the following: When a linen thread is woven into a woollen cloth or *vice versa*, a wool thread into a linen cloth, the Israelite is forbidden to make thereof either a garment or a saddle, or to sell it to heathens; he is allowed to make of it only shrouds for the dead. That these things are not sellable to heathens, can be accounted for only by the assumption that the heathens may thereafter resell them to Israelites who, not knowing that there is a prohibited thread in the cloth, will make garments of it. Now, then, we have in the wheat a perfectly analogous case. Rabha, on hearing the objection, ordered the wheat to be first ground, then to bake of its flour bread, which may be sold to heathens, provided no Israelite

* For a contradiction to this from a Boraitha, see Middle Gate.

notices it, lest he might buy the bread of the heathens. But again, why should not the wheat present the same case as the grapes of the Mishna, which must be only washed in order to be allowed? Because, said R. Papa, the wheat grain has a slit in the middle which makes it similar to *cracked grapes*. Abayi and Rabha are of the same opinion: When old prohibited wine is poured on grapes and they get therefrom an agreeable taste, they are prohibited. But concerning new wine, Abayi prohibits all the grapes as soon as one drop fell on them; while Rabha prohibits them not until after so much wine has fallen upon them as to change perceptibly their taste. Abayi's reason is this: All objects of like taste belong, he believes, to one class, and as soon as a particle, however small, of the prohibited falls upon an object, and be this very big, it, too, becomes prohibited (so, *e.g.*, a drop of forbidden wine falling into a cask renders the wine therein forbidden), and grapes he regards of the one class with wine. On the other hand, Rabha takes for his basis of classification not the taste but the *name* of the objects, so that homonymous objects will render each other prohibited if $\frac{1}{10}$ of the one falls into $\frac{1}{10}$ of the other, when a perceptible change in taste may occur, but not if $\frac{1}{10}$ falls into $\frac{1}{10}$ or more of the other.

In the case when beer-vinegar was intermixed with wine-vinegar, or oaten yeast with wheat yeast, of which in both cases one was allowed and the other forbidden, Abayi prohibits the whole mixture only when the forbidden ingredient tastes perceptibly, while Rabha would prohibit it even when but a drop of the forbidden fell into a whole cask of vinegar; likewise with the yeast Abayi defends his position by his theory: As the ingredients here being of different tastes are not of the same class, the resulting mixture is forbidden only when the prohibited substance is discernible by taste. Rabha, on the other hand, recurs to his name-theory: The vinegars and so the yeasts are homonymous, hence of the *same* class, consequently a drop of the prohibited suffices to render the whole so. Furthermore, Abayi endeavors to justify his name-theory by the following argumentation. We learn: When spices, forbidden with the same prohibition, of the same kind but of three different names, such as, *e.g.*, pepper, white, black and long, or when spices of three different prohibitions but of the same kind and name, all mix in some meal, it is prohibited, for they are counted together. Thereupon said 'Hiskia: This Mishna speaks of spices possessing equal properties so as to sweeten the meal, when they can

be counted together, but not otherwise. Now you see, then, that this, 'Hiskia's explanation, is in the light of my considerations quite plausible, as he guides himself by the taste, while viewed from Rabha's standpoint how can the three spices be counted together now that each has a different name. Hereupon Rabha rejoined: This does not prove your opinion at all, since this Mishna expresses not R. 'Hiskia's view but that of R. Mair of the following Boraitha: R. Jehudah said in the name of R. Mair: When different forbidden things mix with one that is allowed, they may be added to count as one whole, for it reads [Deut. xiv. 3]: "Thou shalt not eat any abomination," etc., *i.e.*, whatever is detestable by the law, is forbidden to eat. Hence, whatever is forbidden, and be it of neither equal name nor taste, can, according to R. Mair, be counted together. Concerning wine into which forbidden vinegar fell in, so that its taste is discernible in that of the wine, all agree that it is prohibited; but if the vinegar is not discernible, the wine is allowed. In the case when prohibited wine mixed in vinegar, Abayi forbids latter even if only one drop fell into it, since the *smell* of the wine is changed when in proximity with the vinegar and it assumes that of the latter, hence, it is as if vinegar fell into vinegar and makes it forbidden even by a drop. Rabha, on the other hand, holds that only then is the vinegar forbidden when the taste of the wine in it is perceptible, otherwise they remain two separate classes even if the *smell* of the wine is changed to that of vinegar. Rabha and Abayi said: A heathen may put his nose to the ventilatory orifice of a cask with wine in order to smell the state of the wine, and be it the wine of an Israelite it is not rendered prohibited thereby. An Israelite, however, is not allowed, according to Abayi, to do the like on the wine of heathens, its smell, like itself, being prohibited; while Rabha allows the smell.

"*The rule is: a prohibited thing renders another one forbidden,*" etc. Said R. Jehudah in the name of Samuel: This rule is the prevailing Halakha. Furthermore, the grit spoken of in the Mishna is allowed only when it was hot at the time the forbidden vinegar fell upon it, for since vinegar imparts a good odor to cold grit, latter is prohibited even if it be boiled after in order to eliminate the good odor. Rabin, on his return from Palestine, said in the name of Rabba b. b. Hana, quoting R. Johanan as interpreting the Mishna in the very same sense. R. Dimi, too, quoted R. Johanan to the same effect, adding

yet that the people of Ciporias are in the habit of preparing on Fridays a meal consisting of cold grit mixed with vinegar and called *shichlaim*. Resh Lakish interprets this point of the Mishna as follows: That the spoiling of taste by a forbidden thing leaves the mixture allowed, intends to teach that even if this bad taste has been subsequently ameliorated by pepper, salt or other spices, the mixture remains allowed.

R. Abuhu says in the name of R. Johanan: A forbidden object dropped into a food and both visible and smellable therein, renders it unallowable to eat; whoever eats it is liable to stripes, provided, however, he ate of the forbidden object the size of an olive and for so long that one could consume in this time a food equivalent in size to four eggs. But if the forbidden object be only tastable and not visible, the food is prohibited, and the consumption thereof is not attended with stripes. On the other hand, if this object heightens the already bad savor of the food, it is allowed. Why does not R. Johanan say: If this object renders the taste of the food insipid, it is allowed? He intends to indicate that the intrinsic bad taste of the food is a condition for its being allowed after the adulteration with a forbidden object, even when its taste is capable of being improved upon by the use of various spices; and this shows that the prevailing Halakha is in accordance with Resh Lakish. R. Kahana said: From this entire discussion it is evident that a forbidden object dropped into a food and rendering it more insipid, leaves it allowed. Hereupon said Abayi: All the participants of this discussion have unambiguously expressed their respective opinions, with the exception of Resh Lakish, who only interprets the Mishna, reserving to himself his own opinion on the point. Now that the Halakha allows the food in question, it is manifest that there were some sages who thought it unallowable; which is, indeed, the case, as we have learned in the following Boraitha: R. Mair prohibits a food or a beverage rendered either more palatable or more insipid by a forbidden object mixed with it, while R. Simeon prohibits it only when rendered more palatable. Said Ula: They differ only in case when the forbidden object renders the food first more palatable, but then insipid; but when it renders it immediately more insipid, all agree that it is allowed. R. 'Haga objected to Ula from the following: If prohibited wine or vinegar poured upon lentils or grits respectively, each renders the food forbidden; R. Simeon, however, allows both by reason of their be-

coming thereby more insipid. Now, this former opinion can be only that of R. Mair's, who prohibits it though immediately rendered insipid. Ula answered: A man like 'Haga, who has no notion of what the sages ever say, ventures upon raising objections! The Boraitha adduced by him speaks of cold lentils and cold grits, which become more palatable by the wine or vinegar, but when put on fire they become more insipid, and it is this case that R. Mair forbids. R. Johanan, however, said: It is the case where a forbidden object renders a food more insipid right after mixing with it, that R. Mair prohibits and R. Simeon allows.

It once happened that a mouse was found in a barrel of beer and Rabh prohibited the beer. Whereupon the rabbis said in the presence of R. Sheshith: From this decision of Rabh we see that he prohibits anything that is rendered more insipid by a forbidden object mixed with it. Said R. Sheshith: Nay; this is far from being the case; this decision is but an exceptional with Rabh. Indeed, a mouse is so detestable a creature that no one would think of eating, and yet the law specifically prohibits it. It is this circumstance that induced Rabh to the above decision. However, R. Simi from Nahardea said: A mouse is by no means so abominable a creature; as a matter of fact, the field-mouse is being served even on princely tables, but in the case of the beer it was a house-mouse, and house-mice are not eaten. Rabha said: The Halakha is that a forbidden object rendering the food more insipid leaves it allowed, and as to Rabh, his reason is not obvious; if he thought the insipidness of no account, the Halakha is against him, or maybe he thought that the mouse contributes toward bettering the taste of the beer!

The schoolmen propounded a question: How is it when a mouse falls into vinegar? Said R. Hillel to R. Ashi: Such an incident occurred in the presence of R. Kahana and he prohibited the vinegar. R. Ashi remarked: This decision of R. Kahana hardly admits of generalization, for the mouse there was already wholly decomposed and he rationally feared lest something of the mouse would be consumed together with the vinegar. Rabina was about to allow the vinegar, provided its bulk was 100 fold that of the mouse, basing this upon the same law regarding Teruma, but R. Tachlipha b. Gisa reminded him to draw rather the comparison with the spices of the Teruma, where a portion of 101 fold is requisite. According to the calculation

of R. Ashi the bulk of the vinegar in order to be allowed must be to that of the mouse in the ratio of fifty to one. R. Samuel b. Aika finds the ratio of sixty to one necessary to declare allowable the beer. This ratio remains as the prevailing Halakha with regard to all contamination by forbidden objects (*e.g.*, when into a pot containing sixty pounds of allowed meat one pound of pork meat is mixed in, the whole mixture is allowed to eat).

MISHNA III.: Wine known as being watched is allowed when transported from place to place by a heathen and an Israelite, even if the latter absent himself. However, if he notifies the heathen that he is taking leave, and be it only for as short an interval as to enable one to bore a hole, close it up and have it dried, the wine is forbidden. R. Simeon b. Gamaliel says: This interval must be so long, that he could open the bung-hole, close it again and have it dried.

When an Israelite leaves his wine on the wagon or boat of a heathen and himself takes a shorter road, the wine is allowed even if he succeeded to reach first the destination and to have a bath meanwhile. But if he notified the heathen of his leave, and be it for only as short an interval as to enable one to bore a hole, close it, and have it dried, the wine is prohibited. R. Simeon b. Gamaliel says: As long as to open the bung-hole, close it and have it dried. When an Israelite admits a heathen into his wine store, the wine is allowed, even if the Israelite is only coming in and out; if, however, he says that he is going to absent himself, and be it only for as short an interval as to enable one to bore a hole, close it and have it dried, the wine is forbidden. R. Simeon b. Gamaliel says: As long as to open the bung, close it again and have it dried.

When an Israelite dines with a heathen at the same table, puts a bottle of wine on the table and another one on the by-table (*δελφικος*) and goes out, what is on the table is prohibited, what on the by-table is allowed; but if he said to the heathen: You only help yourself to the wine and drink, the bottle on the by-table is forbidden, too. If he leaves open casks they are prohibited; closed ones, they are only then forbidden when the heathen could unbung them, close again and have them dried.

GEMARA: "*Wine known as being watched*," etc. This seems to express the same idea of the following Boraitha: When he who accompanies his drivers leaves them to convey the clean objects from one place to another, himself going away from them even a whole mile, the objects remain clean; if, however,

he told them: You go ahead and I shall follow you, the objects are unclean, as soon as he loses sight thereof. R. Itz'hak interpreted this Boraitha to mean in its first half that the owner had first to cleanse both his driver and animals with water.

"*When an Israelite leaves his wine in the wagon,*" etc. These two cases, though seemingly identical, are providing for different points. Indeed, the latter case could not be so generalized as to include the former, for here it may be assumed that the heathen is under the influence of constant fear lest the proprietor come in at any moment, while the condition on the wagon or boat is different. On the other hand, the former case cannot include the other one, for on the wagon there is yet a possibility left for the heathen to fear, lest he be overtaken by surprise and looked after from another direction, while in the store he could presumably lock the door, thus securing himself against surprise and doing what he pleases. Hence, the Mishna states both these cases. Rabba b. b. 'Hana in the name of R. Johanan: The Mishna prohibits the wine only when the bunghole of the cask was closed up with lime, but if with clay, an interval so long as to enable the heathen to open the hole, close it again and let it dry is necessary to prohibit it. Whereupon it was objected: A Boraitha teaches that R. Simeon b. Gamaliel said to the sages: When the heathen broaches the cask and then closes it up again, this is recognizable on the outward as well as on the inner surface of the bung. Now, if the stuff of which the bung is made be clay, R. Simeon's idea is clear, for clay when old becomes brighter in color, wherefor the new in it is easily distinguishable by the color, because the new clay cannot combine with the old one, since the hand cannot reach the inner sides. But if, as you incline to think, the sages speak of a *lime* bung, the new lime is not recognized, having as it does the same color as the old one. This objection was met thus: R. Simeon b. Gamaliel, ignorant of whether the sages spoke of a lime and a clay bung, was endeavoring to show that even in the case of lime a change produced by breaking is discernible though only on the inward side; so that the sages answered this point, contending that so long as it is not recognizable on the outward, the wine is prohibited, for it is to be feared that the inner side of the bung might perchance become difficult of recognizing, or that it was altogether forgotten to examine it. Said Rabba: It seems that the Halakha prevails with R. Simeon b. Gamaliel, for the end of the Mishna gives his opinion without mentioning

his name. And Rabha did well to remind of this, for otherwise it could be thought that the *whole* of the concluding paragraph (*i.e.*, beginning with R. Simeon till the end) was said by R. Simeon b. Gamaliel. But now that the Halakha here prevails with R. Simeon b. Gamaliel, *i.e.*, that there is no fear lest the heathen should break the cask, and above in Chap. II. it prevails with R. Eliezar, *i.e.*, the cask being well bunged, there is no fear of the heathen's opening it, why are we still refraining from keeping our wine in the house of a heathen? The answer is this: Every cask has a small orifice for ventilation, and it is feared lest the heathen should somehow get at the wine through it.

Rabha said: Though Israelites that come into the house of a heathen prostitute may not resist the sexual impulse, yet the wine which they chance to bring there is allowed, for they will surely prevent the prostitute from touching it. If, however, heathens visit a Jewish prostitute, her wine becomes prohibited, for it is safe to conclude that since she lowers herself so much as to have intercourse with heathens, she will admit them to touch her wine, too.

A heathen once happened to enter the wine-store of an Israelite, where he himself had some wine; he closed the door which had, however, a crevice, and through it he was seen standing among the Israelite's casks. Rabha decided this case thus: Only the casks visible through the crevice are allowed.

Jewish wine was once stored up in a house where a heathen and an Israelite lived in the lower and upper floors respectively. One day the two, alarmed by a sudden noise in the street, went out to see what was the matter; the heathen was then the first to return, and locked the door. In this case Rabha allowed the wine, for, he argued, the heathen may think that the Israelite entered first and might surprise him any minute. In another case where a heathen was found among casks of Jewish wine at an inn, Rabha decided thus: If the heathen is suspicious of being a thief, the wine is allowed, for he will be afraid to touch it; but if this is not the case, the wine is forbidden, for once he approached it he must have touched it.

There was another case where a heathen was found among the casks and Rabha decided it again conditionally—viz.: If the heathen has good reasons to account for his being in the cellar the wine is prohibited, because the fear of being surprised is counterbalanced by the said reasons, and he will surely touch the wine; but if he has no such reasons, the wine is allowed,

because of his fearing to be surprised. An objection was raised from the following: Unguarded Jewish wine in a public inn in which Israelites always come and go, but which happened to be closed so that it became inaccessible to Israelites; or wine left in the inn by an Israelite who requested a heathen from outside to watch it, is in both cases forbidden. In the latter case the heathen has sufficient ground to believe that the Israelite, who of his own accord made him the watchman of the wine, will not return so soon, so that there is ample time to touch the wine; this wine, we see, is indeed forbidden, though the heathen, if taken by surprise, would have no reasons to account for his being near it! Now, Rabha would allow the wine under these conditions. The Boraitha, then, must, therefore, be so interpreted as to mean that the heathen would have reasons for approaching the wine.

An Israelite and a heathen were once at an inn sitting and drinking wine. As the hour of prayer arrived, the Israelite went to pray, leaving the wine where it was. Rabha allowed this wine on the basis of the heathen's fearing to be surprised.

Once an Israelite was with his wine in a boat where a heathen, too, embarked. On hearing the trumpet announcing the approach of Sabbath, the Israelite went on land to enjoy there the Sabbath day. Also in this case Rabha allowed the wine left alone on the boat with the heathen, on the above basis. The possible objection here—viz.: The heathen, knowing that the Israelite will not on Sabbath come back to the boat, will have no fear of being surprised, Rabha meets by saying that the heathens do not believe the Israelites to keep the Sabbath so strictly, and he corroborates this view by citing the words of the proselyte, Issur, who told him that, when yet a heathen, he was sharing in the general conviction of all other heathens that the Jews merely *pretend* to observe the Sabbath day, because if they actually kept it, there would be found the pocket-books lost in the streets, since the Jews are prohibited from picking them up on Sabbath. However, the proselyte went on: Since he became an Israelite he has learned to know better the law laid down on this point by R. Itz'hak—viz.: When an Israelite finds on Sabbath a pocket-book, he must stop for a while, then move on for a distance less than four ells, stop again, etc., till he reaches his house, where he may leave it, and this is the reason why there are no pocket-books in the streets on the day of Sabbath.

An Israelite once happened to leave his wine in the press. Meanwhile a heathen, who heard the roaring of a lion, ran into the press among the casks of wine for his life. Rabha allowed this wine, because the heathen will surely think that some Israelite, too, may chance to save himself here from the lion, and thus take him by surprise, were he to attempt at touching the wine.

In the city of Pumbeditha thieves once intruded into a house, and it was afterward feared that the casks of wine had been opened by them. As it was not certain whether the thieves were Jews or heathens, the case was brought before Rabha, who allowed the wine on the ground that the majority of thieves in that city are Jews. In a similar case that occurred in Nahardea, Samuel, too, allowed the wine.

A heathen girl was once found among the casks of Jewish wine, holding in her hands wine froth. Rabha allowed the wine, for she might have gotten the froth on the outside of the cask, which, though now no longer noticeable there, might have come out before by chance.

Soldiers once arrived at Nahardea and opened quite a number of Jewish casks. R. Dimi tells of a similar case that occurred in Palestine, and R. Elazar allowed the wine, with no definite reasons, however, to base this decision; he either guided himself by the opinion of R. Eliezar, who holds that a doubt as to whether or no a heathen came near the wine found open is a reason to allow it; or he assumed that the majority of the soldiers were Jews.

A Jewish woman, dealing in wine, once left her keys in charge of a heathen, and the question came up as to whether her wine she has in the tavern is allowed? Said R. Itz'hak in the name of R. Elazar: A similar case was once cited before the sages assembled in college, and they allowed the wine; because entrusting one with the taking care of the key by no means allows him into the room. Abayi said: A like decision is pronounced in the following Boraitha: When one leaves to the care of an ignoramus the keys of his barn where fruit is stored up, the fruit is not defiled, because the keeper of the key is only appointed to watch the key. It is thus obvious that, since in the case of an ignoramus who is ignorant of the rules regarding cleanness the fruit is none the less allowed, the more so in case of the wine. It must, moreover, be concluded from here that the provisions of wine are not so stringent as those of

cleanness. The like was, indeed, taught, as follows: When a Jewish scholar lives in the same house with an ignoramus, each having his own courtyard separated from the other's by a low partition, so that one can look over into the other one's yard, and the scholar stores up in his yard something capable of being defiled, and goes away, these things are rendered unclean on the assumption that his ignorant neighbor has touched them. But if the scholar's neighbor is a heathen and the former deposited wine in his own yard, this is, according to Rabh, allowed. R. Johanan, however, holds that the former, too, remains clean.

MISHNA IV.: When an army enters a town in time of peace, the open wine-casks are forbidden, the closed ones are allowed; but if in time of war, both are allowed, for there is no leisure then to make libations.

GEMARA: This Mishna was contradicted from the following: When a city is conquered by a besieging army, the wives of the priests are prohibited to their husbands. Whence it follows that the soldiers find time for debauchery. Thereupon replied R. Mari that they do not find time for offering wine, but they find it for satisfying their voluptuous inclinations.

MISHNA V.: Artisans who are offered by a heathen a cask of offered wine as their remuneration, are allowed to ask of him its worth in money; if, however, the wine has already entered their possession, they are forbidden to ask it.

GEMARA: R. Jehudah said in the name of Rabh: A Jew may say to a heathen, Go and pay for me the government taxes, without becoming liable, even if the heathen gave to the treasury wine instead of money. The following Boraitha was, however, adduced as objecting to this view: A Jew is not allowed to ask a heathen: Go and gratify for me this or that officer. Hereupon Rabh answered: The two cases are incomparable; I allow a Jew to pay his taxes through a heathen, while the Boraitha prohibits him from asking the heathen to do such a thing for which doing the Jew is himself responsible.

MISHNA VI.: He who sells his wine to a heathen is allowed to use the money, provided he has fixed the price *before* measuring the wine, but if he had first measured out and then determined the price, the money is forbidden.

GEMARA: Amemer said: The law governing the transition of title in an object with the object itself extends to non-Israelites as well; instance the Persians, who are in the habit of sending presents to one another; they can never get back the present

which once reached the possession of the other one, since *ex facto* the title passes to the latter and the present is regarded his ownership. R. Ashi, however, questioned this positive extension of the law, and rejected the adduced instance as not convincing, because the fact that the Persians do not return presents is due merely to the pride they take in not *asking* back whatever they have once given away (but if they were asking it back, it would have to be returned). This view can be further substantiated by the following: Rabh was instructing the Jewish winesellers to take of the heathen the money *before* giving him the wine, and to rather lend him money for which he might buy his wine, than to give him wine on credit, for by the fact of getting the wine he does not yet obtain title therein, hence, he renders it as Jewish wine unallowable for use. This shows convincingly that the law mentioned at the outset is not extended to non-Israelites. Thereupon it was further argued that Rabh would prohibit the wine only when it has been measured out to the heathen in *his* vessels, which fact, apart from the question of ownership, renders of itself the wine forbidden. But, was again contended, admitting this argument, we can none the less say that the question of ownership *is* concerned here—viz.: The wine becomes unallowable as soon as it reaches the bottom of the heathen's vessel, but it becomes his property as soon as the Israelite *begins* to pour it, *i.e.*, *before* it reaches the bottom of the heathen's vessel and when it is yet allowed, and still Rabh instructs the wineseller to take the money *first*. Whence it may be inferred that the flow is considered a connecting link.

Shall we assume that Rabh told the Jewish wine-dealers to have their heathen customers pay in advance, because he holds that the jet between the two vessels unites them so as to be regarded one, wherefore the wine becomes forbidden as soon as the first drop of it touches the heathen's vessel? However, the adduced is not at all evidence that the said law is not extended to the non-Jews, for if the heathen kept the vessel in his hand while the Israelite is pouring Rabh would not prohibit the money, as he prohibits only when the vessel stands on the ground while the pouring is being done. It can, however, be shown that, notwithstanding this, it *is* evidence against the extension of the said law. For, the wine is the heathen's property as soon as it enters his vessel, and yet it is not forbidden, unless he touches it; and the Israelite would be allowed to take the

money also after, were this law extended to the non-Jews, too. Now that Rabh requires the payment to be made in advance, it is clearly shown that the law is not extended beyond the Jews.

Or shall we assume that Rabh holds that so long as the object sold is in the vendors' house, though in the purchasers' vessel, it is not regarded as received until after the purchaser takes it into his hand? But this would speak neither for nor against the extension of the law. The fact is that Rabh requires payment in advance for an entirely different reason, viz.: he fears lest the vessel brought by the heathen to the Israelite have some wine drops on its brim, so that as soon as the wine poured in touches them it gets all prohibited.

If we admit this to be the case, it would seem that Rabh differs with R. Simeon b. Gamaliel who said: When forbidden wine is entered into allowed one, it is not allowed to drink, but it is allowed to sell it and derive benefit from its money, excepting however the worth of the admixed forbidden wine, which should be cast into the sea. Nay, Rabh does not differ with, but holds that R. Simeon allows the benefit of the wine only when there was mixed among many casks one of forbidden wine; then all casks may be sold and the worth of the one forbidden should be cast into the sea: but if wine is mixed with wine, also he prohibits all benefit thereof.

The following objection was raised against Amemer: When an Israelite buys of a heathen old silver where he finds an idol, he should, upon receiving title in, and paying money for, the silver, throw the idol into the sea; if, however, he has not yet paid the money for, though already received, the silver, he should return the same, saying: I do not buy it. Now, if the law were extended to non-Jews, how could here the Israelite return the silver already received by him? Said Abayi: This is no objection, as in this case the transaction is made merely by error, the Israelite believing all the time that he receives old silver and not an idol; hence, as he had not in mind to buy an idol, he may return it. But, rejoined Rabha, if you consider this but an erroneous transaction, why should the Israelite cast the idol into the sea, once he has paid the money? Why should he not rather return it also here and disclose the error? The answer is that the Israelite may, indeed, regard the transaction erroneous, but lest it should appear as if the Israelite is getting money for an idol, the sages prohibited him to return it.

Mar, the elder son of R. 'Hisda, said to R. Ashi: But it is

expressly stated in the Mishna that if one sells his wine to a heathen and has determined the price before he measures out the wine, the money is allowed. Now, if according to your opinion the foregoing law is not extended to non-Israelites, how should we understand this Mishna? Here of necessity the wine would have to be considered the Jew's property, until after he has received the money; but as the wine becomes prohibited when touched by the heathen, the Jew should not be allowed to take the money therefor? Hence we must say that the law is extended, and the wine (of the Mishna) is regarded property of the heathen as soon as he has received it, so that by touching it he renders prohibited his property, and therefore the Jew is allowed to take the money. Hereupon said R. Ashi: The Mishna may be understood also without your explanation, viz.: He had received the money before the heathen took possession of the wine. But, retorted the other, if so, how is the concluding sentence of the Mishna to be understood, viz.: If he had measured out the wine before he determined the price, the benefit of the money is forbidden? Said R. Ashi: And according to your opinion the wine belongs to the heathen as soon as he has received it, why then is here the money forbidden? You see then that the main point here is the fixing of the price. It is namely the fixing of the price that conditions the passing of the title: if the price was fixed *before* the measuring, the wine is the heathen's and its money is, therefore, allowed; but if *after*, it is not yet the heathen's and its money is forbidden.

Said Rabina to R. Ashi: Come and hear what R. 'Hyya b. Aba said in the name of R. Johanan, if a descendant of Noah steals an object worth even less than a *peruta*, his sentence is death, and the law of returning (the stolen) is not applied here. Now, why is this law not applied here? presumably because the object in question is of so little value that no one will care to require it. Assuming now that the previously discussed law is not extended to non-Israelites, why should a descendant of Noah be subject to capital punishment for stealing from a Jew, when the object is here always to be regarded as remaining the property of the Jew? Hereupon said R. Ashi: It is so indeed, and he is not put to death for the theft, but for his intention to kill the Jew if he attempted to resist. Retorted Rabina: If such be the case, how do you understand the non-applicability in this case of the law of returning? And he answered: As the descendant of Noah causes by said intention a state which he

can neither annul nor reward, the said law is not applicable here. (Says the Gemara): If so, how is to be understood the last part that when his comrade robs from the first thief the stolen object, he is to be put to death; now, according to your opinion, the second robber who has nothing to do here with the Jew, should not be put to death! Hence it is shown that the law regarding the passing of title in an object (by merely touching it) does extend to non-Israelites.

Once an Israelite said to his neighbor: When I make up my mind to sell this field I will sell it to you. Later on he sold it to a third party. R. Joseph decided that the first one is entitled to the field, provided he gives the same price offered by the other purchaser. Abayi, however, disputed this decision on the ground that the owner did not fix a price when making the promise to the first party; and, as it is evident from our Mishna, a sale is determined by the fixing of the price, I should like to know if the Mishna concerns itself only with wine because of its being very rigorous, or also with *all* other sales? Come and hear. Aidi b. Abin said: A case similar to that of the foregoing sale of the field was once brought up before R. 'Hisda, and he consulted R. Huna about it. R. Huna decided it from the following Mishna: When one brings to market fruit on animals or men, and a purchaser, asking him to convey this fruit to his house, himself leads the men or animals with the fruit to his house, the fruit is not yet thereby considered his own, and it is immaterial whether the price was determined upon before or after the measuring of the fruit. The two, purchaser and vendor, may yet withdraw. But if the fruit was unloaded and carried into the house, the following conditions are determining: If the price had been fixed before the measuring began, the sale is a sale and neither vendor nor purchaser can withdraw; if, however, the measuring takes place before the fixing of the price, either party may nullify the transaction. It is thus obvious that (the time of) fixing the price is a condition precedent to a valid transaction.

An Israelite once said to his neighbor: When I make up my mind to sell this field, I will sell it to you for a hundred *zuz*. Sometime later he sold it to another one for 120 *zuz*, and R. Kahana decided the case in favor of the first party (to whom the owner made the promise). R. Jacob from Naharpakod disputed this decision, contending that the owner, while making his promise, had no desire yet to sell the field; it was only the high

price of 120 that induced him to the sale, while for a hundred zuz he would not sell it yet. And the Halakha prevails with R. Jacob from Naharpakod; *e.g.*, if one offers to sell to his fellowman an article for a price estimated by *three* people and then two of them find the article to be worth 100 zuz and the third estimated it at 120 zuz, the estimate of the two prevails. But if the condition of the offerer was that the price be *determined* by *three* people, all the three must agree in their determination of the price. (The reason of this distinction is that in the former case the three persons who are to estimate constitute a jury, and hence the majority rules, while in the latter case the three are to *determine* the price, which can be done by persons not on the jury, and hence the determination must be unanimous.) However, if the offerer put up the condition that the price of the article be either estimated or determined by *four*, unanimity is a requisite in both the cases (because by leaving the matter to four people the vendor clearly indicates that he does not want a jury, as a jury never consists of four). Again, if the vendor after empowering three men to estimate the article refuses afterward to abide by their estimate, requiring to choose another three men who, he thinks, better understand the value of such articles, R. Papa says: He has the right to do so, while R. Huna b. R. Jehoshua denies him such right on the ground that with such a right the vendor would be enabled to drag the transaction *ad infinitum*. And the Halakha prevails with R. Huna b. R. Jehoshua.

MISHNA VII.: If the funnel was first used to measure through it into the heathen's flask and then into that of an Israelite, the wine of the latter is forbidden when there has been left in the funnel a drop or so from the heathen's wine. Furthermore, wine left in the vessel after some of it has been poured into a heathen's vessel, is allowed, but the wine poured out is forbidden.

GEMARA: An objection was raised from the following Mishna: The jet formed by the pouring, the streaming flow and the moisture form no connecting link for either defiling or purification, while a cellar does form a connection for both; and according to R. Huna the jet, etc., form also such a connection with regard to wine.

R. 'Hisda once said to the Jewish wine-dealers: When pouring your wine into the cask of a heathen, you either do it abruptly, bending each time your vessel backward, or do it all at

once—all this in order that the jet may not connect the two vessels. Rabha said to the wine-pourers: Do not allow a heathen to assist you in pouring, for it may happen that a heathen, supporting all alone a vessel, would empty its contents without the aid of the Israelite, and this would render the thus emptied wine forbidden.

An Israelite was once emptying wine from one cask to another by means of a siphon, when a heathen came and touched the siphon. Rabha prohibited the wine in both casks. Hereupon R. Papa, according to others R. Ada b. Mathna, or to still others, Rabina, said to Rabha: Shall we assume that the jet forms a connection, and that on this your decision is based? And the answer was: Nay; this case is of a different nature; the heathen's touching the syphon is equivalent to his touching the cask itself. Mar Zutra b. R. Na'hman said: An Israelite may drink with a heathen from one decanter called *kanishkanin* (having several pipes), provided the former is the first to stop drinking; for if the heathen were the first to stop, the wine left in the pipe would flow back into the decanter and render unallowed the whole wine therein. Rabha b. R. Huna, when at the house of the Exilearch, said the same, and according to others, he himself drank from a *kanishkanin*.

MISHNA VIII.: Devoted wine is prohibited and renders unallowable even by a minimal quantity; the same is the case with devoted wine or water mixed with other wine or water respectively, and be it in a minimal quantity, likewise wine with water or *vice versa*, provided the quantity be such as to impart a flavor to other ingredients. This is the rule: When the two ingredients are of the same kind, a minimal quantity suffices; if, however, they are of various kinds, the imparting of flavor determines.

GEMARA: On his return from Palestine, R. Dimi said in the name of R. Johanan: When an Israelite empties prohibited wine into a reservoir with allowed wine even for as long a time as the entire day, the whole of the wine is allowable, because the allowed wine of the reservoir being every time sixty fold bigger than the first drops of the prohibited wine, keeps the entire wine allowable, *i.e.*, inclusive of the whole prohibited wine emptied into it. Now, how can this view be reconciled with the dictum of the Mishna that a minimal quantity of prohibited wine renders other things forbidden? Not otherwise than by reversing the order of its statement, thus: When

allowed wine is emptied into forbidden one, and be it in a minimal quantity, the former is rendered forbidden. Come and hear another objection: Our Mishna further establishes "the imparting of flavor" as criterion; does it not mean that the forbidden fell into the allowed? Nay; it means *vice versa*. But if the water spoken of in the first part means forbidden water, we must say that the same is the case with the water mentioned in the second part when it falls into the wine, and the "imparting of flavor" is here the criterion? R. Dimi may say that the entire Mishna speaks of the permissible falling into the forbidden; but in the first it is the water that is the forbidden, and in the second the wine is the forbidden and the water the permissible. R. Itz'hak b. Joseph on returning from Palestine said that R. Dimi's version of R. Johanan's view was faulty, and corrected it thus: When an Israelite empties forbidden wine from a vessel with a narrow mouth into a reservoir with allowed wine, even the whole day long, the forbidden wine is rendered allowable by the wine in the reservoir on the basis of the sixty to one ratio. Whence it is manifest that R. Johanan allows to do this only from a narrow-mouthed vessel, which makes but a very thin jet, but not from a barrel that has a thick flow. Rabin, however, when he came from Palestine, declared this version, too, as inexact, and formulated R. Johanan's opinion as follows: When forbidden wine falls into the said reservoir and simultaneously a pitcher of water also falls in, the allowed wine of the reservoir is not taken account of; only the water must be reckoned in relation to the forbidden wine, and if it be sixty fold the latter, the whole is allowed. R. Samuel b. Jehudah, on coming from Palestine, said that to Rabin's version R. Johanan adds: Provided the water fell in first into the allowed wine in the reservoir, the incoming forbidden wine becomes allowed; if, however, the forbidden wine first fell into the reservoir and then the water, all remains prohibited, because the wine has met with its own kind and asserts itself. According, however, to another opinion, R. Samuel b. Jehudah explains not Rabin's version, but our Mishna, where it says that wine mixed with wine, even in a minimal quantity, renders it prohibited. This, he says, R. Johanan understands as follows: If wine meets wine only, then a minimum renders prohibited; but if a pitcher of water falls also at the same time, the allowed wine is not counted at all, and the water, greater in quantity than the wine, abolishes it. And it

is by far not a matter of indifference whether Samuel's explanation is concerned as relating to the said Mishna or to the foregoing version of Rabin. If it refers to the Mishna, he must be understood to allow the wine regardless of the question whether the water was first added to the allowed wine and then the forbidden wine or *vice versa*. On the other hand, if his explanation applies to Rabin's version, he presumably holds that the water must come first and then the forbidden wine.

It was taught: If forbidden wine falls into a reservoir, and simultaneously a pitcher of water, 'Hiskia prohibits it, provided the forbidden increased the quantity; but if the water increased the quantity, then he allows it. R. Johanan, however, allows also in the case when the quantity was increased by the forbidden. R. Jeremiah asked R. Zera whether the difference of opinion exhibited by 'Hiskia and R. Johanan is the same as that shown by the respective opinions of R. Eliezar and the sages in the following Mishna: In a case when both ordinary and Teruma leaven fell into a dough and neither of the two would of itself cause fermentation, but together they would do so, R. Eliezar guides himself by that which fell in last, while the sages hold that the Teruma leaven does not render prohibited, unless it suffices to cause by itself fermentation, and it is immaterial whether it fell in first or last. Replied R. Zera: How can this be borne in mind? Did not Abayi say that R. Eliezar allows the dough only when the Teruma leaven was put in first, then taken out and the other leaven put in; but if the Teruma leaven remained, the dough is prohibited? 'Hiskia allows the wine even when the forbidden one remains. The difference in the opinions of 'Hiskia and R. Johanan concerns only the consideration (*i.e.*, whether the allowed wine may be considered as non-existent). R. Johanan holds this theory of consideration, while 'Hiskia does not.

The following was taught in support of this: R. Ami, according to others R. Assi, said in the name of R. Johanan: Suppose two goblets, one containing ordinary, the other Teruma wine, each diluted with water; if now the two wines be mixed into *one* goblet, the ordinary wine is not considered as existing at all, hence, if the water is to the Teruma wine in the ratio of sixty to one, the wine is negligible.

"This is the rule: When the two are of the same kind, a minimal quantity suffices; if, however, they are of various kinds the imparting of flavor determines." Rabh and Samuel say that

all objects biblically forbidden, render by minimal quantity prohibited all other objects of the same kind; but if of a different kind, they are made unallowable only when the flavor of the forbidden is perceptibly imparted to them. And this is inferred from the expression of the Mishna "this is the rule," which expression would be superfluous if not for generalizing this biblical prohibition. On the other hand, R. Johanan and Resh Lakish both decide all such cases of biblical prohibition by the rule of "imparting flavor," irrespective of identity or diversity of kinds; and the expression of the Mishna "this is the rule" they explain as including a mixture of grain from which it is not known whether Teruma and tithe were separated.

There are two Boraithas, one held in the sense of Rabh and Samuel, the other in that of R. Johanan and Resh Lakish: (1) All objects biblically forbidden render objects of the same kind prohibited by minimal quantity, objects of another kind by the imparting of flavor. (2) All objects biblically forbidden render *all* other objects prohibited by the imparting of flavor irrespective of kind; the mixture mentioned above and the wine form the only two exceptions: A mixture from which Teruma has not been separated, as well as offered wine, renders objects of the same kind forbidden by minimal quantity; objects of a diverse kind, by imparting flavor. The rigorousness of the wine regulation is readily justified, when we remember that here idol-worship is concerned; but why is it applied also to the mixture? The answer is that as regards the separating of Teruma the same law holds good—viz.: When the owner separates as Teruma but a single grain from a heap of 1,000 measures, it is, according to Samuel, sufficient; hence, when from such a heap of 1,000 measures, from which no Teruma has as yet been separated, a single grain comes to another heap of like magnitude, the latter is rendered prohibited. And there is also a Mishna to the same effect: According to the sages an object renders prohibited other objects by minimal quantity when they are of the same kind, but if they are of various kinds, the imparting of flavor is the deciding factor.

MISHNA IX.: The following objects are forbidden and render prohibited by minimal quantity: Offered wine, an idol-image, holed hides, an ox sentenced to be stoned, the heifer destined for breaking off her neck, the fowl sacrifices of the leper, the hair of a Nazarite, the first-born of an ass, meat cooked in milk, the kid exported on the Day of Atonement, and

ordinary cattle slaughtered in the courtyard of the temple. All these objects are themselves forbidden and render prohibited by their minimal quantity.

GEMARA: If the Mishna classifies these objects on the basis of their perceptible number, why does it not include here pieces of a carcass? Or if it enumerates only objects of which all benefit is forbidden, why does it not include leaven on Pass-over? Said R. 'Hyia b. Abba, according to others, R. Itz'hak of Naph'ha: The Mishna enumerates here objects that are both perceptible in number and prohibited for all benefit.

"*All these objects.*" What does this expression exclude? Objects whose number is a matter of indifference, their benefit, though, being forbidden; or *vice versa*, objects allowed for benefit and perceptible in number; it is such objects that render prohibited not by minimal quantity, but by imparting flavor.

MISHNA X.: When offered wine flows down into a reservoir of wine, the benefit of the whole wine is forbidden. R. Simeon b. Gamaliel, however, says: The whole is allowed to be sold to heathens, excepting the worth of the offered wine therein.

GEMARA: Said Rabh: The Halakha prevails with R. Simeon b. Gamaliel only in the case when a *cask* of devoted wine was mingled among casks of Jewish wine; but when devoted wine is mixed with other wine, the whole is forbidden. Samuel, however, says: The opinion of R. Simeon b. Gamaliel prevails as the Halakha concerning wine also. With Samuel agree Rabba b. b. 'Hana in the name of R. Johanan, R. Samuel b. Nathan in the name of R. Na'hman in the name of Rabha b. Abuhu. R. Na'hman himself, however, said that for practice it should be decided thus: If it is definitely known that the admixed wine was devoted wine, Rabh's procedure is the right one; but if the case is doubtful, Samuel's view is to be followed.

MISHNA XI.: A stone wine-press waxed by a heathen must only be washed to remain clean; but if it is of wood, Rabbi says it must only be washed, while the sages say that the wax must be wholly removed. Finally, if it is a clay press it is forbidden even when the wax has been removed.

GEMARA: Rabha interprets the Mishna thus: The washing suffices only when the heathen waxed the press, but if he pressed his own wine therein, the entire wax must be removed. Is not this self-evident from the fact that the Mishna does not mention the pressing? Lest one say that the expression of the

Mishna is *not* exclusive of the other case, hence his interpretation. Here is a case to this effect. An Israelite once appeared before R. 'Hyia asking him thus: Send a man with me to investigate whether my wine-press is in legal order, so that I might press my wine therein. Hereupon R. 'Hyia said to Rabh: Go and examine the man's press, but state your opinion in a manner as not to excite any dispute in the college. Upon examining the press, Rabh found it smooth, and thought it need only be washed. However, further examination revealed to him a fissure in which some wine, though dried up, was noticeable; then he decided that washing is not sufficient, but that the wax must be wholly removed, adding: I now understand the apprehension of my uncle regarding a possible dispute in the college consequent upon my decision; indeed, had I but relied upon my first superficial examination, my decision would have been disputed.

The rabbis taught: A press, a ladle, and an earthen funnel that belong to a heathen and are not waxed Rabbi allows to use, provided they have first received a washing, while the sages prohibit them. As to the use of earthen wine-pitchers, Rabbi, too, forbids it, for such pitchers are used for a greater length of time, while the foregoing vessels are used but temporarily; but again, if these vessels are of wood or stone they are, after being washed, allowed if not waxed, but if waxed they are forbidden. Now, this last prohibition seems to conflict with the Mishna which declares clean a stone press waxed by a heathen, provided it be washed before using it? The answer is that the press of the Mishna is, though waxed, yet not used by the heathen, while the Boraitha speaks of a press where the heathen pressed wine.

The master says: A press, a ladle and an earthen funnel that belong to a heathen, are allowed to use upon being washed first, while the Mishna prohibits an earthen press even after the wax thereof has been removed? Said Rabha: In the Boraitha it is Rabbi that allows, while the sages forbid here as well as in the Mishna.

Rabha lectured: When an Israelite wishes to use a heathen's wine-press, he must first wash it with boiling water. When Rabha once sent his wine-pitchers to Harpania through a heathen, he put each pitcher-mouth downward into a sack and sealed the latter, thereby effecting a double sealing; for he was of the opinion that the sages prohibit such vessels as used to preserve

wine for a long time, even if they have been but for a short time in the hands of a heathen.

How should the washing prescribed in both Boraitha and Mishna be done? Rabh says, with water; while Rabba b. b. 'Hana says, with ashes—that is to say, the two require the washing to be done with both water and ashes, and differ only as regards the order, Rabh requiring the water first, and Rabba the ashes first; not is their point of difference one of essence, as the former has in view dry vessels and the latter moist ones. The disciples of Rabh at Suro said in his name that the washing is done as follows: To dry vessels apply first water, then ashes, and then again water; to moist vessels, first ashes, and then water. The same disciples said in the name of Samuel: To moist vessel apply in this order: ashes, water, ashes; to dry ones, in this order: water, ashes, water, ashes. The disciples of Rabh at Pumbeditha quoted him as holding the just-cited view of Samuel, and Samuel as requiring this procedure: To moist vessels, ashes, water, ashes, water, *i.e.*, four; to dry vessels, water, ashes, water, ashes, water, *i.e.*, five processes; hence, Rabh and Samuel are of the same opinion, with the only difference that the former does not count the last water, which Samuel does.

R. Abuhu on being once asked how the cover of a heathen's press should be cleaned, answered with the following Boraitha: Wine or oil-presses of an Israelite that have become unclean must be cleaned in the following manner: The sideboard of the press, the press itself and the brooms must be washed with water; the press cover, however, if made of hemp stalks or osier, must be washed according to the directions of Rabh and Samuel; but if it is of reed or thin wood, it must be left unused for a year; R. Simeon b. Gamaliel, however, finds the period between two consecutive press-seasons sufficient, which period is sometimes more sometimes less than a year. Said R. Jose: If the cover is needed for immediate use it should be put in boiling water or passed through the boiler where are roasted the olives from which the oil is pressed. R. Simeon b. Gamaliel said in his name: The cover may be put under the water of a cascade or of a spring. And for how long? For an *Onah*. The same laws which the sages have established with regard to clean and unclean, are also concerning the question of devoted wine.

How long is an *Onah*? R. Hyya b. Abba said in the name of R. Johanan: An *Onah* is the length of either a day or a

night. R. Hana b. Sheina, according to others, R. Hana b. Sheina, said in the name of Rabba b. b. 'Hana that R. Johanan makes an Onah equal to the length of a half a day and night. However, according to each version, the Onah equals twelve hours, since the one refers to the equinox and the other to the solstice season.

R. Jehudah says: The bags of the heathens through which the wine is filtered of its dregs, are subject to the following regulations: If they are made of human hair, they must first be washed with water before an Israelite may use them; if of wood, they must pass through water and ashes; finally, if of linen, they must be set aside for twelve months, and if they have knots they must be unravelled. Baskets and beehives used by the heathens in working the wine, are under these rules: If woven of palm-twigs, they should be washed with water before the Israelite uses them; if of reed, the washing should be with water and ashes; linen sieves must be put aside for twelve months, and if they have a knot it must be opened.

What must be done when an ignoramus thrust his hand into the wine-press and touches the grapes and the wine? Of the two sages, Rabbi and R. 'Hyya, one says only the grape touched by him and whatever is immediately adjacent thereto is unclean and must be removed from the press, but not the rest; while the other says: All that the press contains is defiled by his touch. The former opinion seems to conflict with the following Mishna: A reptile found in an oil-mill renders unclean only the place touched by it, but if there be a flowing liquid, all becomes unclean. The answer is that the grapes are on the twigs of the cluster, so that wood intervenes between the place touched and the fluid, and wood is not receptive of uncleanness.

The sages taught to R. Jeremiah, according to others, to his son, that the Halakha prevails with him who says that only the part touched by the Amharetz and its immediate environment are unclean, while all the rest in the press is clean.

MISHNA *XII.*: Utensils bought of a heathen must be cleansed according to usages: if they are customarily immersed in water, they must be cleansed so; if boiled, by boiling; if glowed, by glowing in fire. A spit or a gridiron must be glowed; a knife is cleansed even by grinding it.

GEMARA: There is a Boraitha: The objects mentioned in the Mishna, upon being cleansed in the prescribed manner, must be again immersed in a tank holding forty sa'ah of water.

Whence is this deduced? Said Rabha, from [Numb. xxxi. 23]: "Everything that cometh into the fire, shall ye make go through the fire, and it shall be clean." The apparently redundant phrase "and it shall be clean" calls for another cleansing, which is the last immersing.

Bar-Kapara taught: The last sentence of the verse is introduced by "yet" in order not to give rise to the belief that the said objects must on the third and seventh day be besprinkled with the sprinkling water. Moreover, the term *meinidah* (i.e., the waters where the menstruant woman bathes) is used with a view toward emphasizing the necessity of immersing them not merely in water, but in a tank holding forty saäh thereof. Again, it is also evident that both the sentences, that "it shall be clean," and the next one, "yet it," are necessary: the former alone would merely indicate the necessity of an additional immersing in general (and not in forty saäh); while the other sentence alone would give ground to assume that the rules regulating the said utensils are identical with those providing for the woman's cleansing of her menses, which is, besides the immersing, yet conditioned by the sunset; hence, the former sentence serves to prevent such an assumption. R. Nahman said in the name of Rabba b. Abuhu: New utensils, too, bought of a heathen, must be cleansed, just as vessels passed through fire must none the less be also immersed; whereto, R. Sheshith opposed, saying that according to this opinion scissors bought of a heathen would also need immersing, to which R. Na'hman replied that it is only kitchen utensils that are concerned here. R. Nahman said again in the name of Rabba b. Abuhu: The rule of immersing applies only to utensils bought as it was in Midian, but not to those borrowed of a heathen.

R. Itz'hak b. Joseph happened once to buy of a heathen an earthen vessel and wanted to immerse it, when R. Jacob said to him: I have heard from R. Johanan that only metallic vessels need immersing. R. Ashi said: Vessels of glass, too, must be immersed, for they can, after being broken, be restored to their former state, wherefore they equal those of metal. As to glazed vessels R. A'ha and Rabina express their opinions as follows: One holds that as these vessels are of earth they need not be immersed; while the other maintains that since in glazing lead is used, these vessels are regarded as metallic, and need immersing; and so the Halakha prevails.

The schoolmen propounded a question: Is it allowed to use

without immersion a new vessel received of a heathen as a pledge? Said Mar b. R. Ashi: A heathen once left with my father a silver goblet as a pledge, and he had first immersed and then used it; however, I am not in a position to tell whether my father was of the opinion that a pledge is in general regarded as bought, wherefore immersion thereof is obligatory, or he knew in that particular case that the heathen was not going to redeem the goblet, so that it surely remained his property.

The rabbis taught: New kitchen utensils bought of a heathen need immersion; furthermore, vessels already used by a heathen, but merely for preserving cold articles, such as goblets, small wine-pitchers and glasses, must be first washed with, and then immersed in, water; vessels, however, already used by the heathen to preserve warm food, etc., such as kettles, pans and water-boilers, must first be passed through boiling water and then immersed; finally, vessels used by the heathen only on fire, such as spits and gridirons, must first be glowed and then immersed. In case, however, an Israelite made use of such utensils without having submitted them to the prescribed process of cleansing, all that was kept or prepared in them is, according to one Boraitha, forbidden, and according to another, allowed; the one basing itself upon the opinion that all forbidden objects, even if they make a food when mixed to it insipid, render it prohibited, while the other Boraitha guides itself by the opposite opinion. But, may be asked in this connection, how does he who leaves an object allowable provided the admixed forbidden thing augmented its insipidness, interpret the Scripture's prescribing to the Israelites to cleanse the vessels they acquired through their conquest of the Midianites? Said R. 'Hyia b. R. Huna: The prescription of Scripture just alluded to concerns only such kitchen utensils in which food was prepared during the very day of the conquest, as they were not capable yet to render other things more insipid. And the Scripture did not allow to leave these vessels for a day or so when they would render food insipid, fearing lest one would be tempted to use them on the very day of the conquest.

R. Amram said to R. Sheshith: The Mishna says that "spits and gridirons must be glowed," whereas we learned with regard to such utensils that if meat of a sacrifice was roasted on them, they must be passed through boiling water before other such meat may be roasted on them? Said R. Sheshith: Amram, my son, the two cases are incomparable: Here the utensils ab-

sorb an allowed object, while the vessels of heathens absorb forbidden things, and can be, therefore, cleansed only by glowing. Rabba, however, finds the two cases comparable, because as soon as the meat of the sacrifice remains on the spit or gridiron for an interval longer than the one prescribed for eating it, its vapor, which is already unallowed, is absorbed by the vessel, therefore "boiling" includes also scouring and rinsing. Hereupon said Abayi: Such cannot be the case, for the scouring and rinsing take place in cold water; while in the case of sacrificed meat the vessels are passed through boiling water; it must then be understood that both the spit and gridiron of the heathen and those used to roast sacrificed meat on must, in order to be used again, first be glowed and then passed through hot water. As to the Mishna, it mentions only glowing, for the passing through boiling water is seen from the Boraitha; in like manner does not the latter mention the glowing which is clearly stated in the Mishna. Rabba, however, finds this explanation incorrect; for, he says, if this were the reason of the omission, either the Mishna or the Boraitha would have to state both methods of cleansing; then in the other one, where only one method is given, the inference as to the second method, too, could be justly made, but as the case is now, the two are not mutually supplementary (but rather exclusive). R. Papa, however, reconciles the two (Mishna and Boraitha) as follows: The utensils of the heathens retain all they absorb, as they are not used daily; while those on which the sacrificed meat is roasted are used continually and are, therefore, not left to cool off and to absorb the vapors. Said R. Ashi: The most plausible explanation is that offered above by R. Sheshith, and as to Rabba's objection there, that the utensils will, when next used, evaporate the previously absorbed vapors that have become forbidden, it can be met thus: The evaporation is considered merely as odor and deserves of no attention.

For how long must the utensils remain glowing in fire? Said R. Mani: Until their surface is peeled off. In cleansing vessels by passing them through boiling water, the water must all cover them, according to R. Huna. But if the vessel is very big? Come and hear: It once happened at R. Akabia's that a big kettle needed cleansing, and he had the kettle brimmed high with dough, so that the water poured into it reached above the kettle; this water was made to boil and the kettle was cleansed therewith. Said Rabba: Who can equal R. Aqabia in wisdom,

so as to invent so ingenious a device! for the brim of the kettle which was unclean only by reason of the forbidden prepared therein and the drops spouting upward, is now cleansed by the drops of the boiling water spouting upward upon the brim.

"*A knife is cleansed even by grinding it.*" R. Ukba b. 'Hama said: It means the knife should be ten times stuck into the earth in and out. Added R. Hunab. Jehoshua: It must be earth that has not been yet cultivated. R. Kahana remarked: The knife which is to be thus cleansed must have no hole on its surface. There is a Boraitha in support of this: A knife wholly smooth on its surface may be cleaned by sticking it in the ground ten times. Said R. Huna b. Jehoshua: But then you can eat with it only cold food; and if you want to use it also for warm food, you must first pass it through boiling water. As it once happened that Mar Jehudah and Bati b. Tubi were guests at the table of King Sabur when a citron was served; the king took a piece from it for himself and another piece he tendered to Bati b. Tubi; then he took the knife, stuck it in the ground ten times, cut off another piece, and gave it to Mar Jehudah. Thereupon said Bati b. Tubi: Am I not an Israelite that you thus cleanse the knife for him and not for me? And the king answered: I am convinced of Mar Jehudah's profound piety, but not of yours. According to others, however, the king's answer was this: Recall what you committed last night. (See Rashi's explanation of this last answer.)

APPENDIX TO PAGE 60.

"*Pieces of wine extract.*" The Mishna speaks of *Hadrianic potsherds*. What are these potsherds? Said R. Jehudah in the name of Samuel: It is meant thereby the potsherds of the King *Hadrianus*; and R. Dimi on his return from Palestine explained the nature of these potsherds as follows: The Romans were wont to find a plot of virgin soil, which they would work out and plant with grapes; the wine thus obtained they used to pour into new white earthen pitchers and leave it therein until the pitchers would absorb as much of the wine as they could; then the Romans would empty the pitchers of the remaining wine and break them into pieces; which potsherds they used to take along with them on their military expeditions, and whenever they wanted some wine they would pour water on such

potsherds and these would turn the water to wine. R. Jehoshua b. Levi added with reference to this that our best wine is not so good as the third pouring of these potsherds.

It was asked whether it is allowed to fasten with such potsherds the legs of a bedstead, since here the potsherds are wanted not for the wine they contain but for another purpose? Come and hear: R. Eliezar and R. Johanan who were asked on this point, expressed contrary opinions; the one allowing the potsherds for this use and the other forbidding them (which latter opinion prevails as the Halakha).

An objection was raised from the following: Wine poured into pitchers or leather bags of a heathen is forbidden to drink, any other benefit, however, may be derived from it. And Simeon b. Guda said to the son of R. Gamaliel, that even his father, R. Gamaliel himself, drank at Ako such wine, which story found, however, no belief. R. Simeon b. Gamaliel said in the name of R. Jehoshua b. Kapusai: The leather bags of a heathen are absolutely prohibited, so that even a cover for an ass is not allowed to make of them. Thus you see that here the leather bags are wanted not for the wine they contain, but for making a saddle or so for an ass, and yet they are forbidden? But again, how is then the Boraitha to be understood? Why then are not all vessels, earthen as well, prohibited to sell to, or buy from, a heathen? What difference is there between leather bags and earthen pitchers? Said Rabha: The following was the cause why leather bags were prohibited: it was namely feared that the Israelite might mend his own leather bag with the leather of the heathen's bag.

But how can he who prohibits to derive any benefit from the heathen's leather bag, account for the fact that the selling and buying of pitchers was not forbidden? He may say that as regards pitchers one can easily detect whether there was wine in them; hence, if it is found that such contained no wine, one is allowed to buy them. But as to Hadrianic potsherds, it is certain that they contain wine, hence they are absolutely prohibited.

END OF TRACT ABODA ZARA.

TRACT HORIOTH (DECISIONS).

SYNOPSIS OF SUBJECTS

OF

TRACT HORIOTH (DECISIONS).

CHAPTER I.

MISHNA I. TO V. If, after the court had decreed the transgression of one of all the commandments prescribed in the Torah, an individual guided by this decree acted erroneously, etc. If upon issuing the decree the court becomes aware of its being conceived in error and retracts, and meanwhile an individual commits a transgression upon their decree, etc. If while the court was deciding, one of its members who perceived their error drew their attention to it, etc. If causing the whole people to act erroneously, etc. If upon the erroneous decree of the court the whole people, or its majority, acted, etc., 3-12

CHAPTER II.

MISHNA I. TO VII. If an anointed priest has erroneously rendered an unlawful decision against himself and acted accordingly by mistake, etc. If he (the said priest) both decided and acted for himself, etc. The court is not liable unless the issued decree concerns Korath and sin-offering respectively. It is also not liable for a decree concerning a command or a prohibition with regard to (polluting) the sanctuary. There is no liability when the decree concerns an adjuring challenge to testify, a hastily made vow, etc. Concerning a ruler and the high priest's offerings for their sin, 13-18

CHAPTER III.

MISHNA I. TO VII. An anointed priest who has sinned and was removed from his office, etc. If they were appointed to their respective positions after they had sinned, etc. Who is the anointed priest? He who was consecrated to priesthood by the holy ointment, etc. The high priest rends his garment from below; the common priest, from the top, etc. What is more common precedes the less common. The man has the preference over the woman, etc. In captivity his master has the preference over his father. His mother, however, has the preference over all. The following precede one

another in order of arrangement, etc. Why does the dog know his master, and the cat does not? Why do all reign over the mice? Five objects are conducive to one's forgetting his studies, etc. Five are apt to strengthen one's memory, etc. The following ten objects are cumbrous to one's studies, etc. When the prince enters, all the people present in college rise to their feet, without again taking their seats until he tells them to do so. When the chief justice enters, the people occupying two rows of seats facing the entrance rise, etc. The legend which happened to Raban Simon b. Gamaliel with R. Mair and R. Nathan. How the latter were removed from the college. An erudite scholar and a dialectician, who has the preference? How Abaye rose to be the chief of the College of Sura, . . . 18-29

TRACT HORIOTH (DECISIONS).

CHAPTER I.

MISHNA I.: If, after the court had decreed the transgression of one of all the commandments prescribed in the Torah, an individual guided by this decree acted erroneously, either simultaneously with the judges, or after they had acted, or altogether independently, the court not having acted yet at all, he is free, for he followed the decree of the court. If, however, the transgressor was one of the members of the court and knew the decree to be erroneous, or a scholar already qualified to himself decide, he is in any of the aforementioned conditions liable (to bring a sin offering), as he has not based his transgression upon the decree of the court. This is the rule: Whoever relies upon his own judgment is liable, but whoever follows the decision of the court is free.

GEMARA: Samuel said: The court is not liable unless its decree read thus: You are allowed to practise so and so. R. Dimi of Nahardea, however, said: The phrase "to practice" is not necessary, the statement "you are allowed" being sufficient; which view was, however, objected to by Abaye, R. Aba, and Rabima from Mishnaioth that oppose it and it was accordingly overthrown without any further discussions.

"*An individual . . . acted erroneously,*" etc. Said Rabha: This is so only when he acted according to the decree of the court, but if he ate, *e. g.*, illegal fat in the belief that it was legal, he is liable. This view of the case so certain to Rabha was doubtful to Rami b. Hama, as he propounded the same question and Rabha answered it from the expression "guided by this decree" (the Gemara, however, says) that in this case Rabh R. Johanan differ, viz.: in case the court has decreed that this fat is allowed to use and has consumed illegal fat thinking it legal, according to the former he is free, and according to the latter he is liable. And R. Papa explained R. Johanan's

reason to be that the transgressor is still considered as having acted in accordance with the decree, as if the court became aware that it has erred it would retract and so would the transgressor abstain from eating, hence R. Johanan's decision. And Rabha said: Rabh admits that the transgressor in question does not complete the majority, because it reads "erroneously," which means that all must err with regard to the same thing but not to different things.

"*Either simultaneously with the judges,*" etc. This is stated in order to teach that he is free, not only when he acted simultaneously with, but also when after, the judges had acted.

"*A scholar qualified,*" etc. To what purpose are both the conditions stated? Rabha: To teach that even such a person who is learned but who lacks discriminating power, or *vice versa*, is also culpable. Said Abaye to him: But from the statement of the Mishna, "who is already qualified to decide," obviously follows that he is both learned and strong is discrimination? Answered Rabha: I mean to say that if the Mishna stated not the last phrase, it could be said that in order to make him liable he must possess the two qualifications, hence the Mishna states it to indicate that its first phrase refers to him who possesses even but one qualification.

Again: "*Qualified himself to decide,*" etc. Who is meant thereby? Said Rabha, such, *e.g.*, as Simeon b. Azai and Simeon b. Zoma. Said Abaye to him: An act of such great men may be considered intentional; we must, therefore, say that such a case can take place only if he was aware that such is prohibited, but he committed an error by thinking that it is meritorious to follow the decree of sages even when they err.

"*This is the rule,*" etc. What does this sentence intend to add? Him who does not care at all to guide himself by the decision of the court. Said R. Jehudah in the name of Samuel: The whole Mishna is in accordance with R. Jehudah (the Jana), but according to the sages one is liable for acting upon the decree of the court as his guidance. Which R. Jehudah is this? From the following Boraitha. It reads [Lev. iv. 27]: "If any person . . . sin through ignorance, by his doing," where there are three extensions, to teach that he is liable by *his* doing it himself, but if by doing it upon the decree of the court, he is free. And which sages are there spoken of? From *Torath Kohanim*, section i., Leviticus. But let us see, our Mishna as well as that of *Torath Kohanim* is each taught anonymously;

whence, then, do we know that our Mishna is in accordance with R. Jehudah and the Boraitha with the rabbis, may be the converse is the case? Nay, as of no other have you heard to consider such extensions than of R. Jehudah, who said in the following Boraitha: it reads [ibid. vi. 2]: "This is the law of the burnt-offering," where there are three extensions. However, the Mishna can not be in accordance with R. Jehudah, for the reason that according to him the congregation is liable to bring a bullock in case its majority have sinned erroneously, while according to the sages the *court* must bring it. Therefore, our Mishna must be interpreted to mean that the court has decreed and only the minority has acted thereupon, and the point of their difference is that according to one an individual acting on the basis of the court's decree is free, while according to the other he is liable. R. Papa, however, said: All agree that in such a case the transgressor is free, and their point of difference is that one holds: The court is completing the majority of the congregation, while the other does not hold so.

R. Assi said: In a decision for practising, it is not the majority of the congregation but that of all the population that must be considered, as [I Kings viii, 65], "And Solomon held at that time the feast, and all Israel with him, a great assembly, from the entrance of Chamath unto the river of Egypt, before the Lord our God, seven days and seven days, even fourteen days," now, as it is written, "and all Israel with him," what for, then, yet the description, "great assembly from the entrance of Chamath unto the river of Egypt"? To teach that in such a decision (as to abolish the day of atonement) the population of the whole land is considered the assembly.

R. Jonathan said: If there were one hundred assembled to decide some point, there is no liability (attached to the transgression of the decision) unless the decree was made unanimously, as it reads [Lev. iv. 13]: "And if the whole congregation of Israel sin," which means that all sin by error, and that the decision be brought about unanimously. Said R. Huna b. R. Ashia: It seems to be so, since with regard to all the laws of the Torah there is a tradition that the majority is equivalent to the whole, and here it reads, "the whole congregation," *i.e.*, it must be the *whole* of the body, so that if there were one hundred their decision must be unanimous.

An objection was raised from our Mishna which states that

he is liable if "he has not based his transgression upon the decree of the court," whence it follows by implication that if another one (not so qualified) acted thus he would be free; why so, since in this the decree was no longer unanimous (as one of the members deviates)? It means here that this one member has also nodded his head affirmatively (while the vote was taken).

R. Mesharshia objected from the following: Our masters have relied upon R. Simeon b. Gamaliel and R. Elazar b. Zadok, who have decided that no decree must be promulgated unless the majority of the congregation is able to comply with it; and R. Ada b. Aba said: Where is there an allusion thereto in the Scripture? [Mal. iii. 9]: "With curse are ye cursed, and yet me do ye rob, O ye entire nation." Now, here is written the entire nation and nevertheless the majority is equivalent to the whole; hence, R. Jonathan's view is wholly overthrown, and the expression in the Scripture (cited above), "the whole congregation" means: if the whole is able to comply with the decree it is considered, but not otherwise.

MISHNA II.: If upon issuing the decree the court becomes aware of its being conceived in error and retracts, and meanwhile an individual commits a transgression upon that decree either before or after the court succeeded to bring its atoning offering, he is free according to R. Simeon, while R. Elazar classes it among the doubtful cases. In what sense is it doubtful? He may have stayed at his home, then he is liable; but if he was in the sea countries he is free. Said R. Aqiba: I agree that in the latter case he is rather free than liable. Whereupon Ben Azai asked: What difference is there between the two cases? It consists in that he who stays at home can possibly hear (of the retraction), while to the other one this is impossible.

If the court decided to annihilate a law in its very essence, by saying, *e.g.*, that there is not in the Torah the law of menses, of Sabbath, of idolatry, the members of the court are free (from an offering); but if it decided to abolish only one part of a law retaining in force the other part, they are liable. How so? If it decided, *e.g.*, that, though the law of menses is in the Torah, a man who has sexual relations with a woman in her watching days is free; or, that he who transports something from private to public grounds is free though the law of Sabbath is in the Torah; or, that the Torah truly forbids idol worship, yet he who bows to the idol is free—the court is liable, for it reads

(Lev. iv. 13): "And the thing be hidden," i.e., *something*, but not the whole essence.

GEMARA: Said R. Jehudah in the name of Rabh: R. Simeon used to say that if one acted upon a decision issued by the majority of the congregation, he is free; because a decision discriminates between intentional and unintentional acting, and here the transgressor, guided in his act by the decision, sins unintentionally (though he acts intentionally), and according to Rabh R. Simeon is consistent with his own theory elsewhere that the bullock for the forgetting by the congregation, and the he-goat for idolatry, are to be brought from the treasury of the temple.

There is a Boraitha. In the case mentioned in the Mishna, R. Mair makes him liable, and R. Simeon holds him free, while R. Elazar finds this case to be doubtful; and in the name of Symachos such was said to be a pending case. Said R. Johanan: They differ concerning a pending-offering. Said R. Zera: R. Elazar's decision is like that regarding the case where one consumes fat doubtful whether it is legal or illegal, and thereafter he became aware that it was doubtful, he is to bring a pending offering; and not only according to him who obliges the *congregation* to bring such an offering, as such an act is known to every one, hence, if the transgressor has acted after the congregation brought its atoning offering, in which case it cannot possibly be said that he in his act guided himself by the court's decree,—but even according to him who obliges the *court* to such an offering, which may be not known to everybody, the transgressor is also liable, since he could find this out upon investigating.

R. Jose b. Abin, according to others b. Zebida, likens Symachos' decision to that regarding the case where one brings his atoning offering at twilight, which makes the atonement doubtful, since if it was yet day he is atoned, but if night he is not, and none the less he is not obliged to bring another offering.

"*Ben Azai asked*," etc. Is not Ben Azai right? The difference between them is the case when the transgressor has just set out on his journey; according to Ben Azai he is liable, while according to R. Aqiba he is free as soon as he starts on his way.

"*If the court decided to annihilate*," etc. Said R. Jehudah, in the name of Samuel: The court is not liable unless it has decided

upon a point which the Sadducees do not admit, but where they do, it is not considered an error, since even a child knows such a point, and the court is accordingly free.

MISHNA *III.*: If while the court was deciding, one of its members who perceived their error drew their attention to it, or if the presiding judge was absent, or one of them was a proselyte, a bastard, a nation, or an aged man who had no children, they are free; on the ground of the following analogy [Lev. iv. 3]: the expression *congregation* is used and [Numb. xxxv. 24] the same expression, it is inferred thus: just as there the expression means a congregational meeting whose members are singly and severally qualified to decide law questions, in the latter case it means the same.

GEMARA: "*The presiding judge*," etc. Whence is this deduced? Said R. Sheshith: It is likewise found in a Boraitha of the disciples of R. Ismael, viz.: Why was it said that if the court decides on a point which the Sadducees admit, it is free? Because this is not considered an error but a fact of ignorance, as the members of the court ought to have learned; the same is the case here where the presiding justice was absent, some one of the members ought to substitute him, and as there was none competent to do so they are ignorants who ought to learn.

"*The expression congregation*," etc. And whence do we know that there they are fit to decide questions? Said R. Na'hman b. Itz'hak: It reads [Ex. xviii. 22]: "With thee," *i.e.*, such as are equal to you.

MISHNA *IV.*: If the court decided in error, causing the whole people to act erroneously, a bullock is to be offered; but if the court decided intentionally (against the law) and the people acted in error, a sheep or goat is to be sacrificed (by each individual transgressor). If, however, the reverse was the case, all are free.

GEMARA: It states: If the court decided unintentionally and the people acted intentionally, they are all free, whence it follows by implication that if the unintentional act was equal to an intentional one, *i.e.*, done independently of the court's decree, one is liable; and what case would illustrate this? *E.g.*, the court decided that fat is legal and one has consumed such in the belief that it is legal, whence could be solved the question propounded above by Rami b. Hama? Nay, it may be said that because in the first part it speaks of an intentional decision

and of subsequent unintentional act, it expresses in the last part the reverse.

MISHNA V.: If upon the erroneous decree of the court the whole people, or its majority, acted, a bullock is to be brought; or, in case the decree referred to idol worship, a bullock and a he-goat; so holds R. Mair, while R. Jehudah says: Twelve tribes bring 12 bullocks, and in the case of idol worship yet 12 he-goats in addition. R. Simeon says: 13 bullocks in the one and 13 bullocks plus 13 he-goats in the other case respectively, thus making one bullock with one he-goat to each tribe, and one such pair for the court. If but seven tribes or the majority (of the people) acted upon the decree, the court members must bring a bullock, and in case of idolatry also a he-goat, so holds R. Mair, while according to R. Jehudah, the 7 tribes that sinned should bring 7 bullocks, and the innocent remaining tribes also sacrifice one bullock for the sinners. R. Simeon maintains his foregoing view, reducing the number of the sacrifices from 13 to 8.

If a tribal court caused by its erroneous decision the tribe to act accordingly, only this tribe is liable, while all the others are free, so holds R. Jehudah; the sages, however, maintain that only those are liable who act on the decree of the supreme court, for it reads [Lev. iv. 13]: "If the whole congregation of Israel sin through ignorance," hence not that of a single tribe.

GEMARA: The rabbis taught: If the court was aware that its decision was erroneous, lest one say that it is liable, it reads [Lev. iv. 14]: "The sin becometh known," but not the sinner, "through which they have sinned," *i.e.*, if there were two tribes they bring two bullocks; three, three bullocks, and so forth. But perhaps it means: If two individuals have sinned, they must bring two bullocks, and if three, three, and so on? To this it reads: "The congregation shall offer," *i.e.*, each congregation, as well as the congregation at large, is liable; how so? If there were two tribes, they bring two, and if seven tribes, they bring seven, and all other tribes who have not sinned should also each of them bring a bullock, since, though they have not sinned, they must conjoin themselves to the sinning tribes, as for this purpose it reads "the congregation," to make liable each of them. So R. Jehudah. R. Simeon, however, said: The seven tribes that have sinned bring seven, and the court brings one bullock in addition, for, as here *congregation*

is used and there the same term, hence, just as there the court *with* the congregation is meant, the same is the case here. R. Mair, however, said: If the seven tribes have sinned, the court brings only one bullock, and *all* are free for the same reason; as congregation mentioned above means only the court, the same is the case here. And R. Simeon b. Elazar said, in the name of R. Mair: If six tribes have sinned, and they formed the majority of all Israel, or seven tribes, though not forming the majority of Israel, only one bullock must be brought.

"*If a tribal court,*" etc. The school-men propounded a question: If one tribe has sinned, guided by the decree of the supreme court, may the other tribes conjoin with it to bring bullocks or not? Shall we assume that only to seven tribes conjoining takes place, but not to one, which does not form majority, or since it acted upon the decree of the court there is no difference whether one or seven? Come and hear: R. Jehudah said: If one tribe has acted in accordance with *its* court, it *alone* is liable, but if it acted according to the decision of the supreme court, all the other tribes are also liable. Said R. Ashi: It seems to be so also from our Mishna, which states, "only this tribe is liable, while all the others are free"; to what purpose does it add, "while all the others," etc., after it states "*only this tribe,*" etc? To teach us, thus: Only in the case of its own court, but if it is a case of the supreme court, all the others are also liable.

But let us see, whence do both R. Jehudah and R. Simeon deduce that *one* tribe is also called *Kahal*, i.e., congregation (of all Israel)? From [II Chron. xx. 5]: "And Jehoshaphat stood forward in the *Kahal* of Judah and Jerusalem." R. A'ha b. Jacob opposed: Perhaps there it was *Kahal*, because the tribe Benjamin, too, was there, hence more than one tribe? Therefore, says he, it is deduced from [Gen. xlviii. 4]: "And I will make of thee a *Kahal* of people"; now, at that time Benjamin was born, and you infer from here that so said the Merciful One to Jacob: one *Kahal* more is born to you. Said Shba to R. Kahana: But perhaps the Merciful meant, now as Benjamin is born, and you have twelve tribes you are called a *Kahal*? And he answered: Do you mean to say that eleven tribes are not called *Kahal*?

The rabbis taught: If one member of the congregation dies, the liability does not cease, but if one member of the court dies, it does cease. According to what Tana is this Said R. 'Hisda,

in the name of R. Zera, in the name of R. Jeremiah, quoting Rabb: It is in accordance with R. Mair, who said that the court and not the congregation brings the offering; hence, if a member of the court dies, it means one of the partners to the sin-offering died, and in such a case the sin-offering can not be brought.

R. Joseph opposed: Why not say on the same reasoning lines that it is in accordance with R. Simeon, who says that the court *with* the congregation must bring the offering? Said Abaye to him: We have heard R. Simeon saying elsewhere that a sin-offering of partners is not put to death: If the bullock and he-goat of the day of atonement upon being lost were substituted by others, and thereafter the first were found, they all are put to death (because none of them is fit for the altar); so R. Jehudah. R. Elazar and R. Simeon, however, maintain that they must be kept until they become blemished, as there is a rule that a sin-offering of a congregation is not put to death. Rejoined R. Joseph: You speak of priests, an entirely different case, as they are themselves called *Kahal* [Lev. xvi. 33]: "For all the priests and for all the people of the *Kahal*." Answered Abaye: According to this they ought to bring a bullock for an erroneous decision by their own court; and should you say that such is the case, then there will be more than twelve tribes! Thereupon said R. A'ha b. Jacob that the tribe of Levi is not called *Kahal* at all, as from the above cited verse [Gen.], it is to be understood that they who inherited landed property in Jerusalem are called a tribe, but not the Levites, who had no such inheritance. But if so there are fewer than twelve tribes? Said Abaye: It reads there [ibid.] that Ephraim and Menashah (the two sons of Joseph) are considered as Rubin and Simion: *i.e.*, as *two* tribes. Said Rabha: Does it not read [ibid., ibid. 6]: "After the name of their brothers shall they be called"? The answer is: They are called after the brothers' name only in respect of inheritance, but not in other respects. But are they not all divided into flag-division? This was only to honor the flags, as the division of the inheritance took place in accordance with the flag-divisions. But are they not divided according to their respective princes? This also was done to honor the princes; as we have learned in the following Boraitha: Solomon has celebrated seven days the dedication of the temple; why did Moses celebrate twelve days the tabernacle? To honor the princes.

CHAPTER II.

MISHNA *I*: If an anointed priest has erroneously rendered an unlawful decision against himself and acted accordingly by mistake, he must sacrifice a bullock. But if the decision was conceived in error and the act performed intentionally or *vice versa*, he is free; for the decision of an anointed priest with regard to himself is equivalent to a decision of the court for the people.

GEMARA: "*Erroneously . . . acted accordingly by mistake.*" Is this not self-evident? Said Ahaye: It speaks of a case where he forgot the reason of his decision, and when he acted he said that he acts in accordance with the decision, lest one say that in such a case it is considered an intentional act, since if he remembered the reason of the decision he would not act, it comes to teach that it is not so.

"*But if the decision . . . in error and the act performed intentionally,*" etc. Whence is this deduced? From what the rabbis taught: it reads [Lev. iv., 3] "to bring guiltiness on the people," which seems superfluous in this connection, but comes to teach that he [the priest] is equal to the congregation; a fact that could be inferred without a special verse, *i.e.* the congregation is exempt from the laws governing the individual, and so is the anointed priest; hence, as the congregation is liable but for forgetting and for acting erroneously, the same should be with the anointed priest; or, on the other hand, a prince is exempt from the laws of an individual, and so is an anointed priest: as the former is liable for erroneous acting without forgetting, the same should be with the latter; it thus remains to see to whom is he [the priest] equal as regards his offering: the congregation brings a bullock, but not a pending trespass offering, and the same does the anointed priest bring; hence, as the congregation is liable but for forgetting and erroneous acting, so also is the anointed priest. But why not say: As in case one acts in accordance with the congregation's decree, he is liable, the same should be if one acts according to the decision of the anointed priest? It reads [ibid.]: "For *his* sin, and not for the sin of another." And whence is it deduced that the anointed priest does not bring a pending

trespass offering? From [ibid. v., 18] "concerning his sin of ignorance," which signifies: only for him whose sin and erroneous act are considered equal (*i.e.* where both decision and acting were performed in error), exclude the anointed priest, who is liable but for forgetting and for erroneous acting.

MISHNA II.: If he (the said priest) both decided and acted for himself, he brings his atoning sacrifice separately. If, however, he both decided and acted jointly with the congregation, he brings with latter a joint atoning sacrifice. Like the court, that is liable only when it effects a decision partly annulling partly confirming the law, so also the anointed priest, and even if the law in question be one regarding idol worship.

GEMARA: Whence is this deduced? from what the rabbis taught: if he has both decided and acted together with the congregation, lest one say he is to bring a bullock separately, we infer from the case of a prince: as a prince is exempt from the laws governing an individual and so is the anointed priest, too, the same is the case here, viz.: as the prince is to bring a separate offering when he sins separately, but when he sins with the congregation he is atoned for by its offering, the same is the case with the anointed priest; on the other hand, a prince is atoned for together with the congregation on the day of atonement, which is not the case with the anointed priest, and as he (priest) needs a separate offering on the day of atonement, the same should be the case if he has sinned together with the congregation;—against this the afore-cited verse [Lev. iv. 3], which signifies that if he sins separately, he brings a separate offering, and if he sins with the congregation he need not bring a separate offering.

But let us see the nature of the case: if he was the presiding justice, then only *his* decision must be taken into consideration, as the opinion of the rest counts for nothing, and it is obvious that the atonements must be separate; and if he was not presiding, why should he be atoned for separately when *his* opinion in this case does not count? Said R. Papa: it means that he was equal to the others.

Abaye was about to say that "he sinned separately" means: in a different place; but Rabha said to him: does the difference in place cause the separation? it may be even in one and the same place but concerning different prohibitions, and then it is considered separate sinning.

"Partly annulling," etc. Whence is this deduced? From

what was said in the Chapter I: by forgetting *something* and not the whole, and whence is it deduced that the same is the case with the anointed priest? from what is discussed above: "To bring guiltiness on the people." Finally, whence is deduced that the same is the case concerning idolatry? From what the rabbis taught: lest one say that because concerning idolatry there is a special verse, it should hence be treated differently,—there is an analogy of expression: "From the eyes," found in both cases (idolatry and other sins) to teach that they are equal in all respects.

MISHNA *III.*: The conditions determining the liability of both the courts and the anointed priest are: Their ignorance of the thing during the rendering of the decision, and the subsequent erroneous acting. The same conditions hold in decisions regarding idol worship.

GEMARA: Whence is this deduced? From what the rabbis taught: it reads [Lev. iv. 13] "Through ignorance, and a thing be hidden," whence we see that both ignorance and forgetting are necessary. The deduction of the case of the anointed priest is again as above. As to idolatry, lest one say: it was separately taught, hence it requires different treatment, comes the analogy of expression to teach as above. Thus we see that it does not teach concerning the anointed priest regarding idolatry; whence it may be said that our Mishna is in accordance with Rabbi of the following Boraitha: If the anointed priest has sinned in a case of idolatry, according to Rabbi, he is liable for erroneous acting, and, according to the rabbis, for forgetting; all, however, agree that his offering must be a she-goat and that he is not under the category of those who bring a pending trespass offering, and Rabbi's reason is from [Num. xv. 28]: "And the priest shall make an atonement for the person that hath erred"; "for the person" means the anointed priest; "that hath erred" means the prince; "in his sinning through ignorance" means according to Rabbi that the sinning of each of the two must be through ignorance, while according to the rabbis this part applies only to him who sins through ignorance, exclude the anointed priest who sins through forgetting; and whence do they deduce that he like any other individual must bring a she-goat? From the above-cited verse [ibid., ibid. 27]: "And if *any* person sin," *i.e.*, any one: common, priest, prince, etc.

And whence is it deduced that he does not bring a pending trespass-offering? From [ibid. v. 18] "for his ignorance," which

can not mean the priest in question who sins by forgetting. On the other hand, according to the rabbis, it intends to exclude the anointed who sins in any case whatsoever not by erroneous acting alone, but when such is accompanied by forgetting.

MISHNA IV.: The court is not liable unless the issued decree concerns a command the intentional and unintentional violation of which entail *Korath* and sin-offering respectively; the same is the case with the anointed priest. The same refers to the case of idol worship.

GEMARA: Whence is this deduced? As stated in the following Boraitha: Rabbi said: It reads [Levi. v. 5]: "*Alehu*" [ibid. xviii. 18]: "*Olehu*," as there it is a case of *Korath* and a sin-offering, the same is the case here. And the deduction that the same applies to the anointed priest is made as above. As to a prince, it is inferred from the analogy of expression [ibid. iv. 22]: "Prohibitions" (*Mitzvoth*), found also [ibid. ibid. 13] concerning the congregation; now, as the latter treats of things the transgression of which is, if intentional under *Korath*, and if unintentional under sin-offering, the same is the case with a prince; while concerning a common individual it reads [ib. ibid. 27]: "If any person" to infer this last from the previous one.

"*The same refers to the case of idol worship.*" Whence is this deduced? From what the rabbis taught: because idolatry is mentioned specially, hence it should be treated differently, so that one be culpable even when the sin is not under the category of *Korath*, etc., therefore the analogy of expression "from his eyes," as there it is under the category of *Korath*, so also here.

But this is concerning the congregation; whence do we know this with regard to the anointed priest, prince, individual? From [ibid. ib. 27]: "*Any* person," i.e., *any*: be he priest, prince, etc. But again, all this is correct according to him who holds the analogy of expression *Olehu*; but to the rabbis who do not hold so, whence is this deduced? From what R. Jehoshua b. Levi taught to his son [Num. xv. 29, 30]: "One law shall be for you, for him that acteth through ignorance. But the person that doth aught with a high hand," etc., this compares all the laws of the Torah to idolatry: as latter is under both *Korath* and sin-offering, so also all other cases of the same category. But from here you infer only an individual, a ruler, and an anointed priest; whence do we know that the same is the case with the congregation? Infer the first verse [13] from the last [27]. We thus see that according to all, the cited verses [Num. xv. 29, 30] speak of idol-

atry, how is it so understood? Said Rabha, according to others, R. Jehoshua b. Levi; according to still others, Khdi: it reads [ibid. ib. 22]: "and do not observe all these commandments"; now, a negative commandment that is in importance equal to *all* other negatives is, you must say, idolatry.

The disciples of Rabbi infer this from the same verse [22 and 23] "which the Lord hath spoken unto Moses, all that the Lord hath commanded you by the hand of Moses," and a commandment said, in the words of the Holy One, blessed be He, and commanded again by the hand of Moses is of idolatry; as the disciples of R. Ismael taught that the commandment "I am the Lord; thou shalt have no other gods before me," we have heard from the Almighty Himself; and thereafter it was commanded through Moses in many other places.

MISHNA V.: The court is not liable for a decree concerning a command or a prohibition with regard to (polluting) the sanctuary. Nor must one bring a pending offering for a doubtful violation of the said command or prohibition. But in case of erroneous teaching and of doubt, each regarding a command or prohibition with reference to a woman in her menses, a bullock and a pending offering are required respectively. The command in the case is: Keep away from a woman in her menses. The prohibition is: Have no sexual intercourse with her.

GEMARA: Whence is it deduced that the congregation is not liable to any offering, while the individual is not liable to a pending offering either? Said R. Itz'hak b. R. Dimi, it reads [Lev. iv. 27]: "and become guilty" concerning a sin and pending offering, and also [ibid., ibid. 13]: "and they become guilty," which signifies: as the guiltiness of an individual is attended with a sin offering established for all, so also the guiltiness of the congregation is attended with such an offering; and as the latter's offering is an established one, so also the pending offering must be brought only for the doubt about a transgression to which an established offering applies, but not about that of the sanctuary to which a rich and poor offering applies.

MISHNA VI.: There is no liability when the decree concerns an adjuring challenge to testify, a hastily made vow, the defilement of the temple and its holy objects; the same is the case with the ruler, so R. Jose the Galilean. R. Aqiba, however, says: The ruler is liable in all these cases but the first one, for the king can neither judge nor be judged, neither testify for others nor have others testify for him.

GEMARA: Said Ula: What is the reason of R. Jose the Galilean? [Lev. v. 5] "And it shall be, if he have incurred guilt by any one of these [things], that he shall confess that concerning which he hath sinned," which speaks of all that are treated of in the Mishna, and which signifies that he who may be guilty for one of these may be guilty also for the others, but who is not guilty for one of these is not so for the others either. But perhaps the verse means that if he incur guilt even for one of these? Therefore it must be said that the reason of R. Jose the Galilean is the following Boraitha: R. Jeremiah used to say: It reads [ibid., ibid. 7], "And if his means be not sufficient," and then [ibid., ibid. 11], "If he can not afford." All this speaks of persons that can be classed as poor and rich, which is not the case with either priest or ruler, as concerning the latter it reads [ibid., ibid. 22] "of the Lord his God," which signifies him who has for his superior only his God; and concerning the former it reads [ibid. xxi. 10]: "And the priest that is highest among his brethren," meaning that he is highest in beauty, in might, in wisdom and in wealth; and the anonymous teachers say: whence is it deduced that if he [priest] is not rich his people should make him the richest: from same verse: "that is highest among his brethren," signifying that his brethren make him highest.

MISHNA VII.: As regards all commandments of the Torah, whose intentional and unintentional violations entail respectively Korath and sin offering, a private individual brings offers (in the latter case) a (female) sheep or goat, the ruler, a he-goat; the high priest or the supreme court, a bullock. In matters of idol worship the private individual, ruler and priest bring a she-goat, while the court (that has erroneously decided) a bullock and a he-goat, former as burnt offering, latter as a sin offering. The pending offering (for a doubtful malfeasance) is imposed upon the ruler and private persons, the anointed priest and the court are free therefrom. The trespass offering (for a sure misdeed) is imposed besides the first two also upon the high priest, while the court is exempt therefrom. For challenging by oath to testify, for a hastily made vow, for defiling the temple and the holy objects thereof, the erroneously decreeing court is free; while private individuals, the ruler, the high priest are liable; with the exception, however, that the last one is according to R. Simeon not liable in the said case of defilement. And what is the sacrifice they bring? A poor and rich offering. R. Eliezar says: The ruler brings (for temple defilement) a he-goat.

GEMARA : There is a Boraitha : R. Simeon laid down this rule : In whatever an individual is liable to a pending offering, the ruler is equal to him, while the anointed priest and the court are free ; on the other hand, in whatever a trespass offering applies the ruler and the anointed priest are equal, while the court is free, viz. : for a witness-oath, an uttered oath and the defilement of the sanctuary and its holy objects the ruler and the anointed are liable, and the court is free ; however, the ruler is not liable for a witness-oath and the anointed for the defilement of the sanctuary, etc. ; and in an act where a rich and poor offering applies the ruler is equal, while the anointed and the court are free.

Now, is not the Boraitha involved in a contradiction concerning the liability of the ruler and the priest ? Said R. Huna b. R. Jehoshua : this presents no difficulty ; as one Tana speaks of poverty, while the other, of extreme poverty, and R. Simeon holds with R. Agiqa concerning extreme poverty when the ruler is free from that offering, but differs with him concerning poverty, in which case he holds the ruler, too, liable.

CHAPTER III.

MISHNA I.: An anointed priest who has sinned and thereafter was removed from his office, and a ruler who has sinned and was removed from his dignity, the former brings a bullock and the latter a he-goat. However, if both have sinned after they were removed from their offices, the priest in question brings a bullock and the ex-ruler is considered as a common man.

GEMARA: To what purpose is it needed for the Mishna to state that when he has sinned before the removal from his office he is to bring a bullock, as the same is the case even if he did so after the removal? It was necessary because of the law that a ruler after the removal of his dignity is considered common.

Whence is this deduced? From what the rabbis taught [Lev. iv. 3]: "Shall he bring near for *his* sin," which signifies that he has to bring an offering for his previous sin. While concerning a ruler it reads [ibid. 22]: "If a ruler should sin," which signifies that if he has sinned while he is still a ruler, but not when he becomes common.

MISHNA II.: If they were appointed to their respective positions after they had sinned, they are treated as private persons. R. Simeon, however, says: If they become cognizant of their malfesance before their appointment, they are liable; but if after, they are free. What is meant by ruler? A king, for it is stated [Lev. iv. 22]: "If a prince sins and performs one of the commandments of the Lord his God," etc.; hence, a prince who has above him no one but the Lord his God.

GEMARA: Whence is this deduced? From what the rabbis taught [ibid., ibid. 3]: "If the anointed priest do sin to bring guiltiness," which excludes the transgressions he had committed before he was anointed. This could be deduced by a *fortiori* argument, thus: A ruler who is liable to a sin-offering for an erroneous act is not liable for his acts before he became a ruler. The anointed who is liable for forgetting an erroneous act, so much the less should he be liable for his previous acts. And should you say that with a ruler it is different, as he is not liable

after his removal from office, to a sin-offering for his sin while he was still a ruler, which is not the case with the anointed? To this it reads in the above-cited verse "the anointed has sinned," which signifies only for that sin which he committed while he was already in his office. On the other hand, on a *fortiori* argument could be used to make a ruler liable for his sin before he ascended the throne, if not for the verse cited above concerning him.

The rabbis taught: "A ruler who will sin," lest one say that such is the heavenly decree that he shall sin, to this it reads, "If the anointed will sin," which means if it will happen so, and the same is with the ruler.

The rabbis taught: "A ruler should sin" to exclude him who was sick with leprosy, as it reads [II Kings, xv. 5]: "And the Lord afflicted the king with leprosy, and he was a leper unto the day of his death, and he dwelt in the free-house.* And Jotham the king's son," etc. What does it mean, free-house? Was he until that time a servant or a slave? Yea; as it happened with Raban Gamaliel and R. Yehoshua, who were on a boat; the former has prepared bread for food, and the latter prepared bread and fine flour for food. And when the bread of R. Gamaliel was consumed by him he relied upon the fine flour of Yehoshua. And to the question of the former: Were you aware that there will be a delay in the journey, that you took with you so much food, he answered: There is a star which appears once in seventy years that makes the captains of the ships err, and I thought perhaps it will appear now and make us err, I therefore prepared more food. Said Gamaliel: You possess so much wisdom and still you are compelled to go on a ship to make your living. And he rejoined: You are wondering about myself, how would you be surprised if you knew about two disciples of yours who are on the land—viz.: R. Elasar Chasma and Johanan b. Goodgada, who can imagine how many drops of water there are in the sea and nevertheless have no bread to eat and no garment for dress. R. Gamaliel then made up his mind to make them officers in the best places of the congregation, and when he returned home he sent for them, but they did not appear; he sent again for them, and when they came he said to them: Do you think that the appointment to such high offices which I am about to confer on you, will make you rulers? Nay;

* Leeser's translation does not correspond.

slavery I give to you, as it reads [I Kings, xii. 7]: "If thou wilt this day be a servant unto this people," etc.

R. Na'hman b. R. 'Hisda lectured; it reads [Eccl. viii. 14]: "There is a vanity which is done upon the earth, that there are righteous men"; happy are the righteous whose fate is like that of the wicked in the world to come; and woe is to the wicked whose fate is in this world like that of the righteous in the world to come. Said Rabha: May not the righteous be rewarded in both this and the world to come? Therefore, said he, "Happy are the righteous whose fate is like the fate of the wicked in this world, and woe is to the wicked whose fate is like that of the righteous in this world."

R. Papa and R. Huna b. R. Jehoshua came to Rabha and the latter questioned them if they have learned thoroughly such and such tracts of the Talmud, to which they answered: "Yea." And to his question: Have you become a little rich so that you have time to study properly? They rejoined: Yea; as we bought little grounds. He then applied to them the above-cited verse.

Rabha b. b. 'Hana said, in the name of R. Johanan, it reads [Hos. xiv. 10]: "For righteous are the ways of the Lord; and the just shall walk in them; but the transgressors will stumble through them"; whereby Lot and his two daughters are meant. To the latter who intended to do a meritorious act, the verse "the just shall walk in them" is applied, and to him who intended to commit a crime, the last words of the same verse are applied. And whence do we know that he has intended to commit a crime? Was he not compelled to this action? It was taught in the name of R. Jose b. R. 'Huni: Why is the *vav* of the word *bkumah* [Gen. xix. 33] pointed? Because he (Lot) was not aware at the start, but when she got up he became aware of his act. But what could he do; there was no remedy to what has already passed? He ought to have drunk the second evening.

Rabba lectured [Prov. xviii. 19]: "A brother offended is harder than a strong town"; by this Lot is meant, who separated himself from Abraham. "And quarrels [among brothers] are like the bars of a castle"; it is Lot who made Israel to quarrel with the nation of Amon [Deut. xxiii. 4].

Rabha or R. Itz'hak lectured [Prov. xviii. 1]: "He that separateth himself [from God] seeketh his own desires: at every sound wisdom is he enraged"; by the first part of this verse

Lot is meant, who separated himself from Abraham; and by the second half the punishment of Amon and Moab is meant, of whom a Mishna states the prohibitions of mingling with them are forever lasting. Ula said: Tammar sinned, and kings and prophets were her issues. Zimri sinned and tens of thousands of Israel fell. (How great a difference!)

"*What is meant by ruler,*" etc. The rabbis taught: It reads "A prince." Lest one say a prince of a tribe as, *e.g.*, Na'hshan b. Aminodob, it reads: the above-cited verse [Lev. iv.] and [Deut. xvii. 19], concerning a king, it reads: "He shall fear the Lord his God"; now, as there no one but his God is his superior, so also here.

Rabbi questioned R. Hyye: I, who am a prince, am I liable to a he-goat? And he answered: There are your rivals in Babylon; Rabha objected to him from the following: Kings of Israel and the kings of the house of David have to bring their offerings separately? And he answered: They were not dependent each upon the other, while we are dependent on those in Babylon.

R. Safra taught the above as follows: Rabbi questioned Hyye: I, *e.g.*, who am a prince, am I liable to a he-goat? And he answered: In Babylon there is a tribe (Shebet), etc. (See Sanhedrin, p. .)

MISHNA III.: And who is the anointed priest? He who was consecrated to priesthood by the holy ointment and not merely by the many (8) raiments. However, between these two kinds of priests there exists no other difference except the bullock-sacrifice attending the violations of any of the commandments. Nor is there any difference between the priest in office and the retired priest except the bullock of the day of atonement and the tenth of the *Eifah*. Both are equal as regards the services on the day of atonement, the command to marry a virgin, the prohibition from marrying a widow, from defiling themselves to a dead relative, from wild-growing of the hair, from tearing their garments; finally both effect through their respective deaths the return of the homicide from exile.

GEMARA: The rabbis taught: In the oil for anointing which was made by Moses, they used to soak the roots, so R. Jehudah, etc. (Here it is repeated from Tract Kherithoth, 5 b. to 6 b., and as there is its proper place, we omit it here.)

The rabbis taught: The anointed, and lest one say it means the king, it adds "the priest." And lest one say, that also he who was sanctified by his dress only, therefore "the anointed."

But still one may say that it means the priest anointed for the war time, therefore and "the anointed priest," *i.e.*, the distinguished one who has no one anointed over him.

"*There is no difference between the anointed,*" etc. Our Mishna is not in accordance with R. Nair, as he holds that he who was sanctified by the eight dresses, has to bring a bullock for the transgression of all the negative commandments which are to be found in the Scripture; while the sages did not agree with him. But how can you say that our Mishna is in accordance with the rabbis? Does not the latter part state, "There is no difference between a priest who is still in his office and one retired, but concerning the bullock of the day of atonement and the tenth of Eipha," all which can be only in accordance with R. Nair, as we have learned in the following: If it happened to the high-priest a thing which makes him temporarily unfit for service, so that he was substituted by another priest, then the former returns to his office and his substitute remains with all the obligations of a high-priest, so R. Nair; R. Jose, however, maintains that the substitute is no more fit either as a high-priest or as a simple one. And he added: It happened to Joseph b. Ailim of Ceparas that something made him temporarily unfit, to serve as high-priest, and another one was substituted, and his brethren the priests did not allow his substitute to be either a high-priest or a common one: a high-priest because of animosity, and a common one because of the rule that one may be raised in sanctification but not lowered; hence, we see that the first part of the Mishna is in accordance with the rabbis, and the second with R. Mair. Said R. 'Hisda: So it is. But R. Jose said: It is in accordance with Rabbi, who edited the Mishna in question in accordance with different Tanaim. Rabha, however, said: It is in accordance with R. Simeon, who holds with R. Mair in one case, but differs with him in the other. (The difference of opinion of the above Tanaim is translated already in Tract Joma.)

The Mishna states: "Except the five things which are said in the portion regarding a high-priest." Whence is this deduced? From what the rabbis taught [Lev. xxi. 10]: "And the priest that is highest among his brethren," means the high-priest. "Upon whose head anointing oil hath been poured," means that who was appointed for the war. "And who hath been consecrated to put on the garments," means that who was sanctified by the garments only; and to all them it says,

" Shall not let the hair of his head grow long, and his garments shall he not rend. Neither shall he go in to any dead body," etc. And lest one says that they all may perform the holy service in the first day in which death occurs in his family, it reads, " For the crown of the anointing oil of his God is upon him," which means, upon him but not upon his appointed colleague, *i.e.*, the appointed for the war, and as the latter was separated from the above, one might say that he is also commanded to take a virgin; therefore [ibid. 13]: " And he shall take a wife in her virgin state," *he* and not some other one. However, in the latter case Tanaim differ.

MISHNA IV.: The high-priest rends his garment from below; the common priest, from the top. The former, while in mourning, may offer sacrifices but not eat thereof; the latter, if in mourning, must do neither the one nor the other.

Said Rabb: From below means literally he shall tear from the bottom of the garment. Samuel, however, says: From the bottom of the seam, and on top means on the top of the seam. But both must be on the bottom of the collar.

MISHNA V.: What is more common precedes the less common; the more holy precedes the less sanctified. If the bullock of the anointed priest and that of the congregation are simultaneously ready as sacrifices, the former precedes the latter in all respects.

GEMARA: Whence is this deduced? Said Abaye [Numb. xxviii. 23]: " Besides the burnt-offering of the morning, which is for a continual burnt-offering, shall ye prepare these." Now, as it reads already the burnt-offering of the morning, why was it necessary to state which is for a continual offering? To teach that what is more common precedes the less. And whence do we know that what is more sanctified precedes the less one? From what was taught by the disciples of R. Ismael: " Thou shalt sanctify him," means to every sanctification he shall begin first, he shall make the benediction first, and he shall be the first to take the best share.

" *The bullock of the anointed,*" etc. Whence is this deduced? From [Lev. iv. 21]: " And he shall burn him as he has burned the first bullock." To what purpose was the " first " necessary? To teach that he must make precede the bullock of the congregation in all respects.

The rabbis taught: If the bullock of the anointed priest and that of the congregation were standing, the former precedes the

latter in all respects, because as the anointed one atones and the congregation is atoned, it is but right that he who atones shall precede the atoned one in all respects. And so also it reads [ibid. xvi. 17]: "So shall he make an atonement for himself, and for his household, and for the whole congregation of Israel."

MISHNA VI.: The man has the preference over the woman in respect of preservation of life and of returning a loss. The woman has the preference in respect of dressing and of being ransomed from captivity. If two persons of different sex are menaced with being (sexually) disgraced, the man must be protected first.

GEMARA: The rabbis taught: if it happened that he, his master and his father were in captivity (and he was able to redeem one of them), he himself has the preference over the latter, and his master has the preference over his father. His mother, however, has the preference over all. A sage has the preference over a king of Israel, as if a sage dies we have no equal to him, but if a king dies all Israel are fit for the throne. A king has the preference over a high priest, as [I Kings i. 33]: "Take with you the servants of your lord," etc. A high priest has the preference to a prophet, as [ibid. 34]: "And let Zadek the priest with Nathan the prophet," hence the priest precedes the prophet. The priest anointed with the anointed oil precedes him who was sanctified by his garments. The latter precedes the one appointed for the war, and he precedes him who was removed from office on being blemished, and he precedes segan (vice high priest), and he precedes the Amarkhal. (What does Amarkhal mean? said R. 'Hisda: the head officer of the temple.) The last one precedes the treasurer, and he precedes the head of the watching officer. He (the head) precedes the head of the family priest, and the latter precedes a common priest.

MISHNA VII.: The following precede one another in order of arrangement: the priest, Levite (simple), Israelite, bastard, nathin, proselyte, a freed slave; provided, however, they are equally qualified in learning; but if, e.g., the bastard be a learned man in the Law, while the high priest is an ignorant, the preference is on the part of the former.

GEMARA: "*Equally qualified*," etc. Whence is this deduced? Said R. A'ha b. R. 'Hanina, from [Prov. iii. 15], "She is more precious than pearls"; (**pninim*), which means from the high priest who enters the *sanctum sanctissimum*.

* *Pninim* is homonymous with *Pnim*, which means inside.

There is a Boraitha : R. Simeon b. Ia'hai said that it is but right that a free slave have the preference over a proselyte, as *the former was brought* up with us in sanctity, which is not the case with the latter ; however, as a slave has been placed in the category of the "cursed" [Genes. ix. 25], a proselyte has the preference.

The disciples of R. Elazar b. Zadok questioned their master : Why is one more anxious to marry a female proselyte than a freed female slave ? and he answered as a reason the slave's being in the category of the "cursed," and also because the proselyte is supposed to have kept herself in chastity, which, as a rule, is not the case with the slave.

They further questioned : Why does the dog know his master, and the cat does not ? and his answer was : It is certain that he who eats from what is left by a mouse is apt to have a poor memory, so much the more so the cat that himself consumes the mouse. They questioned again : Why do all these animals (i.e. dogs, cats, and the like) reign over the mice ? and he answered : Because the mice are instinctively mischievous, since, says Rabha, they tear even garments ; and R. Papa says : They gnaw through even the handle of a pick-ax.

The rabbis taught the following five objects are conducive to one's forgetting his studies : The eating up of the remnants of the mice's or cat's food, of the heart of a cow, the frequent consuming of olives, the drinking of the water left from one's own washing, and, finally, the bathing of one's feet one kept on the other. According to others add yet this : the putting of one's clothes under one's head while sleeping,

The following five are apt to strengthen one's memory : Bread baked on coals, and particularly the consuming of the coals themselves, soft eggs without salt, the frequent drinking of olive oil, of wine flavored with spices, of water left after its use for a dough. According to others add yet this : to dip the finger in salt and consume the latter. According to others add this : the consuming of wheat bread and particularly of the wheat itself.

This Boraitha furnishes a support to R. Johanan who was wont of saying that as an olive causes one to forget one's studies acquired during a period of 70 years, so the oil thereof calls back to one's memory the studies of such a period.

Concerning the consuming of salt on one's finger, according to Resh Lakish this must be done with one finger ; while Tanaim differ : according to R. Jehudah it is with one finger and

not two, according to R. Jose two and not three fingers, and the negative sign of it is *Kuritsah*, i.e. taking a fistful of the meal-offering (done always with three fingers).

The following ten objects are cumbrous to one's studies: passing under the rope of a camel and particularly under the camel itself; passing between two camels, between two women, the passing of a woman between two men, passing through the obnoxious odor of a carcass, passing under a bridge where nature was not running for 40 days, the eating of half-baked bread, of meat taken out with the *ζωμηρατρος* (spoon with which the scumming is done), drinking from a well streaming through a cemetery, looking on the face of a corpse. According to others add yet, reading the inscriptions on a tombstone.

The rabbis taught: when the prince enters, all the people present in college rise to their feet, without again taking their seats until he tells them to do so. When the chief justice enters, the people occupying two rows of seats facing the entrance rise and remain standing until he takes his seat. If the sage enters, the occupants of one row rise and remain standing until he takes his place. The children as well as the disciples of the sages, if their help in the studies is needful, are allowed to pass over the heads of the people (seated on the floor), but not when their help is not wanted. The children of such scholars who superintend the congregation, if they comprehend the subjects treated of, may enter, sit down with their faces to their fathers and backs to the people; but if not, they have to sit in the opposite order. R. Elicar b. R. Zadok said that also at a banquet these children may be invited for the sake of their parents. If one of them has to go out for physiological requirements he may return, Said Rabha, this is so only when their fathers are still alive and also present.

Said R. Johanan: This Mishna was taught in the time of R. Simeon b. Gamaliel, when he was the prince, R. Nathan the president, and R. Mair the sage of the college. When R. Simeon would enter, the people rose; likewise when either R. Mair or R. Nathan entered the people would rise; said then the prince: If so, there is no difference between me and the others, whereas I should like that a difference be made; and he accordingly enacted the rules laid down in the Mishna. However, this was carried out in the absence of R. Mair and R. Nathan, so that on the morrow when they came and saw the people behind the 2 rows remaining in their seats, they asked the reason thereof, in

answer, to which they were told of the prince's enactment. Thereupon said R. Mair to R. Nathan: I am the sage and you are the president, let us enact something in our behalf; let us ask R. Simeon to teach us Tract Uktzin (stalks of fruit), and as we are aware that he is not versed therein, we will say unto him [Psal. cvi. 2] "Who can utter the mighty acts of the Lord?" he "who can publish all his praise!" Thereupon we will depose him and you will take his place and I yours. R. Jacob b. Oarshi (Rabbi's master) overheard this plan and was embarrassed as to how he could prevent R. Simeon's reputation from being marred; he then hid himself in back of R. Simeon's attic and began to study aloud Uktzin over again and again, until R. Simeon has noticed it and the idea struck him that something must have happened in the college, to which Jacob would like to draw his attention; he accordingly was quick enough to take up the study of Uktzin, and, indeed, succeeded in acquiring close familiarity with this Tract. On the morrow he was asked in the college, according to the premeditated plan, to lecture on Uktzin which he did, and after he was through he said to them: If my attention had not been called to this Tract, I should have been put to public shame by your plan. On his command, then, R. Mair and R. Nathan were removed from the college. They, however, were circulating in writing, questions and objections and throwing them in to the college; to those that could not be resolved in college, they would themselves write the answers and send them again to college. Said R. Jose to the college: The whole Torah is outside and we should remain inside the college? This pressure urged R. Simeon to allow the relegated to return under the penalty, however, that the Halakhas be not proclaimed in their names. Therefore R. Mair's Halakhas were henceforth classed with the anonymous teachers, and R. Nathan's were given as "according to some." It once happened that both had dreams commanding them to reconcile R. Simeon; whereupon R. Nathan did so, while R. Mair said that he does not yield to dreams as they are nonsense. When R. Nathan came to reconcile him, R. Simeon b. Gamaliel said: Because thy father's (official) belt helped thee to be president of the court, must we make thee Nasi (prince)?

Rabbi taught to R. Simeon his son: The anonymous teachers say so and so; interrupted him his son; who are they whose water we imbibe and whose names we do not mention? And he answered: They were the men who conspired to destroy your glory and that of your father's house, rejoined he; [Eccl. ix, 6.]

"Also their love, and their hatred, and their envy are now already lost," answered the Rabbi paraphrasing. (Psal. ix. 7): The enemy is lost, but his ruinous deeds are still existing; said R. Simeon: this would be right if the deeds of the rabbis in question remained effective, but they whom you have in view had only an intention, and one that has never been realized. Thereupon Rabbi taught to him again; so and so was said in the name of R. Mair. Said Rabha: Rabbi, though modest in nature, yet refrained from saying 'it was said by R. Mair,' but taught it was said *in the name* of R. Mair.

Said R. Johanan: R. Simeon C. Gamaliel and the rabbis differed with regard to the following: according to one the erudite scholar, while according to the other, the dialectician, has the preference. A message concerning this point was sent to the west, and the answer thereto was: the erudite has the preference, since every one is in need of the owner of the stored-up wheat. R. Joseph was the erudite, and Rabha was the dialectician, and though the answer of the west was in favor of the former, he did not accept the position of head of the college for 22 years, until Rabha who accepted this position died. During all this time R. Joseph did not invite to his house even a barber, but was himself going wherever he needed.

Abaye and Rabha, R. Zera and Rabha C. Mathma were sitting together at the time when the presidency of the college was vacant, and they have decided that he who will recite a point that will meet no objection be elected to this office. The sayings of them all were objected, excepting that of Abaye which was not; thereupon Rabha noticing that Abaye was raising his head, said to him: Wa'hmeni, begin your lecture (you are the head of the college).

The schoolmen questioned regarding R. Zera who was a genius and in the habit of raising objections, and Rabha C. Mathma who was slow, careful and considerate in drawing conclusions, which of the two types has the preference. This question remained undecided.

END OF TRACT HORIOTH AND OF THE VOL. XVIII.,
AND ALSO OF THE WHOLE SECTION JURISPRUDENCE.





This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

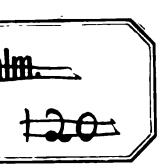
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



Library of the Divinity School.

Bought with money

GIVEN BY

THE SOCIETY

FOR PROMOTING

THEOLOGICAL EDUCATION.

Received 12 April, 1900.

Talmud. English.

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and
Translated into English

BY

MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACTS ABOTH (FATHERS OF THE SYNAGOGUE), WITH
ABOTH OF R. NATHAN, DERECH ERETZ
RABBA, AND ZUTA

Revised by the Rev. Mr. GODFREY (Shajah) TAUBENHAUS
Rabbi Cong. Beth Elohim, Brooklyn

Volume I. (IX.)

NEW YORK

NEW TALMUD PUBLISHING COMPANY

1332 FIFTH AVENUE

1900, April 12.
Divinity School.

.311
492.5
=4
1896
v. 9

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.
2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.
3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Wa'bayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.
4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.
5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.

COPYRIGHT, 1900, BY
MICHAEL L. RODKINSON.

• TO HIS EXCELLENCY

THE WELL-KNOWN PHILANTHROPIST, WHO WARMLY ESPOUSES
THE CAUSE OF JUDAISM AND ITS LITERATURE

BARON EDMUND DE ROTHSCHILD

THIS VOLUME IS MOST RESPECTFULLY INSCRIBED BY THE
EDITOR AND TRANSLATOR

MICHAEL L. RODKINSON

New York, Purim, 5660
March 15th, 1900

INTRODUCTION TO SECTION JURISPRUDENCE.

WITH the present volume we begin the Section "Damages," also called "Jurisprudence," from the occurrence of discussions on criminal law. This section forms the fourth in the old edition, and comprises the following treatises: "First Gate," "Middle Gate," "Last Gate," "Sanhedrin," "Stripes," "Oaths," "Testimonies," "Idolatry," "Fathers" (or "Ethics of the Fathers of the Synagogue"), and "Decisions."

Notwithstanding the fact that in the old edition of the Talmud "Fathers" stands next to the last tract, we have placed it at the head of the section, relying upon the decision of Sherira Gaon in his letter (Goldberg edition, Mayence, 1872, p. 14) declaring that it is perfectly permissible to change the order of sequence of tracts in the several sections. Therefore, because the treatise entitled "Fathers" deals entirely with the ethics of life, we have deemed it best to give it precedence over the other treatises. Just as in the Pentateuch we find the ten commandments—the basis of all ethical religion—heading the subsequent detailed laws and ordinances, so it seems but fit that the Section "Damages" should be headed by the tract setting forth the main ethical principles, and be continued by the detailed discussions. We are further borne out by the Talmud itself, which reads (First Gate, Chap. III., Mishna 3): "One who wishes to be pious should observe the laws of damages. Rabhina said: 'He should observe the teachings of the Fathers.'" Rabhina's statement should, in our opinion, not be taken literally, but as indicative of the opinion that the decisions contained both in "Fathers" and in "Damages" generally are equivalent.

"Fathers" is one of the few treatises which consists of Mishna only; *i.e.*, has no supplementary Gemara either in the Babylonian or the Palestinian Talmud, although interspersed throughout the contents of the entire Talmud may be found amplifications or comments on some of the sentences of the "Fathers." There is, however, a Tosephtha entitled "Fathers of Rabbi

vi INTRODUCTION TO SECTION JURISPRUDENCE.

Nathan" which discusses most sentences of the original "Fathers" separately; in fact, begins the discussion of each sentence with the interrogation "How so?" Forming, therefore, a valuable addition to the much-valued literature of the "Fathers," we have considered it our duty to incorporate it in our edition, and we have therefore inserted the said Tosephtha in the place where, in other tracts, we have placed the Gemara.

Owing to the fact that the Tosephtha named above bears the name of Rabbi Nathan of Babylon, one of the most distinguished masters of his generation, but at the same time contains ethics similar to those of the Mishna, as well as lectures and discussions which could not have been compiled by that author and are evidently contributions from scholars of a later period, the historians of modern times, from Zunz in his "Gottesdienstliche Vortraege" to Brill in his "Jahrbuecher" and Weiss in his "Dor Dor Vedorshov," engage in elaborate speculation as to who was the compiler of the "Fathers of R. Nathan" and at what time it was compiled. The complicated nature of the Tosephtha in question brought to the front a number of commentators and text-revisers, and finally Solomon Tausik and Solomon Shechter made a search of manuscripts, and published new editions of the Tosephtha, with additions from the material found in the manuscripts. The latter, in fact, searched so thoroughly that he found an entirely different version of the Tosephtha, and then published in his edition two separate texts, calling them First Text and Second Text, respectively, with his own corrections, notes, and a long introduction (Vienna, 1887).

True to our methods of translating the Talmud, we have, however, ignored the new versions of "Fathers of Rabbi Nathan," and have merely adapted the old version which forms part of the Talmud, simply adhering to the corrections made by Elias Wilner and the commentaries of Joshua Falk and others contained in the great Wilna (1890) edition of the Talmud. Further, in accordance with our wont we have omitted such of the passages as have already appeared in the preceding tracts of our edition, merely indicating the places where they can be found. Wherever necessary, of course, we have added footnotes, remarks, etc.

Our reasons for not making use of the new versions of the Tosephtha in question are as follows:

In a previous article touching upon the subject, which appeared in our publication "Hakol," we have pointed out that

we cannot give preference to recently discovered manuscripts over those used by the compilers of the Talmud, and for a reason that is perfectly obvious, viz. : If those manuscripts were in existence during the construction period of the Talmud, the compilers, who sifted every manuscript with the utmost care, undoubtedly rejected them as valueless. If, on the other hand, they were at that time not in existence, but were written at a later period, they certainly cannot be used as a medium for correcting the antedating manuscripts.

As for Schechter's revised and corrected texts, we cannot accept them for the reason that he presumes to remark, anent Elias Wilner's corrections, "I do not favor them," or, "They are unnecessary." After careful investigation we have, however, found that almost all the corrections made by Elias Wilner, and adopted by us, are founded directly on Talmudical and Midrashic passages scattered throughout the Talmud, a fact the learned Dr. Schechter no doubt overlooked.

On the other hand, we find that the commentaries published in the above-mentioned Wilna edition and credited to Joshua Falk, Chayim Joseph David Azulayi, and Baruch Frankel Theomim are referred directly to passages of the Talmud in the several treatises. Therefore we have used these well-known authorities in our translation, eliminating merely their lengthy discussions and adductions of proof.

As to the origin of the sayings of the "Fathers of Rabbi Nathan," the period during which they were compiled, and other historical events attending their conception, we refrain from rendering our opinion, even though it has become customary to do this in an introduction, leaving these matters to the philologists and historians in whose province such discussions properly fall. Our sole reason for the translation is that the said sayings have never before been rendered into any modern language and without them our work would not be complete.

The "Fathers of Rabbi Nathan" contains in the original forty-one chapters. As we render them, however, in the form of a Gemara to the Mishna of "Fathers," we have not numbered the chapters, but merely indicated at the foot of the page to which chapter each paragraph belongs.

Regarding the translation of "Fathers," *i.e.*, the original Mishna in the first five chapters, we have found that the translation of C. Taylor (Cambridge, 1877) is entirely too literal and almost incomprehensible without foot-notes and commentaries.

viii INTRODUCTION TO SECTION JURISPRUDENCE,

On the other hand, the partial translation contained in the Home Prayer Book, compiled in the main by Dr. G. Gottheil and Dr. F. De Sola Mendes, is lucid and in accord with the original text. We have therefore made use of the latter rendition, with slight changes. The part remaining untranslated in the Prayer Book we have adapted from C. Taylor's version, rendering it somewhat more comprehensively. In the rendition of the sixth chapter, which does not really form part of the Mishna but is added by the sages in Mishnaic language, we have followed Taylor, making numerous notes and corrections, in order to make it intelligible to the lay reader.

We have not deemed it necessary to add a commentary to the "Fathers" as we did to Tracts Shekalim and Ebel Rabbathi, because the "Fathers" has been translated into all modern languages and because there is already considerable literature concerning the ethics of Judaism, especially the recent publication by Prof. Dr. M. Lazarus entitled "Ethik des Judenthums," an admirable work, issued at Leipzig (1899), and giving a masterly exposition of the philosophical tendencies of "Fathers." We have also devoted a special chapter to this subject in our forthcoming "History of the Talmud."

We have also thought it well to give in this volume, which treats exclusively of the ethics of Judaism, the two Tracts Derech Eretz (Rabba and Zuta), which contain the essential "rules of conduct of life," as construed by Dr. Mielziner, or Worldly Affairs, as named by us, which latter is the prevailing interpretation among Hebrew readers.

As to the origin of these two tracts, elaborate discussions may be found in Zunz, "Gottesdienstliche Vortraege," pp. 110-112, as well as in "Der Talmud—Tract Derech Erez Sutta Kritisch bearbeitet, übersetzt und erläutert" (Berlin, 1885), by Abr. Tawrogi. For Tawrogi's reasons for not translating Derech Eretz Rabba, see his work; nevertheless, inasmuch as Derech Eretz Rabba has never been translated into any language, and of Derech Eretz Zuta, while there is a critical translation into German, there is none in English, in order to make this volume, which treats of the ethics of Judaism, complete, we have considered it expedient to translate into English both tracts almost literally, although they are not counted among the thirty-seven treatises proper of the Babylonian Talmud, but only among the minor treatises added to them. We do not, however, deem it necessary to add any commentary, for the reason that the say-

INTRODUCTION TO SECTION JURISPRUDENCE. ix

ings are very plain and lucid, and can easily be understood even by those who are not students of the Talmud.

Because of the similarity in language and style of these two treatises and of the so-called Mishnayoth of the sixth chapter of Aboth, they appear in the same large type as the Mishnayoth. Following this treatise will be published the other tracts of this section in the regular sequence of the old edition.

THE EDITOR AND TRANSLATOR.

NEW YORK, *March*, 1900.

SYNOPSIS OF SUBJECTS

OF

TRACT ABOTH (FATHERS OF THE SYNAGOGUE).

[Several requests have been received by the translator that an index should be made to the volumes of the Talmud, as is customary with all modern works. It would be an utter impossibility to give a complete index of everything contained in the Talmud. Were it like other scientific works, which treat each subject separately, this could easily be done; but with the Talmud it is different. On one page many different subjects may be discussed, and again a single subject may occupy several pages. The Talmud, therefore, has never had an index.

After careful examination of the volumes, page by page, it has been decided to make a synopsis, *i.e.*, to give briefly the heads of the discussions and conversations upon each Mishna, indicating the page where the Mishna is to be found, and the Gemara of each one, which serves as a commentary. By this the reader should be able to refer to what he desires to know.

A synopsis is therefore given of every Mishna which discusses a single subject, with its accompanying Gemara—in this volume, the Tosephtha; but when several short Mishnas cover the same subject, a single synopsis is given of the whole, including the Gemara of each one; and where a chapter is short, a synopsis of the whole chapter is made, without dividing it into Mishnas.

This is the best that can be done, and it is hoped that readers will find it satisfactory.]

CHAPTER I.

MISHNA A. The Great Assembly originated three maxims. Be deliberate in judgment. How so? The books of Proverbs, Song of Songs, and Ecclesiastes were hidden. How was Adam created? Why was Adam created on the last hour of the sixth day? On the same day on which he was formed, on the very same day his countenance was created. According to others: "Be deliberate in judgment" means not to have an irascible manner. Erect safeguards for the Law. The safeguard of the Lord, of Adam the First. The legend about Eve and the serpent, etc. The ten curses with which Eve was cursed at that time. "Shall I and my cattle eat out of the same trough?" The tradition about the ox of Adam, the steer of Noah, and the ram sacrificed by Abraham, I-II

CONTINUATION OF CHAPTER II. OF TOSEPHTHA.—What is the safeguard that the Torah made to its words? What Elijah the prophet answered the widow of the scholar who died in the prime of his life. What is the safeguard that Moses made to his words? The reason why Moses broke the Tables? What is the safeguard that Job made to his words? The safeguard that the prophets made to their words. The safeguard that the Hagiographers made to their words. The safeguard that the sages made to their words, 11-19

CONTINUATION OF CHAPTER III. OF TOSEPHTHA.—Whoever takes a coin from charity when not in need of it, etc. Study the Law in thy old age, even if thou hast studied it in thy youth. If you gave a coin to a poor man in the morning, and another one begs of you in the evening, give him also. What happened to a poor man with R. Aqiba. What happened to Benjamin the Just, 19-21

MISHNA *B*. The motto of Simeon the Just. Upon the Torah, how so? Upon service, how so? Upon bestowal of favors, how so? Rabban Johanan b. Zakkai and Vespasian. In three things mankind differ one from the other, 22-26

MISHNAS *C* AND *D*. Be not like slaves who serve their masters for the sake of compensation. Let the fear of Heaven be upon you. Let your house be the meeting place of the wise. How did R. Aqiba begin his wonderful career? Not less astonishing was the literary career of R. Eliezer. How his father Hyrkanus reached the seats of Ben Zizith Ha Kesseth, Nakdimon b. Gurion, and Calba Shebua, 26-32

MISHNAS *E* AND *F*. Let thy house be wide open for the poor. When the great affliction came upon Job, he prayed, etc. Teach thy house humility—the different explanations of this saying. Get thee a wise teacher. Judge everyone from his favorable side. The legend about a maiden who was led into captivity and the pious men who went to redeem her. Not only were the upright of former times themselves very strict and particular, but also their cattle were so. The ass of R. Hanina b. Dosa, 32-38

MISHNA *G*. Keep aloof from a wicked neighbor. Slanderers are punished with plagues. The legend about Moses, Aaron, and Miriam. Do not consider thyself exempt from God's chastisement, 38-41

MISHNAS *H* TO *K*. Make thyself not as those that predispose the Judges. Love work—how so? Do not care for superiority. See to it that your name be not known to the Government. Ye wise, be guarded in your words. Love peace—how so? Moses desired to die the same death Aaron did—how so? The legend of the death of Moses, at length. Pursue peace—how so? Love all men too, and bring them nigh unto the Law, 41-50

MISHNAS *L* TO *Q*. If I do not look to myself, who will do so? And if not now, when? He who does not desire to learn from his masters is not worthy to live. He who increases not, decreases—how so? He who serves himself with a tiara perishes. Fix a time for study. Promise little and do much. Receive everyone with friendly countenance. Make a master to thyself. "I have never found anything better for a man than silence." Three things support the world. The disciples of Hillel; of R. Johanan b. Zakkai—what was said about them and what they used to say. The consolation of R. Johanan b. Zakkai by his disciples when his son died. Thy

SYNOPSIS OF SUBJECTS.

xiii

fellow's honor must be as dear to thee as thine own. Do not allow thyself to be easily angered. The two proselytes that came before Hillel and Shammai. Repent one day before thy death, 50-58

CHAPTER II.

MISHNAS A TO M. In choosing the right path, see that it is one which is honorable to thyself and without offence to others. All who occupy themselves with communal affairs should do it in the name of Heaven. Do His will as if it were thy own, that He may do thy wil as if it were His. Pass not judgment upon thy neighbor until thou hast put thyself in his place. The boor can never fear sin, and the ignorant can never be truly pious. The more feasting the more food for worms. What is the best thing to cultivate. Which is the evil way a man should shun. Warm thyself before the light of the wise. An envious eye, evil propensities, and misanthropy drive a man out of the world. The legend about Joseph the Just, R. Zadoq, R. Aqiba, R. Eliezer the Great, etc. How difficult it is for man to avoid the evil propensities. Love everyone except the infidels, the enticers, the misleaders, and the informers. Thy neighbor's property must be as sacred as thine own, 58-65

MISHNA N. Set thyself to learn the Law. Johanan b. Zakkai and the daughter of Nakdimon b. Gurion. Let noble purpose underlie thy every action. The sages who were recounted of R. Jehudah the Prince. How they were named by Issi b. Jehudah, 65-70

CHAPTER III.

MISHNAS A TO V. Consider three things, and you will not fall into transgression. Pray always for the welfare of the Government. Whoever takes the words of the Torah to his heart. Render unto God what belongs to Him, for thou and all thou hast are His. Whomsoever fear of sin precedes, his wisdom prevails. He whose works are in excess of his wisdom, his wisdom will endure. Be pliant with thy chief. Receive every man with cheerfulness. Mockery and frivolity are the forerunners of immorality. Everything is foreseen and free will is given. The world is judged by grace. All that we possess is merely a trust. Without knowledge of religion there can be no true culture, and without true culture there is no knowledge of religion. Qnim, canons, astronomy, and geometry are after-courses of wisdom, 70-81

CHAPTER IV.

MISHNAS A TO P. Who is a wise man? He who learns from everybody. Despise no man, and consider nothing as too far removed to come to pass. Be exceedingly lowly of spirit. Wear not the law of God as a crown to exalt thyself withal. Judge not alone, for none may judge alone save One. Whatsoever congregation is for the sake of Heaven will in the end succeed. Let the honor of thy disciple be as dear unto thee as the honor of thine asso-

ciate. Be careful in thy study, for error in study counts for an intentional sin, 81-86

MISHNA Q. Neither the security of the wicked nor the afflictions of the righteous are within the grasp of our understanding. Be beforehand in saluting every man. Be the lion's tail rather than the fox's head. Do not seek to appease thy friend in the hour of his passion. Look not upon the pitcher, but upon what it contains. Envy, sensuality, and ambition destroy life. Accept not the assurance of thy passions, that the grave will be a place of refuge for thee. Without thy consent wert thou created, born into the world without thy choice. Thou art living without thine own volition, without thine approval thou wilt have to die. About the death of Eliezer the Great. Set something apart for charity, before you are compelled to do so by others. Lower thy seat two or three rows from the place you intend to occupy. There are three persons whose life is not worth living. The safeguard for honor is refraining from laughter. The safeguard for wisdom is silence. Whoever marries a woman not suitable to him transgresses five negative commandments. Do not be as the lintel, which no hand can reach, etc., 86-95

MISHNA Q. (continued). Those that despise me shall be lightly esteemed. The support of the wise, etc. Do not keep away from a precept which has no limit. Let the honor of thy disciple, etc. There is grain in Judea, straw in Galilee, and chaff on the other side of the Jordan. There is no love such as the love of the Torah. There is no wisdom such as the wisdom of manners. Whoever maintains peace in his own household, etc. The words of the Torah are as difficult to acquire as silken garments and are lost as easily as, etc. All those things which are done in private shall be done as if they were done publicly. Do not isolate thyself from the community. The disciples are divided into three classes, etc. Whoever constitutes the Torah as the chief good, and considers worldly affairs as a secondary thing, etc. Conciliate not thy friend in the hour of his anger. The scholars are divided into four classes: One studies but does not teach others, etc. If one honor his friend for pecuniary considerations, he will in the end be dismissed in disgrace, etc. On account of the four different means of forgiveness, etc. Repentance must be to every one of them. However, one who has profaned the name of heaven has not the power to repent. Wherefore do scholars die before their time. Be careful in greeting thy neighbors. He who neglects the words of the Law on account of his riches. There is a case where one transgresses ignorantly, etc. One who connects himself with transgressors, etc. The punishment of the liar is that even when he tells the truth he is not believed, 95-103

CHAPTER V.

MISHNAS A TO G. By ten sayings the world was created. For what purpose is this stated? Whence is it deduced that a single person is equal to the whole creation? The Holy One, blessed be He, showed unto Adam all succeeding generations, together with their preachers, directors, leaders, prophets, heroes, criminals, and their pious. Nine hundred and seventy-

four generations before the creation of the world, the Torah was already written, etc. He created in man all that he created in his world—how so? Ten generations were there from Adam to Noah. For what purpose was this stated? The Lord said: I will not equal the evil thoughts to the good thoughts so long as their fate has not yet been sealed. Ten generations were there from Noah to Abraham. For what purpose was it necessary to state this? With ten temptations was Abraham our father tempted. They are as follows, etc. In contrast with these ten temptations the Lord performed ten miracles for his descendants in Egypt. When our fathers stood by the sea, etc. "Arise, and pass through it," etc. With ten temptations did our ancestors tempt God in the wilderness. By means of ten trials the Holy One, blessed be He, tested our forefathers. This sin with which the Israelites were afflicted is enough for that time, etc. Ten names of praise are applied to the Holy One, blessed be He. Ten ignominious names are applied to the idols. There are two sons of the clear oil. This refers to Aaron and Messiah. In the Torah there is written eleven times the word "she" when it ought to be "he." Ten times did the Shekhina descend upon the earth. Ten degrees the Shekhina removed itself from one place to another. A prophet is called by ten different names. There are ten names for the Holy Spirit. Ten are called "living." Ten miracles were wrought for our fathers in Egypt, 103-115

MISHNAS *H TO O*. Ten miracles were performed for our forefathers in Jerusalem. Jerusalem never was defiled by leprosy. How Kimchith, the mother of R. Ishmael, saw her two sons as high-priests on the same day. The men of Sodom have no share in the world to come. About Kora'h and his company. "The Lord killeth, and maketh alive; he bringeth down to the grave, and bringeth up," has reference to them. The generation of the desert. "Gather together unto me my pious servants, who make a covenant with me by sacrifice," has reference to them. The ten tribes have no share in the world to come. R. Aqiba, however, said: "As the day is first dark and then lightens up, so also their darkness will be followed by light." The following seven have no share in the world to come, etc. There are three kings and four commoners who have no share in the world to come. Absalom has no share in the world to come. Seven things mark the clod, and seven there are for the sage. There are seven creations of as many grades of importance. Man possesses six qualifications, three of which belong also to the beast, and three to the angels. The evil spirits possess six qualifications, three of which belong to man. There are seven sorts of hypocrites. That which is hidden is only so from human beings, but not from Heaven. There are seven things which, if used moderately, are wholesome to the body, and if in excess are the reverse. With seven things God created the world. Seven attributes are serving before the throne of Grace. There are seven dwelling-places. A wise man does not speak before those who surpass him in wisdom and years; and does not interrupt another in his speech; admits the truth, etc. Seven kinds of punishments come on account of seven cardinal transgressions. About the execution of R. Simeon b. Gamaliel and R. Ishmael b. Elisha the high-priest. Captivity comes upon the world, etc. Five are not to be forgiven. Four kinds of views are held by men concerning property, 115-131

MISHNAS P TO GG. There are four kinds of dispositions among men. There are four kinds of pupils. There are four kinds of charity-givers. There are four kinds of visitors of the house of learning. There are four kinds of the disciples of the wise. Love inspired by ulterior motives, etc. Whatsoever gainsaying is for the sake of Heaven will have good results. Whosoever causes many to be righteous, sin prevails not over him. In whomsoever are the following three things, he is a disciple of Abraham, etc. Be courageous as the panther, light-winged as the eagle, swift as the deer, and strong as the lion. One five years old should study Scripture, etc. Turn it and turn it again, for everything can be found therein, . 131-133

CHAPTER VI.

MISHNAS A TO R. Whosoever is busied in Torah for the love thereof merits many things. Every day a Heavenly voice goes forth from Mount Horeb and proclaims as follows, etc. He who learns from his companion one chapter, etc., is bound to do him honor. The path of Torah, etc. Seek not greatness for thyself, and desire not honor. Greater is Torah than the priesthood, and than the kingdom. There are four things which bear good fruit in this world. A meritorious act has both principal and benefit. One who causes many to be righteous, no sin prevails upon him. Regarding dreams, there are four sages, three scholars, three books of the prophets, and three books of the Hagiographa. Every assembly that is for the sake of performing a religious duty remains everlasting. Comeliness, strength, wealth, honor, wisdom, age, hoariness, and sons are becoming to the righteous, etc. If thou shouldst give me all the silver, gold, and goodly stones and pearls that are in the world, I would not dwell but in a place of Torah. Five possessions had the Holy One in this world. Whatsoever the Lord created in this world He created only for His glory. There are three crowns: the crown of Torah, priesthood, and kingdom. Three things were said of charitable men. There are three different kinds among scholars. There are three different kinds of sweat that are beneficial to the body. There are six kinds of tears. There are three advantages in an earthen vessel. There are three advantages in a glass vessel. The money that the Israelites carried away from Egypt returned to Egypt. If you do the least wrong to your companion, it shall be considered by you the greatest wrong, etc. The following articles were hidden, etc., . . . 133-143

SYNOPSIS OF SUBJECTS
OF
TRACT DERECH ERETZ—RABBA
AND ZUTA.

RABBA.

CHAPTER II.

OF the Sadducees, common informers, the wicked, the hypocrites, the heretics, the Scripture says, etc. Of the terrifying, the overbearing, the haughty, the barefaced, and of those who develop only their muscular strength, the Scripture says, etc. Of evil-thinkers, story-tellers, tale-bearers, smooth-tongued persons, the Scripture says, etc. Who assaults his neighbor in private, and who insults him in public, etc. Who forestalls fruit, raises the prices, diminishes the measure, accepts payment in large-sized shekels only, and who lives on usury. The following leave no inheritance to their children, etc. The conceited, the slanderers, and those who indulge in obscene language, who are wise in their own eyes, etc. Who lets his young son marry an older woman, and who marries off his daughter to an old man, and who bestows favors upon those who are unworthy, etc. Who betrays his partner, does not return a lost thing to its rightful owner, loans money to another in order to get possession of his house and field, and who lives immorally with his wife, and maliciously slanders his wife, etc. Who are wronged and do not wrong, who consider themselves contemptible, and who overcome their passion, etc. Who loves his wife as himself, honors her more than himself, who leads his children on the right path, and who marries off his son in due time, etc. Who loves his neighbor, loans even a small amount to a poor man, etc. Who truthfully repent, who receive the repentant into their midst, who judge rightfully, reprove truthfully, propagate purity, are pure of heart, are merciful, distribute charity, exert themselves in the study of the Law. Search for an opportunity to do good, pursue righteousness, etc. On account of the following four things an eclipse of the sun occurs, etc. On account of the following four things an eclipse of both the sun and the moon occurs, etc. On account of the following four

things the estates of the citizens are destroyed, etc. Do not fret thyself to be equal to the evil-doers. There is no sitting above, neither is there eating, etc., 1-6

CHAPTERS III. TO VI.

ONE who bears in mind the following four things, etc., will never sin. Think of a big palace in the centre of which the vat of a tanner is placed. If a man allows his lips to pass only respectable words. Be careful, each of you, in honoring your neighbor. Be always pleasant at your entering and at your leaving. The angels, Abraham, and Lot. It is customary that, when entering, the master of the house enter first and the guest after him ; the reverse when leaving. Never shall a man enter the house of his neighbor without permission. The philosopher, Rabban Gamaliel, and his comrades. Always consider strangers as burglars, and at the same time honor them as if each of them were R. Gamaliel himself. One who enters his neighbor's house shall do what he is told by the host (provided it is legitimate). The legend about Simon b. Antiptaris, his guests, and R. Jehoshua. A man shall never be angry at his meals. Always shall a man try to agree with the majority of the people. Hillel the Elder, his wife, and the poor man. One shall not begin to eat the heads, but the leaves, of garlic or onions, 6-12

CHAPTERS VII. TO IX.

WHEN two are sitting at the table, the elder one commences to eat first and the younger one after him. One shall not eat before the fourth hour. One who enters a house shall not ask for food, but shall wait until he is invited. One should not offer presents to his neighbor, knowing that he would not accept them. When one who does not intend to buy is in the market, he should not ask for the prices, for he misleads the sellers. One should not use a slice of bread to cover therewith a dish. Five things said Rabbi in regard to bread. One who comes to the table to take his meal shall not take his portion and give it to the waiter. Guests must not give anything to the son of the host, etc., 12-15

CHAPTERS X. AND XI.

ONE who enters the bath-house may say, etc. How should one conduct himself before bathing ? One who is not careful is an ass's equal ; one who eats in the market is a dog's equal. One must not spit in the presence of his neighbor, even in a bath-house. One shall not greet his neighbor when he is washing himself. He who walks the road. A common informer is considered a murderer. He who hates his neighbor without cause is also considered such. One who sets a definite time for the redemption of Israel through Messiah will have no share in the world to come, 16-19

ZUTA.

CHAPTERS I. TO IV.

WHAT are the qualities of sages ? Their thought concerning this world. If you have sustained a loss of your property, remember that Job, etc. When you hear others insult you, do not answer them. Love the Law ; love all creatures and respect them. Love doubtfulness. Keep aloof from everything that may bring to sin. Keep aloof from grumbling. Seven patriarchs are resting in glory. Let all thy ways be for the sake of Heaven. Do not discuss in the presence of one who is greater than you in wisdom. Accept the words of Law, even when you are in affliction. Be afraid of a light sin. Do not say, " I will flatter this man," etc. If thou hast done much good to some one, consider it as very little. If others have done thee much wrong, etc. Do not hate the one who reproves thee. Let it be thy habit to say, " I do not know." The commencement of making vows is the door to foolishness. Fifteen customs are ascribed to the sages. Be as the lower threshold, upon which all persons tread. The society of scholars is always agreeable. What should one study more—Scripture, Mishnayoth, or Talmud ? No pay shall be exacted for teaching. Do not complain of your being less wise than another. Do not complain that another one is beautiful and you are ugly. Let your ears not listen to vain talk. Be not afraid of the court of justice on earth. If you perform all the commandments with joy, etc. All that is said above is a warning to you, 25-27

CHAPTERS V. TO IX.

A SCHOLAR must not eat standing, etc., etc. By four things the scholar is recognized, etc. The beauty of wisdom is modesty. The beauty of noble performance is secrecy. Four things are derogatory to scholars, etc. When entering, the greater shall be first, etc. For saying benediction, the greater is first. The first step to sin is in one's thoughts. A scholar must be careful in his eating, drinking, washing, anointing, etc. After peace but not after war. Rather follow behind a lion than behind a woman. Who respects the sages ?, etc. Keep aloof from anger. Love the poor in order that your children shall not come to poverty, etc. If you keep your mouth from slander, you will spend all the days of life in peace. When you see your neighbor has become poor, do not refuse to help him. If you lower yourself, the Lord will lift you up. This world resembles the eyeball of a man, etc., 27-31

THE CHAPTER ON PEACE.

ALTHOUGH evil decrees are enacted, one after another, against Israel, still they endure forever. Seek peace at the place where you are, and if you do

not find it, seek it in other places. All manner of lying is prohibited, except it be to make peace between one and his neighbor. Great is peace, in that the covenant of the priests was made with peace. When the Messiah shall come to Israel, he will begin with peace. Great is peace, in that all the benedictions and prayers conclude with peace. He who loves peace runs after peace, offers peace, and answers peace, the Holy One, etc., . 31-34

TRACT ABOTH.

TRACT ABOTH.

(*Fathers of the Synagogue—Ethics.*)

CHAPTER I.

MISHNA *A*. Moses received the Law on Sinai and delivered it to Joshua; Joshua in turn handed it down to the Elders (not to the seventy Elders of Moses' time but to the later Elders who have ruled Israel, and each of them delivered it to his successor); from the Elders it descended to the prophets (beginning with Eli and Samuel), and each of them delivered it to his successors until it reached the men of the Great Assembly. The last named originated three maxims: "Be not hasty in judgment; Bring up many disciples; and, Erect safeguards for the Law."

Tosephtha—Aboth of R. Nathan.

* Moses was sanctified in the cloud, and received the Torah from Sinai, as it is written [Ex. xxiv. 16]: "And the glory of the Lord abode upon Mount Sinai," which means on *Moses* (for what purpose?), to purify him; this occurred after the ten commandments had been given. So says R. Jose the Galilean; R. Aqiba, however, says: It is written [ibid.]: "And the cloud covered it six days." This refers to the *mountain*, before the ten commandments had been given, and this is what is written further on [ibid.]: "And he called unto Moses the seventh day out of the cloud" (for what purpose?—only) to confer honor upon him.

Said R. Nathan: Why did Moses stay the entire six days

* Chapter I. of the original.

without communication from the Shekhina? To cleanse his body of all the food and drink it contained, that he might be like angels at the time of his consecration.

Said R. Mathia b. Heresh to him: Rabbi, all this stated above was done only to overawe him, that he might receive the words of the Torah with awe, terror, fear and trembling, as it is written [Ps. ii. 11]: "Serve the Lord with fear and rejoice with trembling."

It happened that R. Josiah and R. Mathia b. Heresh were both sitting and studying the Law. R. Josiah then departed to attend to worldly affairs. Said R. Mathia to him: "Rabbi, what dost thou gain by forsaking the words of the living God, and devoting thyself to worldly affairs? Even though thou art my master, and I thy disciple, yet I dare say that it is not right to do so." (Lest one say that R. Josiah did so from jealousy,) it was said: While sitting and studying the Torah they were jealous of each other, but when they parted they were like friends from youth.

Through Moses the Torah was given on Sinai, as it is written [Deut. v. 19]: "And he wrote them on two tables of stone, and he gave them unto me." And also [Lev. xxvi. 46]: "These are the statutes and ordinances and laws, which the Lord made between him and the children of Israel on Mount Sinai, by the hand of Moses." The Law which the Holy One, blessed be He, has given to Israel, was given only in the hand of Moses, as it is written [Ex. xxxi. 17]: "Between me and the children of Israel." So Moses (because of his purification and sanctification) was privileged to be the representative of Israel before the Lord.

Moses offered the ram of consecration and prepared the oil of anointment, and anointed therewith Aaron and his sons during all the seven days of consecration. With the same oil high-priests and kings were afterward anointed, and Elazar burned the (first) red-cow, with the ashes of which the unclean were purified in later generations. Said R. Eliezer: "The oil of anointment was of such importance that it remained even for the later generations, for Aaron and his sons were consecrated with the oil of anointment, as it is written [Ex. xxx. 30]: 'And Aaron and his sons shalt thou anoint, and consecrate them to be priests.' " (Hence we see that although Aaron was a high-priest, his sons, nevertheless, stood in need of anointment.)

Joshua received it (the Law) from Moses, as it is written

[Numb. xxxvii. 20]: "And thou shalt put some of thy greatness upon him, in order that all the congregation of the children of Israel may be obedient." The elders (who lived after Moses) received it from Joshua, as it is written [Judges ii. 7]: "And the people served the Lord all the days of Joshua, and all the days of the elders that lived many days after Joshua, who had seen all the great deeds of the Lord, which he had done for Israel." The judges received it from the elders, as it is written [Ruth, i. 1]: "And it came to pass in the days when the judges judged." * The prophets received it from the judges (beginning with Samuel the prophet, who was also a judge), as it is written [Jerem. vii. 25]: "And I sent unto you *all* my servants the prophets, sending them daily in the morning early." Haggai, Zechariah, and Malachi received it from the prophets. The men of the Great Assembly received it from Haggai, Zechariah, and Malachi, and they said the following three things mentioned in the Mishna :

"*Be deliberate in judgment.*" How so? It means a man shall be slow in his judgment, for he who is slow is deliberate, as it is written [Prov. xxv. 1]: "Also these are the proverbs of Solomon, which the men of Hezekiah the king of Judah have collected." They have not collected them, but they were deliberating upon them before (making them public). Abba Saul, however, said: "Not only were they deliberating over them, but they also explained them."

Formerly it was said: The books of Proverbs, Song of Songs, and Ecclesiastes were hidden, because they are only parables, and do not belong to the Hagiographa; the men of the Great Assembly, however, came and explained them, as it is written [Prov. vii. 7-20]: "And I beheld among the simple ones, I discerned among the youths, a lad void of sense, etc.; and, behold, a woman came to meet him with the attire of a harlot and obdurate of heart; she is noisy and ungovernable; in her house her feet never rest; at one time she is in the street, at another in the open places, and near every corner doth she lurk, and she caught hold of him, and kissed him, and with an impudent face she said to him, 'I had bound myself to bring peace-offerings; this day have I paid my vows; therefore I am come forth to meet thee, to seek thy presence diligently, and I have found

* The Talmud infers this from the two words *shephot hashophitim*, which literally mean that the judges were judged. Hence, who have judged the judges? The elders.

thee. With tapestry coverings have I decked my bed, with embroidered coverlids of the fine linen of Egypt. I have sprinkled my couch with myrrh, aloes, and cinnamon. Come, let us indulge in love until the morning: let us delight ourselves with dalliances. For the man is not in his house, he is gone on a journey a great way off; the bag of money hath he taken with him; by the day of the new-moon festival only will he come home.''' And it is written also in Song of Songs [vii. 12, 13]: "Come, my friend, let us go into the field; let us spend the night in the villages; let us get up early to the vineyards; let us see if the wine have blossomed, whether the young grape have opened (to the view), whether the pomegranate have budded: there will I give my caresses unto thee." And it is written again in Ecclesiastes [xi. 9]: "Rejoice, O young man, in thy childhood; and let thy heart cheer thee in the days of thy youthful vigor, and walk firmly in the ways of thy heart, and in (the direction which) thy eyes see; but know thou, that concerning all these things God will bring thee into judgment." And again in Song of Songs [vii. 10]: "I am my friend's, and toward me is his desire." So we see that the last-mentioned passage of the Song of Songs explains all that was mentioned above; under the term "my friend's" the Lord is understood. Hence (it is sure) that they were not only deliberating, but also explaining them.

According to others the statement "Be deliberate in judgment" means to teach that one shall be careful with his words, and also not to have an irascible manner against those who have received his words, for one who is easily provoked by those who have received his words often forgets his (original) words; for so we find with Moses, our master, who had forgotten his (original) words. (See Pesachim, p. 129: "Resh Lakish said," etc.)

And where do we find that Moses was irascible with his hearers? It is written [Numb. xxxi. 14]: "And Moses was wroth. . . . Have you allowed all the females to live?" And it is written [ibid., ibid. 16]: "Behold . . . through the counsel of Bil'am." How so? Infer from this that this was the advice of Bil'am given to Balak: "These people, your enemies, are hungry for food and are thirsty for drink, as they have nothing but manna. Go and put up tents for them, place in them food and drink, and seat in them beautiful women, daughters of nobles, so that the people may turn to Baal Peor." (This will be given in Sanhedrin in detail.)

Now from this we may draw an *a fortiori* conclusion. If

Moses our master, the wisest of the wise and the father of the prophets, at the time he became angry at his listeners forgot his original words, so much the more would we commoners. From this we should learn how necessary it is to be careful and not irascible.

Ben Azai says: Be careful in thy words, that thy hearers shall not err through them.

"And erect safeguards for the Law." That means that one shall make a safeguard to his words as the Holy One, blessed be He, has done. Adam the First made one to his; the Torah made one to its words; Moses and Job likewise made safeguards to their words, and so also the Prophets and Hagiographers have all made safeguards to their words.

The safeguard that the Holy One, blessed be He, made is this [Deut. xxix. 23]: "Even all the nations will say, wherefore hath the Lord done thus unto this land?" Infer from this that it was known beforehand to Him, by whose one word the universe was created, that the future generations will ask this; therefore he said to Moses: Write the answer for the future generations [ibid., ibid. 24, 25]: "Then shall men say, because they have forsaken the covenant of the Lord, etc., and they went and served other gods and bowed down to them—gods which they knew not, and which he had not assigned unto them."

We see, then, that the Holy One, blessed be He, made these answers, to prevent His people from incurring His wrath by their questions, and that they might live in peace.

Adam the First's safeguard to his words was thus [Gen. ii. 16, 17]: "And the Lord God commanded the man, saying, Of every tree of the garden thou mayest freely eat; but of the tree of the knowledge of good and evil, thou shalt not eat of it; for on the day that thou eatest thereof thou shalt surely die."

We see, then, that Adam did not want to give Eve the exact words he received, but he added [ibid. iii. 3]: "Ye shall not eat of it, neither shall ye touch it, lest ye die," in order that they should take care even not to touch the tree. At that time the wicked serpent said to himself: "As it is impossible for me to make Adam stumble (for he himself received the words from the Lord), I will make Eve stumble." He sat by her and had a long conversation with her. He said to her: "As thou sayest that the Holy One, blessed be He, has forbidden thee to touch it, see that I am touching it and will not die, and the same will

be with thee." And so he did: he arose and shook the tree with his hands and feet till the fruit fell down. [According to others the serpent did not actually touch the tree at all, because as soon as the tree saw the serpent it stopped him and said: "Thou wicked one, do not touch me," as it is written [Ps. xxxvi. 12]: "Let not come against me the foot of pride, and let not the hand of the wicked chase me off." Another explanation of the above passage is, that it has referred to Titus, who beckoned with his hand, and struck the altar, saying: "λυκος! λυκος! (wolf!) thou art a king, and I am a king, come and engage with me in battle. How many oxen were slaughtered upon thee; how many heads of birds were pinched off on thee; how many measures of wine were poured upon thee; how much incense of *spices* was burned upon thee, thou art the one who destroys the whole world," as it is written [Is. xxix. 1]: "Woe to Ariël, to Ariël, the town where David dwelt! Add ye year to year; let the festivals come round in order."]

The serpent said again to her (Eve): "If thou sayest that the Holy One, blessed be He, forbade to eat it, see I eat of it, and do not die, and thou mayest do the same and thou wilt not die." So Eve said to herself, the injunctions of my master are unfounded. [(There is a tradition that) at first Eve called Adam nothing but master.] She then herself ate of the fruit and gave it to Adam, and he too ate, as it is written [Gen. iii. 6]: "And when the woman saw that the tree was good for food, and that it was pleasant to the eyes," etc.

With ten curses was Eve cursed at that time, as it is written [ibid., ibid. 16]: "Unto the woman he said, I will greatly multiply thy pain and (the suffering of) thy conception; in pain shalt thou bring forth (children), and for thy husband shall be thy desire, but he shall rule over thee." "I will greatly multiply"—those are the two afflictions of blood that a woman has to suffer: that of her menstruation and that *primæ noctis*. "And thy suffering" means the rearing of children; "and thy conception" means the pain of pregnancy. "In pain shalt thou bring forth children" is to be taken in its literal sense. "And for thy husband shall be thy desire"; infer from this that the woman is longing for her husband during his absence on a journey. She is wrapped like a mourner, separated from all men as if she were in prison and as if she were excommunicated from all mankind. And who caused all this? The words that Adam added: "Ye shall not touch it." From this they deduced the maxims that

if one makes a safeguard to his words (without stating that it is such) he cannot stand by it. Consequently they said that one must not add to what he has heard. Said R. Jose (this is what people say): "It is better to have a wall of ten spans which is solid, than one of a hundred ells which is tottering."

What were the thoughts of the wicked serpent at that time? "I will slay Adam and marry his wife, and I will be king of the whole world, I will walk erect, and will banquet on the best of the land." Then the Holy One, blessed be He, said to him: "Thou hast thought to slay Adam and marry his wife, therefore I will put enmity (between thee and the woman); thou hast thought to be king of the world, therefore be thou cursed among all the cattle; thou hast thought to walk erect, therefore upon thy belly shalt thou go; thou hast thought to banquet on the best of the land, therefore dust shalt thou eat all the days of thy life."

R. Simeon b. Menassia says: "Woe that a great servant was lost to the world, for if the serpent had not been accursed, every one would have had two serpents in his house. He would send one to the West, and the other to the East, and they would bring him diamonds, precious stones and pearls, and all the valuable things of the world, and no creature could stand against them, and furthermore they could be used instead of a camel, ass, and mule in the field, garden," etc.

R. Jehudah b. Bathyra says: "Adam was sitting in the Garden of Eden and the angels served him with roasted meat and chilled wine." When the serpent saw this and observed this honor, he became jealous.

How was Adam created? The first hour his dust was gathered, the second the form was created, the third he became a body, the fourth his members were joined, the fifth the openings were developed, the sixth the soul was put unto him, the seventh he rose to his feet, the eighth Eve was mated to him, the ninth he was brought into the Garden of Eden, the tenth the command was given to him, the eleventh he sinned, the twelfth he was driven out and went away; this is what is written [Ps. xlix. 21]: "*Ve Adam bikor bal yolin.*"* (Adam, "Bal Yolin"—he shall not stay over night.) [We have learned in Tract Rosh Hashana, p. 55: On the first day which psalm did

* The translation of this passage is entirely different. The Talmud, however, interprets this to mean Adam the First, and takes it literally.

they say? "Unto the Lord belongeth the earth with what filleth it" [Ps. xxi. 17]; this was because He created and is still continuing to create, and He is judging the world. On the second day they said: "Great is the Lord and highly praised, in the city of our God" [ibid. xlviii. 2]; it is because He divided all His creatures and became the one ruler of the universe. On the third they said: "God standeth in the congregation of God, in the midst of judges doth He judge" [ibid. lxxxii. 1]; it is because He then created the sea, the land, and the earth was rolled to its right place, and room was made for His congregation. On the fourth day they said: "O God of vengeance, Lord! O God of vengeance, shine forth" [Ps. xciv. 1]; because then He created the sun, the moon, the stars, and the planets which give light to the world, and the Lord will punish those who worship them. On the fifth they said: "Sing aloud unto God our strength; shout joyfully unto the God of Jacob" [Ps. lxxxii. 2]; because He then created the birds, the fishes, and the great sea monsters, who (the birds) fill the world with song. On the sixth they said: "The Lord reigneth, He is clothed with excellency; the Lord is clothed, He had girded Himself with strength: (therefore) also the world is firmly established, that it cannot be moved." Because then He finished all His work He became exalted and placed Himself on the loftiest point of the world. On the seventh they said: "A psalm or song for the Sabbath day" [ibid. xcii. 1]. A day of entire rest, when there is no eating nor no drinking and no traffick, but the upright sit with their crowns on their heads and are nourished from the glory of the Shekhina, as it is written [Ex. xxiv. 11]: "And they saw (the glory of) God, and did eat and drink," just like the angels.]

Why was Adam created on the last hour of the sixth day? In order that he might immediately partake of the sabbatical meal.

R. Simeon b. Elazar said: Adam can be likened to an Israelite who married a proselyte woman, and he constantly sought to impress upon her mind the following regulations: "My daughter, eat not bread when thy hands are unclean, eat not of fruits which were not tithed, do not violate the Sabbath, do not get into the habit of making vows, and walk not with another man. If thou shouldst violate any of the commands, thou wilt die." Another one, who wished to mislead her, did those very things before her that she had been told were sinful: he ate

bread when his hands were unclean, partook of fruits which were not tithed, violated the Sabbath, etc., and thereby caused this proselyte to think that everything that her husband told her was entirely false, so she violated all his commandments.

R. Simeon b. Johai said: The case of Adam can be likened to one who, when intending to leave his house, took a barrel and put therein a certain number of dates and nuts; then he caught a scorpion and put it in the top of the barrel, he covered it well and put it in a corner, and said to his wife: "My daughter, everything I have in this house is placed at thy disposal, except this barrel, which thou must touch not at all." As soon as her husband went away, she, however, opened the barrel, put her hand into it, and the scorpion bit her. She took sick and went to her bed. When her husband returned, he asked her what the trouble was. She said: "I put my hand in the barrel, and the scorpion bit me, and I am dying." He said to her: "Did I not tell thee before that thou must not touch the barrel?" He became angry, and drove her out of his house. The same happened to Adam when the Holy One, blessed be He, told him: "Of every tree in the garden thou mayest freely eat; but of the tree of the knowledge of good and evil, thou shalt not eat of it; for on the day that thou eatest thereof thou shalt surely die"; but as soon as he did eat he was driven out of the Garden of Eden, and this is what the passage said [Ps. xlix.] (see above).

On the same day on which he was formed, on the very same day his countenance was created; on the very same day he was made a body, and his members were joined and his openings developed, and on the very same day the soul was put unto him. On the same day he stood upon his feet, and Eve was mated to him. On the same day he pronounced the names of all the creatures, and on the very same day he was placed in the Garden of Eden and received the command (not to eat, etc.), and on the very same day he violated it and was driven out, to comply with what is written [Ps. xlix.] (see above). On the same day they went to bed two, and descended from the bed four. R. Jehudah b. Bathyra, however, says that they descended six (two sons and two daughters). On that day three sentences were pronounced over Adam, as it is written [Gen. iii. 17, 18]: "And unto Adam he said, because thou hast hearkened unto the voice of thy wife, etc., cursed be the ground for thy sake, in pain shalt thou eat of it, etc., and thorns and thistles shall it bring forth to thee, and thou shalt eat the herbs of the

field." As soon as Adam the First heard that the Holy One, blessed be He, said: "And thou shalt eat the herbs of the field," he trembled in his whole body. He said before Him: "Lord of the Universe, shall I and my cattle eat out of the same trough?" Said the Holy One, blessed be He: "As thou hast trembled, therefore in the sweat of thy face shalt thou eat *bread*" [ibid., ibid. 19].

As Adam was laid under three sentences, likewise was it with Eve. As it is written [ibid., ibid. 16]: "I will greatly multiply thy pain and (the suffering of) thy conception; in pain shalt thou bring forth children." The first few days of menstruation are painful. So also are the first few moments of her sexual intercourse with a man. Also when the woman becomes pregnant, her face loses its beauty and becomes yellow the first three months.

When evening drew near, and Adam, looking toward the west, saw that it was becoming darker and darker, he said: "Woe to me is this, because I have sinned, that the Lord darkens the world upon me!" He did not know that it was the course of nature. In the morning, when he saw it lighted up and the sun risen in the east, he rejoiced greatly. He built an altar and sacrificed on it as a burnt-offering an ox, the horns of which were formed before his hoofs. (Rashi explains this elsewhere as follows: All the creatures of the first days of creation were created in their full-grown sizes, and as the head was formed first the horns thereon preceded the hoofs in point of time. This means to say that Adam sacrificed an ox of the first creation.) As it is written [Ps. lxix. 32]: "And this will please the Lord better than an ox or bullock having horns and cloven hoofs."

(There is a tradition) that the ox of Adam, the steer of Noah, the ram sacrificed by Abraham in place of his son, were all of the first creation, as it is written [Gen. xxii. 13]: "And Abraham lifted up his eyes and saw, and behold, there was a ram *Achar*" (another one, which signifies that it was one differing from the usual ones). At that time (of the sacrifice of the ox, the Holy One, blessed be He, became merciful to him and) three divisions of angels came down with harps, and psalteries, and all musical instruments, and they sang with Adam, as it is written [Ps. xcii. 1-3]: "A psalm song for the Sabbath day. It is a good thing to give thanks to the Lord, etc. To tell in the morning of thy kindness, and of thy faithfulness in the nights." "To tell in the

morning of thy kindness," this means the world to come, which is likened to the morning, as it is written [Lam. iii. 23]: "They are new every morning, great is thy faithfulness"; and [Ps. xcii.] "And of thy faithfulness in the night" means this world, which is likened to night, as it is written [Is. xxi. 11]: "The doom of Dumah. Unto me one calleth out of Se'ir, Watchman, what of the night? Watchman, what of the night?"

The Holy One, blessed be He, said then: "If I will not punish the serpent, that would be as if I Myself were destroying the world, because it would be said that the one that I set up as king over the entire world has disobeyed My command and ate of the forbidden fruit"; therefore immediately He turned to the serpent and cursed him, as it is written [Gen. iii. 14]: "And the Lord God said unto the serpent," etc. R. Jose said: "If the serpent had not been cursed, the world would have been destroyed immediately afterward."

When God created Adam, He formed him with two countenances, front and back, as it is written [Ps. cxxxix. 5]: "Behind and before hast thou hedged me in, and thou placest upon me thy hand." And the angels came down to serve him, and the Holy One, blessed be He, took him under His wings, as it is written: "And thou placest upon me thy hand."

According to others, from this passage is to be inferred that Adam and the Temple were both created with both hands. This view is supported by the following passages [Ps. cxix. 73]: "Thy *hands* have made me and established me"; and it is also written about the Temple [Ex. xv. 17]: "The sanctuary, O Lord, which thy *hands* have established."

Tosephtha—Aboth of R. Nathan.

* What is the safeguard that the Torah made to its words? It is written [Lev. xviii. 19]: "And a woman in the separation of her uncleanness shalt thou not approach." One might say it is allowed to embrace and kiss her, and converse with her, therefore it is written: "Shalt thou not approach"; lest one say it is allowed to sleep with her on one bed when they are both dressed, therefore it is written [Lev. xv. 33]: "And of her that is suffering in her separation," that means during all the

* Chapter II. of the original.

days of her separation she shall be as if under a ban;* from this it may be said that a woman who makes herself homely during her separation does it in accordance with the will of the sages, and one that adorns herself during that time incurs the dissatisfaction of the sages.

It happened that a man, although faithfully studying (the Bible), learning (the Mishna), and serving (in the colleges) of the sages, died in the prime of life. His wife used to take his phylacteries† and go around and visit all the synagogues and colleges, weeping and crying: "My masters, in the Law it is written [Deut. xxx. 20]: 'For he is thy life and the length of thy days'; now there is my husband, who read and learned much and served the sages, why did he die in the prime of life?" And there was no one that gave her a satisfactory answer. Once she met Elijah the prophet, of blessed memory, and he said to her: "My daughter, wherefore criest thou?" and she made to him the same complaint. He then said to her: "What was his wont with thee in the first days of thy separation?" She answered: "Rabbi, he did not even touch me with his little finger; furthermore, he told me, 'Do not touch anything, that thou mayest not bring it into suspicion.'" "And what was his habit with thee in the last days of thy separation?" he said again. She answered: "Rabbi, I used to eat and drink with him, and to sleep with him fully dressed on the bed, and his body touched mine, but with no intention of anything else." Elijah then said: "Blessed be the Omnipotent that killed him, because it is written [Lev. xviii. 19]: 'Shalt thou not approach.'"

It is written [ibid., ibid. 6]: "None of you shall approach to any that are near of kin to him." From this it was said one must not stay in a separate room with any woman in a hostelry, though she be his sister or daughter, because of public opinion. For the same reason one must not converse with a woman in the market, not even with his wife. For the same reason a man shall not walk behind a woman, even though she be his wife. This was deduced from the following analogy of expression: It is written in the passage of illegal unions, "Ye shall not ap-

* In the ancient times, and even now in some places of the Orient, a woman in her separation must be separated and avoid all communication with anybody during the whole time.

† We have explained it in our "Philac. Ritus," that at that time only great men were allowed to bear phylacteries, and therefore she took them to prove that her husband was one of them.

proach," and here is also written, "Thou shalt not approach," from which it is to be inferred that one shall not approach such things as can cause him to sin (or cause people to talk about him).

There is an ancient saying: Keep thyself apart from the abominable, and from things which are equal to it; and the sages explained it thus: Keep thyself from trivial sin, that it may not lead thee to a grave one. Run to perform a slight meritorious deed, for it will lead thee to the performance of a great one.

It is written [Song of Songs, vii. 3]: "Thy body is like a heap of wheat fenced about with lilies." "Thy body is like a heap of wheat" refers to the assembly of Israel, and "fenced about with lilies" refers to the seventy elders. Another explanation of the words, "Thy body is like a heap of wheat," is that they refer to the lenient religious duties which seem to be of no consequence; "fenced about with lilies," nevertheless when the Israelites perform them they bring them to the world to come. How so? When one is with his wife in his house he can do with her what he pleases even during the separation, as there is nobody to control him or reprove him; but when he refrains from having intercourse with her until she submerge herself, he is doing so only because he is afraid of him who commanded the submerging (in the legal bath); and the same is the case with the first dough, the first wool of shearing (no control can be exercised). Hence such duties, which are as light as lilies, bring the Israelites who perform them to the world to come.

Which is the safeguard that Moses made to his words? It is written [Ex. xix. 10]: "And the Lord said unto Moses, Go unto the people and sanctify them to-day and to-morrow." As Moses the upright regarded it inexpedient to speak to the people in the manner God spake to him, he added one day of his own volition, and said to them [Ex. xix. 15]: "Prepare yourselves for three days." * Why did he do so? Because he thought it might happen that one could have seminal intercourse with his wife that day, and so they will receive the Torah when they are unclean; "therefore I will add a third day, that in all the three days they shall refrain from intercourse, in order that

* Leeser translates "against" the third day, but the Talmud translates it as we give it.

they may be clean when receiving the Torah from Mount Sinai."

This is one of the things that Moses did of his own accord by drawing an *a fortiori* conclusion (as will be explained farther on), and his act was afterward sanctioned by the Omnipotent. The same was the case with the breaking of the tables, with his leaving the Tabernacle, and with his separation from a woman. How so? He said: "Since relative to the Israelites who were to be sanctified for the time being only, for the purpose of receiving the ten commandments from Mount Sinai, the Holy One, blessed be He, said unto me, 'Go unto the people and sanctify them to-day and to-morrow,' how much more incumbent is it on me to be particular about the cleanliness of my person, as I must be ready for such a divine call every day and every hour, and do not know when He would speak to me by day or by night." And this was exactly in accordance with the will of God. R. Jehudah b. Bathyra, however, said: Moses did not leave his wife before he was told to do so by the Mighty One, as it is written [Numb. xii. 8]: "Mouth to mouth do I speak with him." It means, mouth to mouth have I told him to separate himself from a woman. According to others, it is from the following passage: It is written [Deut. v. 27]: "Go say to them, return ye unto your tents"; and immediately after [ibid., ibid. v. 28]: "But as for thee, remain thou here by me." Therefore he returned and separated himself. This was exactly the meaning of this passage.

The *a fortiori* in the case of the Tabernacle was thus: He said: As for my brother Aaron, who is anointed with the oil of anointment, and clothed in holy garments for service, the Holy One, blessed be He, regarding him said [Lev. xvi. 2]: "Speak unto Aaron thy brother, that he come not at all times into the holy place." Now I who am not chosen for such service, as I am not a priest, how much more reason is there for me to leave the Tabernacle? He did so, and it was in accordance with the will of the Omnipotent.

The *a fortiori* in the case of the tables was thus: It is said when Moses ascended on high to receive the tables [which were written and preserved since the creation of the world, as it is written [Ex. xxxii. 16]: "And the tables were the work of God, and the writing was the writing of God, engraved upon the tables," do not read "Charuth" (engraved), but Cheiruth (free), for every one who is studying the Law is a free man].

The angels conspired against Moses, saying: "Lord of the Universe, what is the mortal, that thou rememberest him?" etc. [Ps. viii. 5-9]. They murmured against Moses and said: What is the distinction of one born of woman, that he should come into the council on high? As it is written [Ps. lxxviii. 19]: "Thou didst ascend on high, lead away captives, receive gifts." He nevertheless took the tables and descended with great rejoicing. When he saw the contamination with which they had stained themselves in worshipping the golden calf, he said: If I should give them the tables, I impose upon them a responsibility which might result in capital punishment by divine power, for on the tables is written: "Thou shalt have no other gods before me" [Ex. xx. 3]. He started to return, but the seventy elders saw him and ran after him, and grasped the tables on one end, the other end being still in Moses' hand, and he overpowered them all, as it is written [Deut. xxxiv. 12]: "And in respect to all that mighty hand, and in all the great, terrific deeds which Moses displayed before the eyes of all Israel." He looked at the tables, and saw that they were without writing upon them. He then said: How shall I give Israel the tables, now that they have no value? I will rather break them. As it is written [Deut. ix. 17]: "And I took hold of the two tables, and cast them out of my two hands, and I broke them." Said R. Jose the Galilean: I will explain this with a parable. A king said to his ambassador: "Go, betroth to me a maiden who is beautiful, chaste, and of pleasing manners." The ambassador went and betrothed such to him. Soon he found that she acted the harlot. The ambassador was in a predicament. "What is to be done? If I give her the marriage contract now, I may subject her to capital punishment. No," he said, "I will tear the marriage contract and thereby release her from my master and save her." So Moses the upright said, as stated above: "Rather will I seize and break them (the tables) and save the Israelites by enabling them, in case they should be charged with idolatry, to say: 'Where are the tables? They did not exist at all.'"

R. Jehudah b. Bathyra said: Moses would not have broken the tables had he not been told by the Mighty One to do so, as it is written: "Mouth to mouth do I speak with him"; that means, I told him to break the tables. According to others, that thought is expressed in the following passage [Deut. ix. 16]: "And I looked, and behold, ye had sinned against the Lord." He would not say "I looked," unless he saw the writing of the

tables flying away. Anonymous teachers find the same in the following passage [Deut. x. 5]: "And they have remained there, as the Lord hath commanded me." He would not have said he was commanded unless he had been told to break them. R. Elazar b. Azariah infers it from the following passage [ibid. xxxiv. 12]: "Which Moses displayed before the eye of all Israel"; or, "All that Moses did was by the command of the Lord," as in other cases Moses acted according to the command of God. [R. Aqiba infers it from the following passage: "And I took hold of the two tables." What can a man take hold of? Only what he can destroy (*i.e.*, if he had not been commanded to do so he could not have been able to destroy a thing given by God). R. Meir infers it from the following passage: "Which thou hast broken"; it really means, "which thou didst break rightfully" (see Sabbath, p. 165).]

Also Hezekiah, King of Judah, did four things of his own volition which were in accordance with the will of the Lord (see Pesachim, p. 99 in the Mishna): "And Hezekiah prospered in all his works" [II Chron. xxxii. 30].

What is the safeguard that Job made to his words? (Let us see), it is written [Job i. 1]: "And this man was perfect and upright, and fearing God, and eschewing evil." We learn therefrom that Job kept aloof from anything that led to sin, from abomination and from what is equal to it. It may be asked [if it is so, are not the terms "perfect" and "upright" superfluous? (the words "fearing God" and "eschewing evil," are they not sufficient)? Infer from this that the term "perfect" means that he was born circumcised. Adam the first man also came forth circumcised, as it is written [Gen. i. 27]: "And God created man in his image." Also Seth was so born, as it is written [ibid. v. 3]: "And begat a son in his likeness, after his image." Noah, too, was born circumcised, as [ibid. vi. 9] the term "perfect" was used in reference to Noah. Shem was also so born, as it is written [ibid. xiv. 18]: "And Malkizedek, king of Salem." * Jacob the patriarch was also so born, as the appellation "perfect" was also applied to him [ibid. xxv. 27]. And Joseph was also so born, as it is written [ibid. xxxvii. 2]: "These are the generations of Jacob: Joseph." It ought to be the generation of Jacob: Reuben (as he was the first-born).

* There is a tradition in the Talmud that Malkizedek is identical with Shem. Salem in Hebrew means also "perfect." Hence the analogy.

Why is it Joseph? Infer from this, that as Jacob was born circumcised, so also was Joseph. And Moses was born circumcised, as it is written [Ex. ii. 2]: "And when she saw him, that he was a goodly child." What good could his mother see in him? Was he then more beautiful than all mankind? Say, then, he was born circumcised. Also Balaam the wicked was born circumcised, as it is written [Numb. xxiv. 4]: "Thus saith he who heareth the sayings of God." (According to the tradition of the Talmudists, one who is not circumcised could not hear the words of God, and as Balaam was a Gentile, and not circumcised by his parents, and yet he heard the words of God, consequently he must have been born circumcised.) Samuel was also born so, as he is also graced with the appellation *good* [I Sam. ii. 26]. David was also born so, traditionally, as (the support from Ps. xvi. 1 does not imply anything). Also Jeremiah was born circumcised, as it is written [Jer. i. 5]: "Before yet I had formed thee in thy mother's body I knew thee, and before thou wast yet come forth out of the womb I *sanctified* thee." Also Zerubabel was born so, as it is written [Haggai, ii. 23]: "On that day, saith the Lord of hosts, *will I take thee*, O Zerubabel, the son of Shealtiel, *my servant*." And he (Job) said [Job xxxi. 1]: "A covenant have I made with my eyes: how then should I fix my looks on a virgin?" Infer from this that Job was so scrupulous with himself that he did not even look at a virgin. This is to be made an *a fortiori* conclusion—namely, if a virgin whom he could marry himself, or to his son, brother, or relatives was not looked upon by him because he was so rigorous with himself, so much the more did he refrain from looking at a married woman. But what was the reason that Job was so rigorous with himself as regards looking at a virgin? Because he thought, if I look at her to-day (and like her) and to-morrow she marries some one else, I will have looked on (and liked) a married woman.

What safeguard have the prophets made to their words? It is written [Is. xlii. 13]: "The Lord—as a mighty one will he go forth, like a man of war will he arouse his vengeance: he will shout, yea, raise the war-cry." Is then the Lord as one mighty one? Is He not stronger than all the mighty ones of the world put together? The same is in Amos [iii. 8]: "The lion hath roared, who will not fear? the Lord Eternal hath spoken, who will not prophesy?" Is then the voice of the Lord equal to one lion—is it not as of all the lions of the whole world put

together? The same meaning is conveyed by the following passage [Ezek. xliii. 2]: "Behold, the glory of the God of Israel came from the way of the east; and his voice was like a noise of many waters; and the earth gave light from his glory." (Now let us see. We know from a tradition that the words) "like a noise of many waters" mean the angel Gabriel; and by "the earth gave light," etc., is meant the appearance of the Shekhina. Is not here an *a fortiori* conclusion to be drawn? Gabriel, who is only one of the thousands of millions of servants who minister before the Lord, if *his* voice reached from one end of the world to the other, so much the more would that of the King of kings, the Holy One, blessed be He, who has created the universe, who has created the higher and the lower; but the reason why the prophets spake so is, that only such things are mentioned that the eye of a human being can see, and only such things are written that the ear of a human being can hear.

What was the safeguard that the Hagiographers made to their words? It is written [Prov. v. 8]: "Remove far from her thy way and come not nigh to the door of her house." "Remove far from her thy way" means heresy against which one is warned. Lest one say, I have confidence in myself and I am sure that it would not influence me, therefore it is written [Ps. ii. 19]: "All that come unto her return not again, and they will not reach the paths of life." [It is written [ibid. ix. 2]: "She hath killed her cattle, she hath mingled her wine; she hath also set in order her table." This refers to the wicked. When one goes away with them, they give him food and drink, they clothe and cover him, and give him plenty of money; but as soon as he becomes one of them, each one recognizes what belonged to him and takes it away from him. Concerning them it is written [ibid. vii. 23]: "Till an arrow cleaveth through his liver, as a bird hasteneth into the snare, and knoweth not that it is done to take his life."]

Another explanation to the above passage is this: "Remove far from her thy way" refers to a harlot. When one is warned not to go in this market, and not to enter into that alley, as there is a celebrated and much-spoken-of harlot, and he says, I have confidence in myself even though I go there I would not be seduced by her; nevertheless they must say to him, Go not, for after all thou canst be seduced by her. Did not our sages say: "A man shall not be in the habit of passing by the door of a harlot, for it is written [ibid. vii. 26]: 'For many deadly

wounded hath she caused to fall: yea, very numerous are all those slain by her'?"

What is the safeguard that the sages made to their words? *e.g.*, the reading of Shema (see Berachoth), and so also have the latter sages made a safeguard to their words; and they have multiplied disciples who did the same thing. As to this, however, the schools of Shammai and Hillel differ. The School of Shammai maintain that one shall teach only those who are wise, modest, rich, and come from a good family; the School of Hillel, however, hold that one may teach every one, as there were many transgressors in Israel, and after they had become upright, pious, and righteous men, engaged in the study of the Law, they had the good fortune that from them descended men of uprightness, piety, and righteousness.

Tosephtha—Aboth of R. Nathan.

* R. Aqiba said: "Whoever takes a coin from the fund intended for charity to the poor when he is not in need of it, will not die before he will really be in need of assistance."† He used to say: One that bandages his eyes or his shoulders, and says: "Give charity to the blind or to the leper," will in the end speak the truth—that is, he will be such. He also said: One that throws his bread on the ground, or scatters his money in his anger, will not die before he will be in actual need of assistance. He said again: One that tears his garments or breaks his vessels in his wrath, will eventually worship idols, for this is the way of the evil thoughts: to-day they urge him to tear his garments, and to-morrow they will advise him to worship idols. And again: One that is desirous that his wife shall die in order to inherit her property, or to marry her sister, or one who is desirous that his brother shall die in order to marry his wife, in the end will be buried by them. Regarding such it is written [Eccl. x. 8]: "He that diggeth a pit will fall into it; and him who breaketh down a fence, a serpent will bite him."

(Here follows a repetition of a Mishna in Baba Kama, which, according to our method, we have omitted.)

* Chapter III. of the original.

† In a Mishna at the end of Tract Pëah it is stated the reverse, viz.: That one who needs charity and refuses to take it will not depart from this world until he will be in a position to give charity.

R. Dostai b. Janai said: Though thou hast chosen and sown in the first quarter, sow also in the second: perhaps a hail might destroy the first, but the second will be preserved; for thou knowest not which will succeed, whether this or that, or both may be preserved, and both of them will be alike good, as it is written [Eccl. xi. 6]: "In the morning sow thy seed, and in the evening let not thy hand rest." And even though thou hast sown in the first and second quarters, do not neglect to do so also in the third, as it may happen that a blast might destroy the first, but the latter will be preserved, as is said in the passage just mentioned.

R. Ishmael b. R. Jose said: The above passage refers to study, thus: Study the Law in thy old age, even if thou hast studied it in thy youth. Do not say: "I do not want to study when I am aged"; but study it always, because thou knowest not which will succeed. If thou hast studied the Law in years of plenty, do not count it for the years of famine. The study during times of ease does not count for those of distress, because one thing done in distress is better than a hundred in ease, as it is written [ibid.]: "In the morning sow thy seed, and in the evening let not thy hand rest." R. Aqiba also said the same.

R. Meir said: When thou hast studied under one master, say not: "It is enough," but go and study under another; yet do not go to all of them, but only to those who were near to the Law from the start (meaning a scholar from a scholarly house), as it is written [Ps. v. 15]: "Drink water out of thy own cistern, and running water out of thy own well."

It is a duty to study under three masters, such as R. Eliezer, R. Joshua, and R. Aqiba, as it is written [Ps. viii. 34]: "Happy is the man that hearkeneth unto me, waiting day by day at my gates, waiting at the posts of my doors."* Because thou canst not know which master's teaching will remain with thee, or perhaps all are good, as may be learned from the above-mentioned passage.

R. Joshua said: "The same passage applies also to this: Marry a woman in thy youth; marry one also (if need be) when you are old; beget children in thy youth, and do so also in thy old age. Do not say, I will not marry again as I have children, but marry and beget more children, as you do not know which of them will be the good."

* This is inferred from the superfluous letter י and ת; as דלת, "gates," is also plural, not less than two, from the added י and ת they deduce one more.

He used also to say: "If thou hast given a coin to a poor man in the morning, and another one begs of you in the evening, give him also, as thou knowest not whether both will be benefited by thy donation, and whether both are alike deserving, as it is written: "In the morning sow thy seed." *

It happened that a pious man who used to spend much in charity, while aboard a ship encountered a great storm, and the ship foundered. R. Aqiba saw him go down, and came to testify before the court in order that his wife might marry again. Before the court adjourned, the man came and stood before them. Said R. Aqiba to him: "Did you not sink into the sea?" He answered: "Yea." "And who brought thee out of the sea?" R. Aqiba asked again. He answered: "The charities that I have given have saved me from the sea." "Whence dost thou know this?" He said: "When I went down in the deep, I heard the noise of the waves. It seemed to me that they said to each other: This man has done charity all his days (and they actually threw me on land)." R. Aqiba then arose and said: Blessed be the Lord the God of Israel, who has chosen the words of the Torah and the words of the sages, for they are preserved everlastingly. As it is written [Eccl. xi. 1]: "Cast thy bread upon the face of the waters; for after many days wilt thou find it again." It is written again [Prov. x. 2]: "And charity will deliver from death."

It happened that to Benjamin the upright, who was the treasurer of charities, there came a woman and asked for food. He said: "I assure you that the treasury is empty." She said: "Rabbi, if thou wilt not help me, thou wilt kill a widow and her seven children." He then fed them at his own expense. Years afterward Benjamin the upright fell ill, and he suffered very much on his sick-bed. Said the angels before the Holy One, blessed be He: "Lord of the Universe, Thou hast said: He who preserves one soul of Israel is regarded (by Scripture) as if he preserved an entire world. Benjamin the upright, who has preserved a widow and seven children, (is entitled) so much more to such consideration, yet he is pining on the couch of a painful disease." They implored the mercy of God in his behalf, and His decree was annulled, and twenty-two years were added to his life.

* We omitted the narrative of a pious man who was compelled to stay over night in a cemetery, as its proper place is in Berachoth.

MISHNA *B.* Simeon the Just was one of the remnants of the Great Assembly. His motto was: "The order of the world rests upon three things: on law, on worship, and on bestowal of favors."

Tosephtha—Aboth of R. Nathan.

* "*Upon the Torah.*" How so? It is written [Hosea, vi. 6]: "For piety I desired, and not sacrifice; and the knowledge of God more than burnt-offerings." Infer from this that the burnt-offering is more favored than ordinary sacrifices, because it is all burnt up in the fire, as it is written [Lev. i. 9]: "And the priest shall burn the whole on the altar," and elsewhere [I Sam. vii. 9]: "And Samuel took the sucking lamb and offered it for an entire burnt-offering unto the Lord." Yet the study of the Law is more acceptable in the sight of the Lord than burnt-offerings, because he who is studying the Torah knows the will of the Lord, as it is written [Prov. ii. 5]: "Then wilt thou understand the fear of the Lord, and the knowledge of God wilt thou find." From this it may be inferred that when a sage lectures to the public it is accounted to him in Scripture as if sacrificing fat and blood upon the altar.

Two scholars studying together, when a bride or a bier carrying a corpse passes before them, must observe the following rule: If the bride has all she needs to feel that she is such, and if the dead has all that is needed for decent burial, the students shall not interrupt themselves; but if such be not the case, let them suspend their study and go to add to the joy of the bride and to do honor to the dead. [It happened that a wedding procession passed by while R. Tarphon was studying with his disciples, and he directed that the bride be brought up to his house, and he told his mother and his wife to wash, anoint, and ornament her, and to dance for her until she should reach her groom. According to Elias Wilna.]

It also happened that, while R. Judah b. Ilai was teaching his disciples, a wedding procession, which had not sufficient followers, passed by, and he with his disciples took part in the procession until the bride passed.

It happened again that while the same was engaged in teaching his disciples, a bridal party passed by. He asked: "What is

* Chapter IV. of the original.

that?" and they answered: "A bridal party." He then said: "My sons, arise, evince your interest in the bride." So we find that the Holy One, blessed be He, bestowed His favor upon a bride, as it is written [Gen. ii. 22]: "And the Lord God *formed* the rib." And in the cities by the sea a bride is called *Beniatha*, "the *formed* one." If He has done so, how much more reason is there for us so to do? Infer from this that the Lord formed Eve and ornamented her like a bride, and brought her to Adam, as it is written [ibid.]: "And brought her unto Adam." Only once has the Lord become a mediator to Adam; henceforward man must procure a mediator for himself, as it is written [ibid., ibid. 23]: "Bone of my bones, and flesh of my flesh." Once only was Eve formed out of Adam; henceforward man betroths the daughter of his fellowman.

"*On service.*" How so? As long as the service of the Temple existed, the world was blessed for the sake of its inhabitants, and the rain came down in due season, as it is written [Deut. xi. 13, 14]: "I love the Lord your God, and to serve him . . . that I will send rain for your land in due season." But when the service of the Temple ceased, the inhabitants were not blessed, and the rain did not come down in due time, as it is written [ibid., ibid. 16]: "Take heed to yourselves that your heart be not deceived . . . and he will shut up the heavens that there be no rain." Also Haggai said [ii. 15, 16]: "Direct, I pray you, your heart from this day and upward, before the time that a stone was laid upon a stone in the temple of the Lord: since those days were, when one came to a heap of sheaves of twenty (in number), and there were but ten; when he came to the wine-press to draw off fifty measures out of the vat, and there were but twenty." [Why was it not said of the wine-press also "twenty, and there were but ten," the same as of the wheat? Because the wine-press is a better sign than the wheat. There is a tradition that when the vine is spoiled it is a bad sign for the current year.]

Said the Israelites before the Holy One, blessed be He: "Lord of the Universe, why hast Thou done thus to us?" The Holy Spirit answered: "Ye looked for much, and, lo, it came to be little, . . . because of my house that lieth in ruins, while ye ran every man unto his own house" [Haggai, i. 9]. "If ye will employ yourselves with the service of the Temple, I will bless ye as heretofore," as it is written [ibid. ii. 18, 19]: "Direct, I pray, your heart . . . from the four and

twentieth day of the ninth month, even from the day that the foundation of the Lord's temple was laid. . . . Is the seed yet in the barn? Yea, as yet the wine, and the fig-tree, and the pomegranate, and the olive-tree have not brought forth; (but) from this day will I bless you." Infer from this that there is no service which is favored by the Lord more than the Temple service.

"*Upon bestowal of favors.*" How so? It is written [Hosea, vi. 6]: "For kindness I desired, and not sacrifice." Moreover, at the beginning the world was created with kindness, as it is written [Ps. lxxxix. 3]: "To eternity will kindness be built up (*e.g.*, the world is built up with kindness), the heavens—yea, in these wilt thou establish thy faithfulness."

R. Johanan b. Zakkai once went out of Jerusalem, followed by R. Joshua, and seeing the destroyed Temple, R. Joshua said: "Woe to us, that this is destroyed, the only place where the sins of the Israelites were atoned!" R. Johanan corrected him, saying: "My son, do not grieve over it. We have other means of atonement as effective—namely, bestowal of favors, as it is written [Hosea, vi. 6]: 'For kindness I desired, and not sacrifice.' As we find with Daniel, who was occupied in doing good. And what good did he do? He certainly did not sacrifice burnt-offerings and voluntary offerings, as he was in Babylon, and with regard to the place of sacrifice, it is written [Deut. xii. 13, 14]: 'Take heed to thyself that thou offer not thy burnt-offerings in every place which thou mayest see; but in the place which the Lord will choose in one of thy tribes, there shalt thou offer thy burnt-offerings.' What good, then, did he do? He rejoiced with people in their joy, he wept with them in their sorrow, he helped and cheered poor brides, he honored the dead by following them to the last resting-place, he gave material aid to the needy, and prayed three times every day, and his prayers were received with favor, as it is written [Dan. vi. 11]: 'And three times every day he kneeled upon his knees, and prayed, and offered thanks before his God,' etc."

When Vespasian came to destroy Jerusalem, he said to the inhabitants: "Fools, wherefore do ye seek to destroy this city and to burn the Temple? All I want of you is to send me a bow or an arrow—*i.e.*, to acknowledge my dominion over you. I will leave you in peace." They, however, said: "Just as we killed the two who came before thee, so will it be with thee." When R. Johanan b. Zakkai heard this, he invited the leaders of

Jerusalem to a conference, and said unto them: "My sons, why should you occasion the destruction of the city and insist upon it, as it were, that the Temple be burnt? All the enemy wants is that you send to him a bow or an arrow, and is willing on that condition to depart." But they answered him in the manner they answered Vespasian. The latter had spies within the walls of Jerusalem, and whatever they heard they wrote upon an arrow and threw it outside the wall. In this manner Vespasian learned that R. Johanan b. Zakkai was friendly to Cæsar (and so he really was, and confessed it frankly to the leaders of Jerusalem). When R. Johanan b. Zakkai saw that his efforts during several days in succession to win the leaders for peace proved futile, for the leaders did not listen to him, he sent for his disciples, R. Eliezer and R. Joshua, and said: "My sons, try to take me out of here. Make me a coffin, and I will sleep in it." They did so, and R. Eliezer held the coffin by one end, and R. Joshua held it by the other, and thus carried him at sunset to the gates of Jerusalem. When the gate-keepers asked them whom they had there, they answered: "A corpse; and you know that a corpse cannot remain in Jerusalem over night." They were allowed to go, and they carried him till they came to Vespasian. There they opened the coffin, and he arose and introduced himself to Vespasian, who said: "Since thou art the Rabban Johanan b. Zakkai, I give thee the privilege to ask a favor of me." He answered: "I request nothing but that the city of Jamnia shall be free to me to instruct there my disciples. I will build there a prayer-house, and will perform all the commandments of the Lord." Hereupon Vespasian said: "It is well. Thou mayest go thither, and undisturbed carry out the object of thy desire." R. Johanan b. Zakkai then asked permission to say something to Vespasian. This having been granted, he said: "I can assure you that you will become a king." "How dost thou know it?" He answered: "We have a tradition that the Temple will not be delivered to a common man (in the name of the king), but to the king himself." As it is written [Is. x. 34]: "And he will cut down the thickets of the forest with iron, and the Lebanon shall fall by (means of) a mighty one."* It was said that scarcely had a few days elapsed when a messenger came from the city of Rome with the tidings that Cæsar was dead, and the resolution was adopted that Vespasian be his successor.

* Elsewhere the Talmud explains that Lebanon means the Temple, and "mighty one" a king.

At the time when Jerusalem was taken, R. Johanan b. Zak-kai, with a trembling heart, was sitting and watching as Eli did, as it is written [I Sam. iv. 13]: "Lo, Eli was sitting upon a chair by the wayside, watching; for his heart was anxious for the ark of God." When he heard that Jerusalem was destroyed and the Temple burnt, he and his disciples tore their garments, wept, cried, lamented, and said: "Open thy doors, O Lebanon!" [Zech. xi. 1]—that is, the Temple; "and the fire shall eat on thy cedars"—that is, the priests of the Temple, who took the keys and threw them up high and said, before the Holy One, blessed be He: "Lord of the Universe, here are the keys which thou hast intrusted us with, as we were no faithful treasurers and we are no longer worthy to do the work of the King and to eat at his table."

Abraham, Isaac, and Jacob, and the twelve tribes all wept, cried, lamented, and said [ibid. 2, 3]: "Wail, fir-tree, for fallen is the cedar; those that were mighty are despoiled," etc. "Wail, fir-tree, for fallen is the cedar"—that is, the Temple; "those that were mighty are despoiled," applies to Abraham, Isaac, Jacob and his twelve sons. "Wail, O ye oaks of Bashan"—that is, Moses, Aaron, and Miriam; "for the impervious forest is come down"—that is, the Holy of Holies; "the noise of the wailing of the shepherds, for wasted is their glory"—that is, David and Solomon his son; "the noise of the roaring of young lions, for wasted is the pride of the Jordan"—that is, Elijah and Elisha.

In three things has the Holy One, blessed be He, made mankind differ one from the other: in voice, behavior, and features. "In voice": for what purpose? The Holy One, blessed be He, has varied the voices of mankind one from the other, to prevent the generations from adultery; because if it would not be so, when a man would leave his house, some one else might come in (in the night time) and do violence to his wife; but as the voices are different, she could recognize that of her husband.

"In behavior": for what purpose? The Holy One, blessed be He, has varied the behavior of mankind one from another, to prevent jealousy; if not so, mankind would be jealous of each other; therefore the behavior of one is different from that of another. "In features": for what purpose? The Holy One, blessed be He, has varied the features of mankind that the women might recognize their husbands, and the men their wives, otherwise all would be mixed up.

MISHNA C. Antigonus of Socho, who received it from Simeon the Just, was in the habit of saying : " Be not like slaves who serve their master for the sake of the compensation ; be like such servants as labor for their master without reward ; and let the fear of Heaven be upon you."

Tosephtha—Aboth of R. Nathan.

*" *The fear of God shall be upon you, that your reward may be double in the world to come.*" Antigonus from Socho had two disciples, who were studying his words. They communicated them to their disciples, and they in turn to theirs, who sought the reason which prompted the sage to make such an utterance. " Wherefore," they asked, " have our ancestors said such a thing ? Is it possible that a laborer will work all day, and not expect to be rewarded in the evening ?" What if they had known that there is a hereafter, and that there will be a resurrection ? They would in that case not have expressed themselves in that manner. The result was, that these disciples deviated from the path of the Torah, and formed two new schools with exclusively worldly tendencies, that of the Sadducees and that of the Baitusees : Sadducees—because the name of the founder of their school was Zadok ; and Baitusees—because the name of the founder of their school was Baitus. They surrounded themselves with pomp and the brilliancy of shining metals, gold and silver, not so much for the delight and pleasure which they derived from those things as to spite the Pharisees, who deprived themselves of enjoyment here, in order to inherit the world to come, which in their opinion was a mere delusion.

MISHNA D. Jose b. Joezer of Zereda and Jose b. Jo-hanan of Jerusalem received from them. Jose b. Joezer used to say : " Let thy house be the meeting place of the wise ; sit gladly at their feet, and drink in their words with avidity."

Tosephtha—Aboth of R. Nathan.

† " *Thy house shall be the meeting-place for the wise.*" What does this mean ? That the house should be for the use of

* Chapter V. of the original.

† Chapter VI. of the original.

scholars, their disciples and their disciples, in the sense that one man says to the other: "I shall wait for you at that place." Another explanation of that phrase is this: If a scholar comes to thee for the purpose of being instructed by thee, and thou art able to comply with his wish, do so; if thou art not able to teach him, dismiss him at once. Neither shall he sit before thee on the bed, chair, or bench, but on the floor; and every word that thou utterest he shall receive with awe, terror, fear, and trembling.

"*Sit gladly at their feet.*" It means that when a renowned scholar comes to the city you shall not say: "I need him not," but go to him; and do not sit before him on the bed, chair, or bench, but on the floor; and every word that comes from his lips, receive with awe, terror, fear, and trembling, for so our ancestors received the Torah from Mount Sinai. According to another explanation the words: "Sit gladly at their feet," are referred to Rabbi Eliezer, and the words: "Drink their words as a thirsty man drinks water," are referred to Rabbi Aqiba.

For how did R. Aqiba begin his wonderful career? (Was it not in the manner hinted in the above words?) It has been said that when he was forty years old he had not learned yet anything. (At that age, however, he conceived the idea of applying himself to study.) It once happened that, standing at a well, he asked: "Who has made that hollow in the stone?" The people whom he asked answered: "The water which continuously, day after day, falls upon it." They also said (by way of reproach): "O Aqiba, it is strange that thou knowest not the passage in Scripture which reads: 'Water weareth out stones' " [Job, xiv. 19]. Aqiba then drew an *a fortiori* conclusion. He said: "If the soft has so much power over the hard as to bore it (water over stone), how much more power will the Torah, the words of which are as hard as iron, have over my heart, which is flesh and blood?" He at once turned to the study of the Law. He and his son * went to a school where children were instructed, and addressed one of the teachers: "Master, teach me Torah." Aqiba and his son took hold of the slate, and the teacher wrote upon it the alphabet, and he quickly learned it; and then wrote it in the reversed order, and learned as fast; then he learned the Book of Leviticus, and proceeded from one book to the other,

* According to this legend, R. Aqiba had a son before he married the daughter of Calba Shebua, and thus can be explained the question of Tossaphat in Sabbath, old edition 106b, beginning with the paragraph, "R. Joshua b. Karcha."

until he finished the study of the Bible. He then sat down at the feet of R. Eliezer and R. Joshua, and said: "Masters, I beg of you to open to me the underlying principal Mishnayoth." As soon as they recited one Halakha to him, he went away; and, contemplating what they had told him, a new realm of thought was open to him. He saw that there must be a reason why this thing was written here; why this thing was written there, and why this thing has been said so and not otherwise, and why it has been said at all. He went back to his masters questioning, and made them rise and deliberate.

Rabbi Simeon b. Elazar said: I shall illustrate this point with the following parable: A stone-cutter who was doing his work in the mountains was once seen standing upon a rocky height, knocking off small pieces thereof. "What art thou doing?" people asked him. His answer was: "I am trying to uproot this mountain and throw it into the Jordan." They laughed at him. He, however, continued his work; knocked off piece after piece, and when he had reduced the mountain to a big rock, he planted himself against it, and pushed and pushed until he had uprooted the rock, and then threw it into the Jordan, saying: "This is not thy place, that one is." So has R. Aqiba done too, with R. Eliezer and R. Joshua (he compelled them to improve and to rectify their method).

Said R. Tarphon to him: Aqiba, to thee applies the following passage [Job, xxviii. 11]: "The various droppings of water he uniteth into streams, and what is hidden he bringeth forth to light." Things which were hidden from mankind, R. Aqiba brought forth to light.

Every day during the entire time of his learning he used to cut a bundle of straw, half of which he would sell for his needs and the other half he used for light. His neighbors murmured, saying: "Aqiba, thou greatly dost annoy us with the smoke; rather sell it to us, and buy oil with the money and study by its light." He answered them: "The straw supplies me with many things: first, it gives me light for studying; secondly, I warm myself by its flame; and, thirdly, I make my bed on it when I go to sleep."

In the world to come, R. Aqiba will be a menace to the poor who have neglected study.* When they will be questioned why

* See Section Moed, Vol. VI., Tract Yomah, p. 49, that it is Hillel who will be a menace to the poor.

they had not studied the Law, and they shall answer because they were poor and had to work for a livelihood, then R. Aqiba will be held up to them as one who was also poor and wearied, and yet did study; and if they should say because of their little children, again R. Aqiba will be pointed to, who had many sons and daughters, and yet supported them and his wife Rachel. At the age of forty Rabbi Aqiba began his studies, and at the end of thirteen years he lectured in public. It was said that he did not leave this world until he had tables of gold and silver, and also golden step-ladders to ascend to his bed. His wife went out with an ornament of gold which represented "Jerusalem" on her head; and when his disciples said to him: "Rabbi, thou hast put us to shame by the profuse jewelry thy wife is wearing," he answered: "She has undergone much suffering, great troubles and privations, for the sake of my study."

Not less astonishing is the beginning of the literary career of Rabbi Eliezer. He was twenty-two years old when, for the first time, he felt a desire for study; and when he intimated to his father that his intention was to sit at the feet of R. Johanan b. Zakkai, his father Hyrcanus told him to plough a full Maanah (a piece of land) without eating anything. R. Eliezer got up early in the morning and did the will of his father, but then left him. It is said that that day was Friday, and that he went in the evening to his father-in-law to eat. Others say that he did not eat at all, that he fasted from the sixth hour of the eve of Sabbath to the sixth hour from the expiration of Sabbath. On the road he saw something which looked to him like food—it is said that it was cow-dung—he picked it up and put it to his mouth. He continued his journey, and finally came to the place where R. Johanan b. Zakkai had his residence and his school. R. Eliezer remained over night at an hostelry in the neighborhood. In the morning he sat at the feet of the great sage, and whose attention he attracted by the offensive odor that came from his mouth. R. Johanan, attributing the bad smell to an empty stomach, said to him: "Hast thou eaten anything to-day?" R. Eliezer made no answer. Again the master put the same question to him, and again he was silent. His host was sent for, of whom the sage inquired whether Rabbi Eliezer partook of any food at his place. "No, he did not," the host said. "I did not offer him any food, thinking that he might eat with the Rabbi." "And I," the Rabbi said, "did not offer him any food, assuming that he had eaten at your place. But while

we are conversing Eliezer is starving." (Food was given to Eliezer, and then) Rabbi Johanan blessed Eliezer, and said unto him: "As thy offensive odor is the result of privation for the sake of study, may thy name shine forth with the glory of scholarship."

Hyrchanus was angry at his son for the course he had taken, and made up his mind to disgrace and disinherit him. But it came to the ears of R. Johanan what Hyrcanus resolved upon to do. It was the day when R. Johanan was lecturing to the great men in Israel that Hyrcanus meant to punish his disobedient son. And the Rabbi appointed watchmen, and advised them: "Should Hyrcanus come, do not allow him to enter the auditorium." They tried to carry out his instruction. But Hyrcanus managed to push himself through and to reach the seats of Ben Zizith Ha Kesseth, Nakdimon b. Gurion, and Calba Shebua, where he sat down with trembling. It is said that on that occasion R. Johanan threw glances of affection at Eliezer, and requested him to open an argument. Modestly did R. Eliezer attempt to decline the honor, saying that he did not know how to begin. But the master and his disciples prevailed, and Eliezer rose and discussed things in an astounding manner, and every subject he touched upon and elucidated pleased Rabbi Johanan to such an extent that he got up and kissed him on the forehead. But Rabbi Eliezer remarked: "Master, everything I said I have learned from thee." Before adjournment Hyrcanus, Eliezer's father, got up and said: "Masters, I had come here with the intention to disgrace my son Eliezer by disinheriting him; but now, however (after I have seen this), I say that all my properties shall be given to him, and his brother shall get none of them."

(It is mentioned that Hyrcanus took his seat by Zizith Ha Kesseth, etc., and is explained why he was so called; but as it is not completed here, the full explanation is given in Tract Gittin.)

Concerning Nakdimon b. Gurion, it was said that the bedding of his daughter was of the value of twelve thousand golden dinars from the city of Tyre, and a golden dinar of Tyre she used to spend for spicing the cookery for every week. She was a childless widow, and was waiting for her brother-in-law to marry her.

And why was he named Nakdimon? Because the sun hastened for his sake. (See Vol. VIII. of Section Moed, Tract Taanith, pp. 51, 52.)

Why was he called Calba Shebua ? Because whoever entered his house hungry as a dog, left satiated.* When Vespasian came to destroy Jerusalem, the zealous fanatics were going to burn all his wealth. Said he to them: "Wherefore are ye destroying this city, and are going to burn my wealth? Wait until I find out what I have in my house." He found that he had food for twenty-two years, of which at least one meal a day could be had by each inhabitant of Jerusalem. He at once gave orders to thresh, to sift and to grind, to knead and to bake, and prepared food for twenty-two years for every one in Jerusalem, but they paid no attention to him. What did the Jerusalemites do? They brought the wagons, sawed them, and smeared them with clay. They also did more than this: they boiled straw and ate it, and every Israelite who took part in the war was placed on the city walls. Said one: If any one give me five dates, I will go down and bring back five heads of the enemy. He received five dates, and he went down and took five heads of Vespasian's men. When Vespasian observed their excrement, and found there was nothing cereal in it, he said to his army: "If those who eat nothing but straw are still slaughtering so many of you, if they would eat and drink as you do, how many more of you would they have killed?"

MISHNA E. Jose b. Johanan of Jerusalem was in the habit of saying: "Let thy house be so wide open that the poor may enter it as were they inmates there; and do not hold too much discourse with woman." The sages have cautioned against talking too much with one's own wife. An inference can then be made with regard to talking with the wife of a neighbor. Hence the wise man said: "The man who does talk overmuch with woman causes evil unto himself, makes himself insusceptive of the words of the Thora, and in the end will be an heir to Gehenna."

Tosephtha—Aboth of R. Nathan.

† "*Thy house should be wide open.*" This means that one's house should be wide open south, east, west, and north, as was

* *Calba*, means "dog"; *Shebua*, "satiated."

† Chapter VII. of the original.

the house of Job, which had four entrances made, so that the poor should not have the trouble of walking around the house looking for the entrance, but should find it whichever way they came without any difficulty.

"As were they inmates there" [literally: "The poor shall be of thy household"]. It is not meant that the people of thy house shall be poor, but that the poor shall speak of what they ate and what they drank in thy house as they used to tell what they ate and drank in the house of Job. And when they met one another on the road, and asked, "Whence do you come?" the answer was: "From the house of Job." "Whereto are you going?" "To the house of Job." Job's house was in a measure the house of the poor.

When the great afflictions came upon Job, he prayed before the Holy One, blessed be He: "Lord of the Universe, have I not fed the hungry and have I not given drink to the thirsty?" as it is written [Job, xxxi. 17]: "Or if ever I ate my bread alone and the fatherless did not eat thereof." "And have I not clothed the naked?" as it is written [ibid., ibid. 20]: "And if he have not been warmed with the fleece of my sheep." (Nevertheless I am so punished.) The Holy One, blessed be He, answered him: Job, as yet thou hast not reached one-half of the performances of Abraham. Thou sittest and waitest in thy house, and wayfarers enter. The one who is used to wheat-bread gets wheat-bread, one who is used to meat gets meat, one who is used to drink wine gets wine. Not so Abraham. He was in the habit of going out of his house to hunt up wayfarers, whom he brought under his roof, and entertained them in a better manner than they had been accustomed to. He offered wheat-bread, meat, and wine to those who at home lived on coarser food. Moreover, he built booths on the road and supplied them with refreshments, and those who entered ate and drank, and blessed God for it. He was favored by heaven, and all that the heart desired and the mouth asked for was to be found in Abraham's house, as it is written [Gen. xxi. 33]: "And Abraham planted an **אשל** (orchard) in Beer-Sheba." (The letters of the word **אשל** are the initial letters of the words **אכילה**, **שתיה**, **לוייה**, eating, drinking, and accompanying. Hence the above statement.)

"Teach thy household humility." For if he is humble, the members of his household are also humble, and the consequence then is that if a poor man comes to the door and asks: "Is your

father at home?" they answer: "Yes, sir. Please walk in." As soon as he enters he finds a set table, and eats and drinks, and blesses heaven for the enjoyment afforded him." When, however, one is not humble, and the members of his household are irascible, the outcome then is that if a poor man asks: "Is your father at home?" they answer harshly: "No," and assail the poor man with angry and menacing words.

Others take the words: "Teach the members of thy household humility," to mean this: When a man is humble and the members of his household are also so, the result is that when he has to go away to countries on the other side of the sea, he says: "I thank thee, Lord my God, that my wife is at peace with her neighbors"; and so his mind is tranquil when he is away from home. But when one is not humble and the members of his household are irascible, it follows that when he has to go away to countries on the other side of the sea he has to pray: "May it be Thy will, Lord my God, that my wife shall not quarrel with her neighbors, and my children shall not quarrel among themselves"; his heart is always trembling and his mind is restless until he returns. It has been said: "And prolong not converse with a woman." It means not even with his own wife, much less with the wife of his neighbor; for he who holds much discourse with a woman causes evil to himself, neglects the teaching of the Law, and finally he is doomed to Gehenna.

Another explanation of the above saying is, that when one enters the house of learning and is not treated with the honor due to him, or has a quarrel with his neighbor, he should not inform his wife of what took place, for in informing her he disgraces himself, and so also his neighbor; and his wife, who has heretofore respected him, will now laugh at him. When his neighbor hears of this, he says: Woe to me, words which were strictly between him and me, he revealed to his wife. The consequence of this is that he degrades himself, his wife, and his neighbor.

MISHNA *F.* Joshua b. Pera'hia and Nithai the Arbelite received from them. The former used to say: "Get thee a wise teacher, acquire a comrade, and judge every one by his good qualities (*i.e.*, from his favorable side)."

Tosephta—Aboth of R. Nathan.

*“*Get thee a wise teacher.*” This means that one should procure a constant teacher of whom he should learn the Scripture, Mishna, Midrash, Halakhoth, and Agadoth. What he has left unexplained in the Scripture, he will finally explain in the Mishna, what is unexplained in the Mishna will be explained in the Halakha, and what is unexplained in the latter will be explained in the Agadah. The consequence of all this is, that one acquires all he desires in his own place and is full of blessings.

R. Meir used to say: One that learns the Torah of one teacher, may be compared to one who has one field, part of which he sowed with wheat and part with barley; in one part he planted olives, and in another fruit-trees. And so this man acquires wealth and blessings. The one, however, who studies under two or three masters is to be compared to one who has many fields: in one he sows wheat, in another barley; in one he plants olives, and in the other fruit-trees. And so this man has to go from place to place in many countries, and has no enjoyment of his wealth.

It is said: “Win a friend.” How is a friend won? This is to teach us that a man has to acquire an associate with whom he should eat, drink, read, learn, and sleep; to whom he should reveal his secrets, the secrets of the Torah, and the secrets of every-day life. The good to accrue from such an intimacy is that, if one of them should blunder in the recital of a traditional law or in the division of chapters, or one should declare anything which is unclean as clean, and *vice versa*, and anything which is prohibited as permissible, and *vice versa*, his associate will correct him. How do we know that, if the associate really turns his attention to the mistake and sets him right, both will be rewarded greatly for their good endeavor? We learn it from the biblical passage which reads [Eccl. iv. 9]: “Two are better than one”; that is to say, the efforts of both will be crowned with success.

When three are sitting and studying the Law together, the Holy One, blessed be His name, accounts it to them as if they had formed a league for His praise, as it is written: “He that buildeth in the heavens his palace and established on earth his

* Chapter VIII. of the original.

tabernacle." From this passage thou art to learn that if three sit and study together it is accounted to them as if they constituted a league to glorify the Holy One, blessed be He.

When two persons are studying the Law together their reward will be received above, as it is written [Mal. iii. 16]: "Then conversed they that fear the Lord one with the other: and the Lord listened and heard it," etc. But what is meant by the words: "They that fear the Lord"? That when they have made up their mind to redeem the captives and release the prisoners, and the Holy One, blessed be He, has given them the opportunity to do so, they embrace it at once. What is meant by the words: "And for those who think after his name"?* They whose thought of doing the above-mentioned great things never ripens into firm resolution, but are doubtful in the Lord whether they will succeed, and therefore the Lord gives them not the opportunity, and they are lost before doing anything they thought of doing. Also an individual who engages in the study of the Law, his reward is marked in Heaven, as it is written [Lam. iii. 28]: "That he sit in *solitude* because he hath laid it upon him." This is illustrated by the following anecdote: A man had a little son whom he left alone when he went to attend to some business. The boy, instead of spending his time in play, took a scroll and spread it upon his knees, and thus he sat and studied. When his father returned and found his son in that commendable position, he joyfully said: "See what my little son has done! Left alone, he took to study of his own accord." Even so the Almighty regards an individual who is absorbed in holy thought. His reward is marked in Heaven.

"*Judge every one from his favorable side.*" It happened that a girl was led in captivity, and two pious men went to redeem her. One of them entered into a house of harlots. When he came out again, he said to his companion: "What were thy suspicions of me (when you saw me enter this house)?" He said: "I thought you went to investigate what sum her ransom would be." He answered: "I assure you that so it was. As thou hast judged me from my favorable side, so may the Lord judge thee in the same manner."

It happened, again, that a maiden was led into captivity, and two pious men went to redeem her. One of them was suspected

* The Talmud translates חושב "think after" (doubt), but Leeser translates it "respect."

as a robber, and was confined in prison, and his wife brought him food and water every day. One day he asked her: "Go to my companion and tell him that I am in prison because I went to redeem the maiden in question, and he who intended to take part in it is doing nothing and pays no attention to her." She rejoined: "Thou art in prison, and thou think about foolish things?" She therefore did not listen to him. He again requested her to go and to notify his companion, and finally she did so. What did this man do? He took gold and silver, and, accompanied by other people, came and released them both. When he was released he said: "Let this maiden sleep with me * in bed with her clothes on." In the morning he said: "Let me go and dip (in a legal bath), and let her do the same." They did so. He then said to them: "Of what did ye suspect me when I went to dip myself?" They answered: "We thought that in all the days thou wast in prison thou wert hungry and thirsty, and now, when thou hast seen fresh air, thou hast grown hot and perhaps thou hast become *Keri*." "And what did ye suspect when she was dipped?" They answered: "We thought that in all the time that she was in prison among the idolaters, she was compelled to eat and drink with them, and you therefore ordered her to dip for the purpose of purification." He then rejoined: "I assure you such was the case, and as you have judged me favorably, so may the Lord judge you."

Not only were the upright people of former times themselves very strict and particular, but also their cattle were so. There is a tradition that the camels of Abraham our father never entered a place where there were idols, as it is written [Gen. xxiv. 31]: "While I have cleaned the house, and room for the camels." The first part of this passage relates that he cleared the house from Teraphim; but what is meant by the second part, which seems to be superfluous? Infer from this, that the camels did not enter the abode of Laban the Aramite until all the idols were cleared away.

It happened that the ass of R. Hanina b. Dosa was stolen by robbers. They tied him in the yard, and put straw, barley, and water before him; but he neither ate nor drank. They said then: "If we leave him here, he will die and infect the yard." Therefore they opened the gate and let him out, and he went on rejoicing until he reached the place of R. Hanina b. Dosa.

* He did so in order to prevent others from doing her violence.

When the latter's son heard his voice, he said to his father: "Is not the voice of this ass similar to that of ours?" He rejoined: "My son, hasten to open the gate for him, or else he will die of hunger." He did so; he put food and water before him, and he fed and drank. Hence the above saying: "In former times the upright men were pious, so were their cattle."

MISHNA G. Nithai the Arbelite was accustomed to say: "Keep aloof from a wicked neighbor, associate not with a sinner, and never consider thyself exempt from God's chastisement."

Tosephtha—Aboth of R. Nathan.

* "*Keep aloof from a wicked neighbor.*" This means any bad neighbor in the house, or outside, or in the field. "In the house," because plagues come only in the house of the wicked, as it is written [Prov. v. 22]: "His own iniquities will truly catch the wicked." Infer from this, that the plagues come only for the sins of the wicked. The sins of the wicked have caused the demolition of the wall of the upright. For instance, if leprosy breaks out on the wall of the house of the wicked, which is also the wall of the adjoining house of the upright, the entire wall must be demolished. Hence the wall of the upright is demolished for the sins of the wicked. That is what R. Ishmael, son of R. Johanan b. Brokah, said: "Woe to the wicked, and woe to his neighbors."

"With ten trials have our ancestors tried the Holy One, blessed be He, but they were punished only for one of them, which is calumny. They are as follows: One at the sea, one at the beginning of the manna period and one at the termination of it, one at the first and last appearance of quails, and at Marah, at Rephidim, one at Horeb, one on the occasion of the golden calf, and one when they sent spies. That of the spies was the hardest of all, as it is written [Numb. xiv. 22]: "And (they) have tempted me these ten times, and have not hearkened to my voice." It is also written [ibid., ibid. 37]: "Even those men that had brought up the evil report of the land died by the plague before the Lord." From this is drawn an *a fortiori* con-

* Chapter IX. of the original.

clusion: If on account of the land, which has no mouth to talk with, no countenance and no shame, the Holy One, blessed be He, punished the spies who made it suffer, how much the more reason is there for the Holy One, blessed be He, to avenge the suffering of one who has been slandered and put to shame by his neighbor.

R. Simeon said: Slanderers are punished with plagues, for we find that Aaron and Miriam, who slandered Moses, were stricken with plagues, as it is written [ibid. xii. 1]: "And Miriam and Aaron spoke against Moses." Why is Miriam mentioned before Aaron? Infer from this, that Miriam made the beginning. (How so?) What she had heard from Zipporah [the wife of Moses] she told to Aaron, and they both spoke against this upright man; therefore plagues came upon them, as it is written [ibid. xii. 9]: "And the anger of the Lord was kindled against *them*, and he went away." For what purpose is it written: "and *he* went away"? To intimate that the anger was removed from Aaron, and placed upon Miriam, because Aaron did not go into such details of the matter as did Miriam; therefore she was punished more. Miriam said: "Although I have not separated myself from my husband, still the Lord has spoken to me." Aaron said: "The word of the Lord came to me, although I have not separated myself from my wife; and also to our ancestors came the word of the Lord, although they were not separated from their wives; but he (Moses) who is too proud in his mind separated himself from his wife." Furthermore, they judged him not in his presence but in his absence, and by a mere supposition. From this draw an *a fortiori* conclusion: If Miriam, who had spoken against her brother (secretly), and not in his presence, was so severely punished, how much severer must be the punishment of a common person who speaks against his neighbor in his presence and shames him.

[At that time Aaron said to Moses: "Moses, my brother, dost thou think that the leprosy is placed on Miriam's flesh only, it is also on the flesh of our father Amram." This is to be compared to one who takes a live coal in his hand, and even if he keeps on turning it from one place to another, still every place it touches is blistered (and as Miriam is the flesh and blood of our father, the leprosy afflicts also his flesh), as it is written [ibid., ibid. 12]: "Let her not be as a dead-born child." At the same time, Aaron began to appease Moses, saying: "Moses, my brother, have we ever injured anybody in the world?" He

said: "No, you have not." "Now then," he said, "if we have not injured anybody else, how could we intend to do an injury to our own brother? But what can we do? Shall, through this error, our brotherly covenant be abolished, and our own sister be lost?" Then Moses made a circle, entered in it, and prayed for his sister and said: "I will not stir from here till she be healed," as it is written [ibid., ibid. 13]: "O God, do thou heal her, I beseech thee." The Holy One, blessed be He, then said to Moses: "If a human king would rebuke her, or her own father would do this to her, would she not be ashamed seven days? Now if I, who am the King of the kings of kings, rebuke her, were it not proper that she should be ashamed fourteen days? Yet for thy sake I will forgive her," as it is written [ibid., ibid. 14]: "If her father had spit in her face," etc.

"But the man Moses was very meek" [ibid., ibid. 3]. Shall we assume that he was meek, but not beautiful and praised? Is it not written [Ex. xl. 19]: "And he spread the tent over the tabernacle"? As the Tabernacle was ten ells in height, so was Moses. Shall we assume that he was as meek as the angels, since it is written [Numb. xii. 3]: "More so than any man"? Consider that man is said, but not angels. Perhaps you think that he would have been considered meek in the former generation. Mark that it is written [ibid.]: "Upon the face of the earth," implying only his own generation. [But what is meant by "he was meek"? . . . There are three kinds of leprous people: moist, dry, and *polypous* (ulcer in the nose), yet Moses was humbler than the afflicted.]

R. Simeon b. Elazar said: Leprosy comes also for the sin of slander, as we find in the case of Gehazi, who slandered his master, and was so punished, as it is written [II Kings, v. 27]: "May then the leprosy of Naaman cleave unto thee . . . and he went out from his presence a leper, (white) as snow."

He also used to say that leprosy came upon those who were haughty, for so we find in the case of Uzziyahu, as it is written [II Chron. xxvi. 16-19]: "His heart was lifted up to his destruction, unfaithful against the Lord his God, and went into the temple of the Lord to burn incense upon the altar of incense. And there went in after him . . . the leprosy even broke out on his forehead." At this time the Temple was split for a distance of twelve square miles, and the priests hurried out. "And he also made haste to go out, because the Lord had afflicted him. And he was a leper until the day of his death, and dwelt

in the leper-house as such; for he was excluded from the house of the Lord, and Jotham his son was over the king's house, (and) judged the people of the land" [ibid. 20, 21].

"*And thou shalt not associate with a sinner.*" By this is meant, that one should not attach himself to a bad or wicked man, as we find with King Jehoshaphat, who became attached to Ahab and went up with him to Ramoth-Gilead, and there was a wrath over him from before the Lord. The same was the case when he became a party to King Ahazyahu, with whom he made ships in 'Ezyon-geber, which the Lord broke down, as it is written [II Chron. xx. 37]: "Because thou hast connected thyself with Ahazyahu, the Lord hath broken down thy work. And the ships were wrecked." And so we find with Amnon, who associated with Jonadab, and received from him wicked advice, as it is written [II Sam. xiii. 3]: "But Amnon had a friend whose name was Jonadab, the son of Shim'ah, David's brother; and Jonadab was a very sensible man—sensible in wickedness, as it is written [Jer. iv. 22]: Wise are they to do evil." According to others, it is meant that one shall not associate with the wicked, even to study the Torah.

"*Do not consider thyself exempt from God's chastisement.*" How so? One should always fear in his heart every day lest affliction come on him to-day or to-morrow, for thus it is written about Job [Job, iii. 25]: "What I greatly dreaded," etc. Another explanation of it is: If one sees that he is successful in all that he undertakes, he should not say: "I deserve it all; the Lord gives me food and drink (as interest), and the principal remains for the world to come"; but he shall be afraid and think: "Perhaps I possess but one desert and all the reward for it is given to me in this world, so that I have no claim in the world to come."

MISHNA H. Jehudah b. Tobai and Simeon b. Shata'h received from them. The former was wont to say: "Make not thyself as those that predispose the Judges,* and while the litigants stand before thee let them be in thine eyes as guilty; and when dismissed from before thee let them

* The Hebrew term is *Kehorkhe Hadaionin*. This translation is according to Rashi. Maimonides explains it as follows: "Do not make thyself as those who instruct the litigants what to plead." The explanation, however, of the ancient sages will be found in the Gemara.

be in thine eyes as righteous, because that they have received the verdict upon them."

Simeon b. Shata'h used to say: "Interrogate the witnesses very closely, and be careful with thy words, lest they be put by them on the track of falsehood."

Tosephtha—Aboth of R. Nathan.

*"*Make thyself not as those that predispose the judges.*" Learn from this, that when entering a college and hearing there a saying or a Halakha, thou shalt not be hasty in answering, but sit and think over the reason why they have said so [and from what sources they derived such judgment; also investigate about which Halakha they were questioned, and also consider the time when it happened]. When two litigants come before thee for judgment, one of whom is poor and the other rich, say not: "How shall I declare the poor innocent, and the rich guilty, or *vice versa*? If I declare one of them guilty, he will become my enemy"; neither say: "How shall I take away one's money and give it to the other?" for the Torah said [Deut. i. 17]: "Ye shall not respect persons in judgment."

According to others, for what purpose is the following passage written: "The small as well as the great shall ye hear" [ibid.]? That means that both litigants shall receive the same treatment: one shall not be allowed to sit down while the other is standing, or one shall not be allowed to plead at length while the other shall be directed to be short in his pleading.

Said R. Jehudah: "I have heard say that it is not forbidden to have *both* litigants sit down (at the hearing), but what *is* forbidden is, to allow *one* to sit down while the other *one* is directed to be standing," etc. From the above passage is to be inferred that the treatment must be alike, even if one of the litigants is a great man. The case of a common man shall be as carefully considered as that of a great man. The lawsuit of a very small amount shall receive the attention of a lawsuit of a great sum of money.

He also used to say: Whoever would have told me before I had entered this great position, "Enter," I would have challenged him, and now that I am the incumbent hereof, should anybody dare to tell me to abandon it, I would be of a mind to

* Chapter X. of the original.

throw at his head a kettle of boiling water, for there is a difficulty in the ascent, but when one has reached the top, it is as hard for him to descend. So we find it was with Saul, that when he was told to ascend the throne he hid himself, as it is written [I Sam. x. 22]: "And the Lord said, Behold, he hath hidden himself among the vessels"; but when told to give up the crown, he followed David even to take his life.

Simeon b. Shata'h said: Examine the witnesses very closely, but while thou art so doing, be careful with thy words on account of the deceivers. Thy words may give them the clue to lying.

MISHNA I. Shemayah and Abtalion received from them. The former was in the habit of saying: "Love work and hate to attain superiority, and see to it that your name be not known to the government."*

Tosephta—Aboth of R. Nathan.

† "Love work." How so? That is, one should love work; at all events, he ought not to hate it, for as the Torah was given in a covenant, so was labor, as it is written [Ex. xx. 9, 10]: "Six days shalt thou labor, and do all thy work, but the seventh day is the Sabbath in honor of the Lord thy God."

Said R. Aqiba: There comes a time when one does his work, and thereby escapes death; and on the other hand there comes a time when one does no work, and incurs the penalty of death by heaven. How so? One who is idle the whole week and has nothing to eat on the eve of Sabbath, but having in his possession consecrated money misappropriates it for his own use, incurs the penalty of death by heaven; but if he was making repairs in the Temple, and is paid with consecrated money and uses it, he escapes the death penalty.

R. Dostai said: "How can it happen that one who did no work all the six days shall finally be compelled to labor all seven days? Strange as this appears, yet it may happen. For instance, a man who did no work during the week, Friday comes

* *I.e.*, do not get into such affairs as will cause the government to investigate about you. The commentators, however, interpret this otherwise. See Gemara.

† Chapter XI. of the original.

and he has nothing to eat. He starts to look for work, but is seized by conscription officers, who, holding him by an iron chain, compel him to make up on Sabbath for what he neglected during the six days."

R. Simeon b. Elazar said: Even Adam the First tasted nothing before he performed some work, as it is written [Gen. ii. 15]: "And put him into the garden of Eden, to till it and to keep it"; and afterward he was commanded: "Of every tree in the garden thou mayest freely eat" [ibid., ibid. 16].

R. Tarphon said: Even the Holy One, blessed be He, rested not His Shekhina in the midst of Israel before some work was performed by them, as them is written [Ex. xxv. 8]: "And they shall *make* me a sanctuary; and I will dwell in the midst of them."

Rabbi Jehudah b. Bathyra said: What shall one do who is without work? (Let him seek it, and he will find it.) Let him see whether there is no demolition in his yard or field, and employ himself in that manner, as it is written [ibid. xx. 9]: "Six days shalt thou labor, and do all thy work." Wherefore is it said, "And do all thy work"? R. Tarphon said: One is doomed to death only through idleness. R. Jose the Galilean explained (the saying of R. Tarphon) thus: If one through idleness stood upon the edge of a roof, castle, or building, or upon the edge of a river and fell down and died, his death was caused through idleness.

R. Nathan said: Moses worked at the Tabernacle without consulting the princes of Israel, who right along thought that at any moment he might solicit their coöperation. When they heard the voice which went throughout the camp proclaiming that the material prepared was sufficient for all the work, they cried: "Woe to us, that we have not participated in the work of the holy Tabernacle." They, therefore, rose and added a great thing of their own accord, as it is written [Ex. xxxv. 27]: "And the princes brought the onyx stones."

"*Do not care for superiority.*" It means that one must not place the crown merited by him upon his own head, but should let others do it, as it is written [Prov. xxvii. 2]: "Let another man praise thee, and not thy own mouth; a stranger, and not thy own lips."

R. Aqiba said: One that makes himself superior to the Law is compared to a putrefied carcass which lies in the road, so that every passer-by puts his hand to his nose and hastens away, as it is written [Prov. xxx. 32]: "If thou hast become

degraded by lifting up thyself, or if thou hast devised evil, put thy hand to thy mouth." Said Ben Azai to him: The sense of this passage seems to be thus: One who degrades himself for the sake of the Law, and eats decayed dates, and dresses in worn-out clothes, and is watching at the door of the sages, the passers-by call him an idiot, but be sure that in the end it will be found that he is full of knowledge. This is what people say: One who makes himself superior to the Law will finally be put down, and one who lowers himself for the sake of the Law will finally be greatly elevated.

"And see to it that your name be not known to the government." One should not have the ambition to be prominent among government officials, otherwise they will become jealous of him, slay him, and confiscate his property. Neither shall one proclaim his neighbor's name to the government; that is, one shall not say: "May the Lord protect so and so, from whose house to-day went out a hundred oxen, a hundred ewes, and a hundred goats," etc., as it may happen that just at that time the officer passes by and hears this and reports it to his chief, and the latter surrounds his house and takes away all he has. As to this, the following passage applies [Prov. xxvii. 14]: "When one saluteth his friend with a loud voice . . . it will be counted a curse to him." According to others, the word *Rashuth* means not the government but publicity, and the passage is to be construed thus: If one's friends say publicly in the market: "May God protect so and so; to-day he brought into his house many measures of wheat and barley," etc., etc., robbers may hear of it and come in the night, surround the house, and take away all he possesses, and in the morning he has nothing left. Of him it is said in Scripture: "When one saluteth his friend with a loud voice," etc.

Others, again, say that it means the government, and the expression "he shall not announce," etc., means one shall not endeavor to be a solicitor for the governor of the city or his vice, for they rob the money of Israel.

Still another explanation is: One shall not seek any governing power, for although in the beginning it appears very pleasing, in the end he will find it very burdensome.

MISHNA J. Abtalion was wont to say: "Ye wise, be guarded in your words; lest you load upon yourselves.

the penalty of exile and be exiled to the place of evil waters ; and the disciples that come after you may drink and die, and the name of Heaven be profaned."

Tosephtha—Aboth of R. Nathan.

"*Ye wise men, be guarded in your words.*" Perhaps they will decide something in your name which will not be according to the teachings of Law, and ye will become liable to the punishment of exile, and be banished to a place where the water is bad. What is meant by "bad water"? It is permissible to say that it has reference to the vices of that place, as it is written [Ps. xvi. 35]: "And they will mingle with the nations and will learn their doings." Some think that it is to be taken literally. Others, however, think that it refers to hard labor.

MISHNA K. Hillel and Shammai received from them. Hillel said: "Be a disciple of Aaron, love peace, pursue peace, love all men too, and bring them nigh unto the Law."

Tosephtha—Aboth of R. Nathan.

* "*Love peace.*" How so? One should love to see peace in Israel and peace everywhere, as Aaron loved peace, about whom it is written [Mal. ii. 6]: "The love of truth was in his mouth, and falsehood was not found on his lips; in peace and equity he walked with me, and many did he turn away from iniquity." When Aaron went on the highway and met a wicked man, he bade him peace in the customary form of salutation. The result was that that man reformed. For when he was about to commit a sin, he remembered that Aaron the high-priest saluted him, and would say: "Woe, if I sin, how will I dare to raise my eyes and look Aaron in the face, who was so friendly to me?" and thus he is prevented from sin.

Likewise, when two men quarrelled with each other (and it came to the ears of Aaron), he went to one of them and said: "My son, see what thy neighbor does. He beats his breast, tears his clothes and cries, saying: 'Woe is me! How will I dare to lift up my eyes to look my neighbor in the face? I am

* Chapter XII. of the original.

ashamed of myself, for it is I who wronged him.' " Thus Aaron allayed the bitterness of that man's feeling. Then Aaron went to the other man and addressed him in the same style, and likewise pacified his heart. When those two men met, they no longer eyed one another as enemies, but embraced and kissed each other, as friends do. Because of Aaron's peace-making, it is written about him [Numb. xx. 29]: "They wept for Aaron thirty days."

The passages about the mourning of Moses and Aaron are differently written. About Aaron it is written "even *all* the house of Israel," which includes also women; about Moses, however, it is written only, "and the children of Israel," which excludes women. To explain this, there are different opinions. Some say because Moses, who was a true judge and judged justly without favoritism, used to rebuke the sinner and say to him: Thou hast sinned in so and so. Aaron, however, when judging them, judged them truly, but at the same time he did not rebuke them, even when the sinners were males, much less when they were females. And, secondly, many thousands were named Aaron, after the high-priest. For were it not for Aaron they would not have been brought to the world at all, as Aaron's special efforts were directed toward making peace between man and wife, so that if, after that, a child was born to them they named him after their peace-maker.

According to others, the reason why even all the house of Israel wept is because they had seen Moses our master sitting and weeping, and who then would not weep? And they also saw Elazar and Pinechas, who were high-priests, weeping, and who would not weep with them?

Then Moses desired to die the same death that Aaron died. Why so? Because it was said that Moses saw his bier decked out with great pomp and many divisions of angels lamenting over him. And although Moses never expressed that wish, but only thought so in his heart, the Holy One, blessed be He, granted him his desire, as it is written [Deut. xxxii. 50]: "And die in the mount whither thou goest up, and be gathered unto thy people; *as Aaron thy brother died* on Mount Hor." From this is to be inferred that Moses had a desire to die the death of Aaron.

At the time (when Moses was about to die), God said to the angel of death: "Go and bring unto me the soul of Moses." Coming to Moses, he demanded his soul. But Moses censured

the angel of death. He said to him: "Thou art not entitled to be where I am, and thou art asking of me my soul?" and Moses drove him away with degradation. At length the Lord said unto Moses: "Moses, Moses, thou hast lived long enough in this world, as thy share in the world to come has awaited thee ever since creation," as it is written [Ex. xxxiii. 21]: "And the Lord said, Behold, there is a place by me, and thou shalt stand upon the rock." Thereupon the Lord Himself took the soul of Moses and placed it under His throne, as it is written [I Sam. xxv. 29]: "Yet will the soul of my Lord be bound in the bond of life." And He took his soul with a kiss, as it is written [Deut. xxxiv. 5]: "Through the mouth of God." *

[Not merely the soul of Moses is placed under His throne, but all the souls of the righteous, as it is written: "Yet will the soul of my Lord be bound in the bond of life." Should one assume that the souls of the wicked are also hidden there, therefore it is written [I Sam. xxv. 29]: "And the soul of thy enemies will he hurl away, as out of the middle of the sling."

For the better understanding of this, let us think of who puts a stone in his sling: although he hurls it from one place to another, he knows not where it will finally land. So are the souls of the wicked: they are wandering and hovering in the world without rest.

After the death of Moses the Lord again commanded the angel of death to bring Him the soul of Moses. He went to the place where he used to be found when alive, but did not find him. He then went to the ocean, and asked whether Moses was there. It answered: Since the day when the Israelites passed through me, I have not seen him. He went to the mountains and hills, and put to them the same question, and they said: Since the day when the Israelites received the Law from Mount Sinai, we have not seen him. So he went to the nether world and place of perdition, and asked them the same question, and they said: We have heard of his name, but have never seen him. Finally, he inquired of the angels, and they said: "God (alone) understandeth her way, and he knoweth her place" [Job, xxviii. 23]. The Lord preserved him for a life in the world to come, and no creature knows where he is, as it is written [Job, xxviii. 20-22]: "But wisdom . . . a report of her." At the same time Joshua was sitting and grieving

* **פיה** in Hebrew means "mouth," and the Talmud takes it literally.

because he did not know where his master was, till the Holy One, blessed be He, said to him: Joshua, do not grieve. My servant Moses is dead.]

"Pursue peace." How so? One shall be a pursuer of peace in Israel among all kinds of people. If a man remains in his place silent, he cannot be a pursuer of peace. But what shall he do? He should leave his place in search of peace, as it is written [ibid.]: "Seek peace, and pursue it." Which means, seek it in thy place, and if thou canst not find it, pursue it in another.

The Holy One, blessed be He, also made peace in heaven, in that He did not name ten angels Gabriel, Michael, Uriel, or Raphael, as, for instance, many people bear the same name; otherwise, when He would summon one of them, they would all respond, and be jealous of one another. Therefore He gave each one a separate name. When He summons one, only that one comes, and He sends him wherever He desires. They reverence and respect one another, and are meeker than human beings, for when they begin to sing the praises of the Lord, one says to another: "Begin thou, as thou art greater than I am"; and the other says: "Thou art greater than I am, and therefore begin thou." With human beings, however, it is the reverse. Every one says: "I am greater than thou art." Some say that not individual angels, but divisions of angels, say to each other: "Begin ye, ye are greater than we are," as it is written [Is. vi. 3]: "And one called unto the other and said."

"Love all men too." That is to say, that one should love all men, and not hate them; for so we find with the men of the "generation of the division," because they loved each other, the Lord was reluctant to destroy them, but only scattered them to all four corners of the world. The men of Sodom, however, because they hated each other, were annihilated by the Lord, both in this and the world to come, as it is written [Gen. xiii. 13]: "But the men of Sodom were wicked and sinners before the Lord exceedingly." "And sinners" implies that they were guilty of illegal unions; "before the Lord" implies that they were guilty of desecration of the Holy name; "and exceedingly," that they sinned wilfully.

"And bring them nigh unto the Law." How so? One should try to uplift * people and bring them under the wings of

* The Hebrew term for this is "Mekapeah," derived from "K'apah," *higā* (Bechoroth, 45b).

the Shekhina, as our father Abraham did; and not only Abraham, but also Sarah, as it is written [Gen. xii. 5]: "And Abram took Sarah his wife, and Lot his brother's son, and all their substance that they had acquired, and the persons that they *made** in Charan." Is it possible? Even all mankind combined could not create even a small insect. We must, therefore, say that the Lord considered the people that they brought under the wings of the Shekhina as if they had made them.

As one cannot divide his life with his neighbor in this world, so he cannot divide with him his deserved reward in the world to come, as it is written [Eccl. iv. 1]: "And, behold, there are the tears of the oppressed, and they have no comforter; and from the hand of their oppressors they suffer violence, and they have no comforter." Why is it written "and they have no comforter" twice? To infer that, although there are men who eat (plentifully), drink, and are successful with their sons and daughters in this world, they may have nothing in the world to come, and they will have no comforter there. In this world, when something is stolen from one, or a death occurs in one's family, his son, brother, and other relatives come and console him, but this cannot be done in the world to come, as it is written [ibid., ibid. 8]: "Yea, he hath neither son nor brother."

The same is the case with one who has begotten an illegitimate son; for the latter may say to him: "Scoundrel, thou hast lost thyself as well as me." For the bastard may have a thirst for knowledge, and therefore desire to study the Law in Jerusalem together with the other disciples, but cannot do so because, being a bastard, he is prohibited from entering Jerusalem. It happened once that a bastard was not allowed to pass Ashdad, as it is written [Zech. ix. 6]: "And bastards shall dwell in Ashdad, and I will cut off the pride of the Philistines."

MISHNA L. He also used to say: "A name made great is a name destroyed; he who increases not, decreases; and he who will not learn from his masters is not worthy to live; and he who uses his knowledge as a tiara perishes."

MISHNA M. He also used to say: "If I do not look

* According to the interpretation of the Talmud, but Leeser translates "obtained."

to myself, *who* will do so? But if I look only to myself, what am I? And if not now, when?"

Tosephtha—Aboth of R. Nathan.

"*He used to say: 'If I do not look to myself, who will do so?'*" (That is), if I cannot reach any reward while I am alive, who can reach it for me after my death?

"*And if not now, when?'*" (That is), if I can do nothing for myself while I am alive, who can do it for me after my death? So also said Ecclesiastes [ix. 4]: "For a living dog fareth better than a dead lion." By "a living dog" is meant a wicked person who exists in this world, and "than a dead lion" refers to all the righteous, who are highly received in the world to come, including even the patriarchs Abraham, Isaac, and Jacob. The living dog, that is, a wicked man who is still alive, fareth better—is accepted by the Holy One, blessed be He, when he repents and becomes virtuous and receives a share in the world to come, while a dead lion cannot add aught to his good deeds after he is dead. The same used to say: "If thou wilt come to my house," etc. (See Section Moed, Vol. VII.; Succah, pp. 83, 84.)

It happened that Hillel the First, while on a journey, met men carrying wheat. He inquired how much was a saah, and was told two dinars. Afterward he met others, who gave him the price of the same as three dinars. He said: "Did not the first men say it was only two dinars?" They rejoined: "Thou foolish Babylonian, dost thou not know that the reward is according to the trouble?" (They came from a farther distance.) But he said: "Is that your answer to my civil question?" Finally he succeeded in making them gentle and accommodating.

He also used to say four things in the Babylonian dialect:

"*A name made great is a name destroyed.*" It means, a man shall not desire to have his name proclaimed to the government, for the reason stated above, p. 45.

"*And he who does not desire to learn from his masters.*" It was said that it happened to an inhabitant of Beth Ramah who adopted the customs of the pious, and Rabban Johanan b. Zakkai sent one of his disciples to examine him. He found him occupied in heating oil on a range and then pouring it into peeled grain. On being questioned what he was doing, he answered, I am careful with the heave-offering, to eat it in its

purity, just as if I were a high-priest. Then he asked again: Is this range clean or unclean? He rejoined: Do we then find anywhere in the Torah that a range can be unclean? An oven only is mentioned, as it is written [Lev. xi. 33]: "Whatsoever is in it shall be unclean." Then the disciple again rejoined: The law of the oven applies also to the range, as it is written [ibid., ibid. 35]: "An oven or range shall be broken down, they are unclean." The same added: If such was thy habit, thou hast never in thy life eaten clean heave-offerings.

"*He who increases not, decreases.*" How so? If one has learned one, two, or even three treatises, and has not added anything thereto, he will finally forget even that.

"*And he who serves himself with the tiara perishes.*" Any one that uses the name of the Lord, as it is written, which is prohibited, has no share in the world to come.

MISHNA *N*. Shammai was in the habit of saying: "Fix a time for study; promise little, and do much; receive every one with friendly countenance."

MISHNA *O*. Rabban Gamaliel said: "Make to thyself a master, and free thyself of doubt, and tithe not much by estimation."

MISHNA *P*. Simeon his son was wont to say: "All the days of my life have been passed among the sages, and I have never found anything better for a man than silence; and the discussion of the law is not of such import as is the practice thereof. He who talks much, cannot avoid sin."

MISHNA *Q*. He also said: "Three things support the world—law, truth, and peace—as it is written [Zechariah, viii. 16]: 'Truth and the judgment of peace, judge ye in your gates.'"

Tosephtha—Aboth of R. Nathan.

* "*Fix a time for study,*" etc. It means, when one has heard something from a sage in the college, he shall not treat it as something unessential, but as a standard saying to be studied

* Chapter XIII. of the original.

diligently, and what he learns from the wise he shall teach it to others, as it is written [Deut. v. 1]: "That ye may learn them, and that ye may observe to do them." And also of Ezra it is first written [vii. 10]: "For Ezra had directed his heart to inquire in the law of the Lord, and to do it." And immediately after it is written [ibid.]: "And to teach in Israel statutes and ordinances."

"Promise little, and do much." As such is the custom of the righteous, who promise little but do much; the custom of the wicked, however, is to promise much and do nothing. Whence do we know that the upright promise little, and do much? From Abraham our father, who said to the angels: "Ye will eat with me a morsel of bread," as it is written [Gen. xviii. 5]: "And I will fetch a morsel of bread, and comfort ye your heart." But what did he in reality do? He prepared for them three oxen and nine saah of fine meal. And whence do we know that he baked for them nine measures of fine meal? From [ibid. 6]: "And Abraham hastened into the tent unto Sarah and said: Make ready quickly three measures of fine meal." "Three" is literal, "meal" is six, and "fine meal" is nine. And whence is it derived that he roasted for them three oxen? From the following [ibid., ibid. 7]: "And Abraham ran unto the herd," etc. "The herd" means one, "a calf" one, "tender" one. According to others it was four, because the word "good," which is added, is also counted as one. "And gave it unto a young man" [ibid.]. This means Ishmael his son, to accustom him to religious practice.

Also the Holy One, blessed be He, promised little and did much, as it is written [ibid. xv. 13, 14]: "And he said unto Abram, know of a surety that thy seed shall be a stranger in a land which is not theirs, and they will make them serve, and they will afflict them four hundred years. And also that nation whom they shall serve, will I judge; and afterward shall they go out with great substance." He promised him with 7 and 3, the numerical value of which is 54. But when the Lord at last avenged Himself on Israel's enemies, He did so with seventy-two letters (contained in verse 34, Deut. xxxiv.):* "Or hath a

* There are seventy-five letters in the Hebrew text beginning with the word לָבֹא and ending with נִלְכֵם, the translation of which is "go to take to himself a nation from the midst of a nation, by proofs, by signs, and by wonders, and by war, and by a mighty hand, and by an outstretched arm, and by great terrors." And in Midrash it is explained that one word, נִלְכֵם, of three letters is not counted, for it has reference to

god essayed to go to take to himself a nation from the midst of a nation, by proofs, by signs, and by wonders . . . and by great terrors."

Whence is it derived that the wicked promise much and do nothing? From Ephron, who said to Abraham [Gen. xxiii. 15]: "A piece of land worth four hundred shekels of silver, what is that between me and thee?" Nevertheless, in the end he accepted the whole sum of the money, as it is written [ibid., ibid. 16]: "And Abraham understood the meaning of Ephron; and Abraham weighed out to Ephron the silver."

"*Receive every one with friendly countenance.*" How so? That means, that even if one presents to his neighbor the most precious things with bad grace, it is accounted to him in Scripture as if he had given nothing; but if one receives his neighbor with a friendly countenance, although he give him nothing, it is accounted to him in Scripture as if he had conferred upon him great favors.

Tosephtha—Aboth of R. Nathan.

* Rabban Johanan b. Zakkai received from Hillel and Shammai. Hillel the First had eighty disciples, thirty of whom were worthy that the Shekhina rest upon them as on Moses, but their generation was not deserving of it. Thirty others were worthy to institute the intercalary years, etc., etc. (Continued in *Suc-cah*, pp. 36, 37.)

"*He used to say: 'If thou hast accumulated much knowledge, do not boast of it, for it is for that that thou wast created.'*"

There are five disciples of Rabbi Johanan b. Zakkai whom he characterized in the following manner: Eliezer b. Hyrcanus as "a plastered cistern which loseth not a drop"; Joshua b. Hananiah as "a threefold cord that cannot quickly be torn asunder"; Jose the priest as "the most pious in his generation"; Ishmael b. Hananiah as "a garden-bed in the desert which absorbs water"; and Elazar b. Arach he named "as a flowing brook and swelling spring whose waters rise and overflow abroad," as it is written [ibid. v. 16]: "So will thy springs overflow abroad; and in the open streets will be thy rivulets of water."

Egypt. Of the many commentaries upon this difficult and complicated passage this seems to us to be the best, which is according to Isaiah Berlin (Pick).

* Chapter XIV. of the original.

"*I consider the judgment of R. Elazar b. Arach,*" etc. Happy is the disciple who receives from his master such a testimonial of praise and acknowledgment. When the son of Rabban Johanan b. Zakkai died, his disciples came to console him. R. Eliezer entered first, sat down before him, and asked his permission to say something. The request having been granted, he said: "Adam the First accepted consolation when his son died. And whence do we find it so? It is written [Gen. iv. 25]: 'And Adam knew his wife *again*' ('again' means after this consolation). Thou also shouldst accept consolation." He rejoined: "Is not my own grief sufficient, that thou must remind me of that of Adam the First?"

Next entered R. Joshua, and also asked for permission to say something, which was granted, who then said: "Job, who had many sons and daughters, all of whom died in one day, yet he accepted consolation. As it is written [Job, i. 21]: 'The Lord gave and the Lord hath taken away; may the name of the Lord be blessed.'" He rejoined: "Is not my own grief sufficient, that thou remindest me of that of Job?"

Next entered R. Jose. He sat down before him and said: "Be it thy wish that I say something." And being encouraged by the sage, he continued: "Aaron had two full-grown sons, and both died on one day, yet he accepted consolation, as it is written [Lev. x. 3]: 'And Aaron held his peace,' which means that he was consoled. Would it not be right that thou shouldst do likewise?" The sage rejoined: "Have I not enough of my own grief? Why do you remind me of the grief of Aaron?"

Then entered R. Simeon, and said: "Rabbi, may I be favored by thee to say a word in thy august presence?" And the sage answered: "Proceed." Then the former said: "King David had a son who died, and he received condolence. It well becomes thee to persuade thyself into comfort. As to King David, it is written [II Sam. xii. 24]: 'And David comforted Bathsheba his wife, and he went in unto her, and lay with her; and she bore a son, and called his name Solomon.'" He rejoined: "Is not my own grief sufficient, that you all remind me of the grief of others?"

Finally R. Elazar b. Arach entered, and when the master saw him he said to his servant: "Take a vessel and follow me to the bath-house; the man who is entering now is a great man, and I am sure that I could not withstand his arguments." He entered, sat down before him, and said: "I will entertain thee

by telling a parable: A king had intrusted one of his subjects with a precious article. The man used to exclaim, weeping: 'Woe is me! When will I be relieved of this responsibility?' This, O Rabbi, is thy case. Thy son, who spent his time in sacred study, departed from the world sinless. What a comfort it ought to be to thee that thou hast returned the article intrusted to thy care intact!" Hereupon the sage said: "Elazar, my son, thou hast consoled me as people should console each other."

When they left him, Elazar said: "I will go to Damsith, which is a fine place with excellent waters"; and the other disciples said: "We will go to Jamnia, where there are many scholars, and love the study of Law." He that went to Damsith lost a good deal of his authority, but the names of those who went to Jamnia, the seat of great scholarship, became legion in learned circles.

Tosephtha—Aboth of R. Nathan.

* "*Thy fellow's honor must be as dear to thee as thine own.*" How so? As one watches over his own honor, so should he guard the honor of his neighbor, and as one is loath to see his own honor assailed, he should be so in regard to the honor of his neighbor.

Another explanation of the above is: When one is possessed of an hundred thousand, and all is taken away from him, he should keep his conscience clear even of the value of a small coin.

"*Do not allow thyself to be easily angered.*" That is, one should be as meek as Hillel the Elder, and not as irritable as Shammai the Elder. It is said about Hillel that two men once wagered the sum of four hundred zuz upon his patience; the one who could succeed to provoke his anger was to receive the amount. (See Sabbath, p. 50; the whole legend ending with): "Take care of thy temper. A Hillel is worthy that twice that amount be lost through him; a Hillel must not get excited."

† What was the irascibility of Shammai the Elder? It was

* Chapter XV. of the original.

† This is also stated in Sabbath, p. 51; but because it is here more in detail, we give it again.

related that once a man came to Shammai and said: "Rabbi, how many Laws have you?" "Two Laws: the written and the oral Law." He answered: "I believe in the written, but not in the oral Law," said the man. But Shammai rebuked him, and drove him away.

The same man came to Hillel and said: "Rabbi, how many Laws were given?" And he told him two—the written and the oral. The man said: "I believe in the written, but not in the oral Law." And Hillel said: "Sit down, my son, and write for me the Aleph-Beth. After he did so, he asked him what the first letter was. "An Aleph," said the man. "It is not an Aleph, but a Beth," said Hillel. And he again asked him: "What is this?" And the man said: "A Beth." "It is not a Beth, but a Gimel," said Hillel. "Whence knowest thou that this is Aleph, the other a Beth, and the third a Gimel? Because it is a tradition of our forefathers, and whereas thou believest in one tradition, believe also in the other."

It happened that a Gentile passing by a synagogue heard a child reading: "And these are the garments which they shall make: a breastplate, and an ephod, and a robe" [Ex. xxviii. 4]. He came to Shammai and said: "Rabbi, to whom belongeth all that honor?" "To the high-priest who serves at the altar," was the answer. The Gentile then said: "Convert me, on the condition that I be made a high-priest." Said Shammai: "Are there no priests in Israel, or have we no high-priests, but that we should raise to this dignity this lowly stranger, who came to us but with his staff and knapsack?" He rebuked him, and drove him away.

He then came to Hillel with the same request, and the latter said: "Sit down, and I will tell thee something. If one is to appear before a human king, is it not demanded of him that he learn how to make his entrance and exit?" "It is so," said the Gentile. Then continued Hillel: "Thou, who art desirous of appearing before the King of kings of kings, how much more necessary for thee to learn how to enter the Holy of Holies, how to trim the lamps, how to approach the altar, how to order the table, and how to prepare the fire on the altar." The man then replied: "What seems right to thee?" So Hillel wrote for him the Aleph-Beth, and he learned it; then he instructed him in Leviticus, and he went on learning till he came to the passage: "And the stranger that cometh nigh shall be put to death" [Numb. i. 51]. Then he of himself made the following

deduction: If the people of Israel, who are called the children of the Lord, and of whom the Shekhina said [Ex. xix. 6]: "And ye shall be unto me a kingdom of priests, and a holy nation," were so warned by Scripture, should not I, an insignificant stranger who has come merely with his knapsack, take the hint? Thus the stranger became reconciled of his own accord.

He came to Hillel the Elder and said: "All the blessings that are contained in the Torah shall rest upon thy head, for hadst thou been as Shammai the Elder, I would not have become as one of Israel. His irascibility came near causing me to be lost both in this world and the one to come; but the patience of Hillel has brought me to a life in this world and the one to come." It was said that to this proselyte were born two sons: he named one Hillel and the other Gamaliel, and they were called Hillel's proselytes.

"Repent one day before thy death." The disciples of R. Eliezer asked him: "How can one know the day of his death, that he may then repent?" He answered: "For that very reason he should make every to-day a day of repentance"; that is, he should be repenting all his life.

R. Jose bar Jehudah said in the name of his father R. Jehudah bar Ilai, who said it in the name of Ilai, quoting R. Eliezer the Great: "Repent one day before thy death, and warm thyself before the light of the wise, but beware of their embers, perchance thou mayest be singed; for their bite is the bite of a fox, and their sting is the sting of a scorpion and *also* their words are as coals of fire."

CHAPTER II.

MISHNA A. Rabbi (Jehudah the Prince) was in the habit of saying : " In choosing the right path, see that it is one which is honorable to thyself and without offence to others. Be as scrupulous about the lightest command as about the weightiest, for no man knoweth the result of his actions. Weigh the present temporal disadvantages of a dutiful course against the reward of the future, and the present desirable fruits of a sinful deed against the injury to thine immortal soul. In general, consider three things and thou wilt never fall into sin : remember that there is above thee an all-seeing eye, an all-hearing ear, and a record of all thine actions."

MISHNA B. Rabban Gamaliel, the son of R. Jehudah the Prince, was wont to say : " Beautiful is the study of the Law when conjoined with a worldly avocation, for the efforts demanded by both stifle all inclination to sin. But study which is not associated with some worldly pursuit must eventually cease, and may lead to iniquity. All who occupy themselves with communal affairs should do it in the name of Heaven, for the merit of their fathers sustains them and their righteousness stands forever. And ye yourselves shall have reward reckoned unto you, as if ye had wrought it."

MISHNA C. [" Be cautious with those in authority, for they let not a man approach them but for their own purposes ; and they appear like friends when it is to their advantage, and stand not by a man in the time of his need."]

MISHNA D. He also used to say : " Do His will as if it were thy own, that He may do thy will as if it were His.

Annul thy will before His, that He may annul the will of others before thy will."

MISHNA E. Hillel was in the habit of saying: "Do not isolate thyself from the community and its interest. Do not rely upon thy spiritual strength until the day of thy death. Pass not judgment upon thy neighbor until thou hast put thyself in his place. Say not a thing which must not be heard, because eventually it will be heard. Say never, 'Sometime or other, when I enjoy leisure, I will attend to my spiritual advancement'; perhaps thou wilt then never have the leisure."

MISHNA F. He also said: "The boor can never fear sin, the ignorant can never be truly pious. Whoso is ashamed to ask will never learn; no irritable man can be a teacher. He whose mind is given to worldly gain will not acquire wisdom. Where a man is needed, endeavor that thou be the man."

MISHNA G. Moreover, he saw a skull which floated on the face of the water, and he said to it: "Because thou drownedst they drowned thee, and in the end they that drowned thee will be drowned." *

MISHNA H. He furthermore said: "The more feasting the more food for worms; the more wealth the more cares; more women, more witchcraft; more maid-servants, more lewdness; more men-servants, more theft. But the more knowledge the more food for life; the

* All commentators concur in the opinion that the above Mishna teaches us nothing else but a lesson of retaliation; namely, that "the Almighty pays measure for measure," or, in other words, that the punishment fits the crime. I am, however, inclined to believe that if the author of the above Mishna had intended to teach us only the said lesson, he could find better and more striking illustrations than "the skull," etc. I am, therefore, of the opinion that a historical fact is underlying the above Mishna. Hillel lived during the time of Herod and witnessed all the atrocities which that tyrant perpetrated on the people, and more especially on the Rabbis. Hillel was also an eye-witness of the foul murder which Herod had committed by having drowned in a bath his brother-in-law, the high-priest Aristobule III. (See Grätz's History, Vol. III., page 203.) The גולגולת (skull) of the Mishna does therefore refer to Aristobule, and since Hillel could not openly express his indignation, for fear of the tyrant, he made an indirect allusion to the occurrence.—*From the American Israelite*, by Rev. Dr. Falk Vedaver.

more study the more wisdom ; the more reflection the better the counsel ; the more charity the more peace. He who earns a good name gains something that can never be taken away. He who has gotten to himself words of Law has gotten to himself the life of the world to come."

MISHNA *I*. Rabban Johanan b. Zakkai received it from Hillel and Shammai. He was wont to say: "If thou hast learned much, do not boast of it, for it is for that that thou wast created."

MISHNA *J*. The above had the following five disciples: R. Eliezer b. Hyrkanos, R. Joshua b. Hananiah, R. Jose the priest, R. Simeon b. Nathaniel, and R. Elazar b. Arach. He used to recount their praises: "Eliezer b. Hyrkanos is a plastered cistern, which loseth not a drop; Joshua b. Hananiah—happy is she that bare him; Jose is pious; Simeon b. Nathaniel is a sin-fearer; Elazar b. Arach is a welling spring."

He used to say: "If all the wise of Israel were in a scale of the balance, and Eliezer b. Hyrkanos in the other scale, he would outweigh them all." Abba Saul, however, said in his name: "If all the wise of Israel were in a scale of the balance and Eliezer b. Hyrkanos with them, and Elazar b. Arach in the other scale, he would outweigh them all."

MISHNA *K*. He (Johanan b. Zakkai) said to them once: "Go out and find what is the best thing to cultivate." R. Eliezer said: A generous eye; R. Joshua said: A loyal friend; R. Jose said: A good neighbor; R. Simeon thought: Prudence and foresight; R. Elazar said: A good heart. Thereupon the Master said: "I consider R. Elazar b. Arach's judgment the best, for in his all of yours are included."

He said to them again: "Go and find out which is the evil way a man should shun." R. Eliezer said: An evil eye; R. Joshua said: An evil companion; R. Jose said: An evil neighbor; and R. Simeon said: He that borrowed and repayeth not; he that borrows from a man is

the same as if he borroweth from the Omnipotent, as it is written [Ps. xxxvii. 21]: "The wicked borroweth and repayeth not, but the righteous is beneficent and giveth." R. Elazar said: An evil heart. Thereupon the Master said: "I consider R. Elazar b. Arach's judgment the best, for in his all of yours are included."

MISHNA *L.* Each of these disciples had three maxims. R. Eliezer: "Thy fellowman's honor must be as dear to thee as thine own. Do not allow thyself to be easily angered. Repent one day before thy death." (He also said:) "Warm thyself before the light of the wise, but beware of their embers, perchance thou mayest be singed; for their bite is the bite of a fox, and their sting the sting of a scorpion, and their hiss is that of a fiery-serpent; and all their words are as coals of fire."

MISHNA *M.* R. Joshua: "An envious eye, sinful propensities, and misanthropy drive a man out of the world."

Tosephtha—Aboth of R. Nathan.

* "*An envious eye,*" etc. How so? It means one shall look upon the house of his neighbor with the same eye as he looks upon his own; and as one is anxious that there be no bad repute against his wife and children, so should he be anxious in regard to his neighbor's or his children's.

Another explanation of this passage is: One shall not be envious of the erudition of his neighbor. It happened to one who *was* envious, that his days were shortened, and he departed prematurely from this world in consequence thereof.

"*Sinful propensities.*" How so? It is said that the evil propensities are thirteen years older than the good propensities, as they begin to grow with the child in the mother's womb, so that he defiles the Sabbath and commits other transgressions, and there is nothing in his mind to remonstrate with him. But when he is thirteen years old, the good thoughts are born. If he defiles the Sabbath, they tell him: Scoundrel, is it not written [Ex. xxxi. 14]: "Every one that defileth it shall surely be put to death." If he is about to commit adultery, they say to him:

* Chapter XVI. of the original.

Scoundrel, is it not written [Lev. xx. 10]: "Then shall the adulterer be put to death, together with the adulteress." When one becomes excited and is about to commit incest, all the members of his body are willing, for the evil thoughts reign over all the two hundred and forty-eight members; but when he is about to perform a meritorious deed, all his members begin to pain him, for the evil thoughts within him reign over all the two hundred and forty-eight members of his body; and the good thoughts are compared to one who is imprisoned, as it is written [Eccl. iv. 14]: "For out of the prison cometh the one to reign," which refers to the good thoughts.

[There are others who say that it refers to Joseph the upright. This wicked woman (his mistress) used to persecute him with her words. She said: "I will imprison thee." He answered: "The Lord looseneth the prisoners." She said: "I will dig out thy eyes." He answered: "The Lord causeth the blind to see." She said: "I will bend thy stature." He answered: "The Lord raiseth up those who are bowed down."

And in reality there is no wonder that Joseph the upright refused to listen to her, as the same happened to R. Zadoq, as it was said: To R. Zadoq, who was great in his generation, while he was in captivity, a certain matron sent a beautiful female slave; but as soon as he noticed her he turned around to the wall, so as not to see her, and absorbed himself with the Torah all night. In the morning she went to complain to her mistress, and said: "Death is preferable to me than to be with this man." The matron sent for him and asked: "Why hast thou not treated this woman as men usually treat women?" He answered: "I could not do otherwise. I belong to a great family of priests. I have entirely ignored her, so as not to be tempted to have intercourse with her, and add bastards to Israel." When she heard this, she gave orders concerning him, and then dismissed him with great honor. Neither is there any wonder for the refusal of R. Zadoq, as R. Aqiba was greater in his act; and to him happened the following:

R. Aqiba, while at one time in a certain country, was calumniated before the Sultan (and was imprisoned). He sent to him two beautiful women, who were washed, anointed, and adorned as brides. They were hugging him all night, each one inviting him to herself. He, however, repulsed them. They complained before the Sultan, and said: "Death is preferable to us than to be with that man." He sent for him and asked:

"Why hast thou not treated these women as men treat even homely women—are they not human beings as thyself? Hath not thy Creator also created them?" He answered: "I could not do otherwise: their odor seemed to me to be that of putrefied carcasses."

And even R. Aqiba is not to be admired for his act, for R. Eliezer the Great exceeded him by the following act: He brought up his own sister's daughter, and for thirteen years slept with her in one bed. When she became of marriageable age, he told her to get married. She, however, replied: "Am I not thy servant? Use me as a slave to wash thy disciples' feet." He again told her: "I am too old. Get married to one suitable to thy age." She answered: "Have I not already told thee I am thy servant, and to use me as a slave to wash thy disciples' feet?" When he heard this, he proposed to her and married her.]

Said R. Reuben b. Aztrobli: How difficult it is for one to avoid the evil propensities which are within him from the minute of his birth! As it is written [Gen. iv. 7]: "Sin lieth at the door." So we see that a young animal is always careful not to approach harmful things, as fire or a well, because it has no evil propensities, while a human child must always be guarded against putting his hand into fire, and other harmful things, because he has a desire to do those things, and this is due to the evil propensities born with him.

Said R. Simeon b. Elazar: "What are the evil thoughts to be compared to? To a piece of iron which is placed in the fire; so long as it is there, various vessels can be formed out of it. The same is the case with evil thoughts: there is no other preventive but the Torah, which is likened to fire. As it is written [Prov. xxv. 21, 22]: "If thy enemy be hungry, give him bread to eat; and if he be thirsty, give him water to drink; for though thou gatherest coals of fire upon his head, yet will the Lord repay it unto thee." Do not read *ישלם לך* (repay unto thee), but *ישלם לך* (make thee at peace).

Said R. Jehudah the Prince: To the following parable the evil thoughts can be compared: Two men entered a hostelry, and one of them was arrested for robbery. When asked for an accomplice he said he had one, although he could easily have denied it, yet he said so in order to implicate also his companion and make him share his own fate. The same applies to

evil thoughts: they are not satisfied with their destruction of the soul, they also destroy the body.

Said R. Simeon b. Johai: From the following is to be deduced that the Israelites will never see Gehenna. The following parable can be applied to this: A king who had a barren field rented it to some persons at a yearly rental of ten measures of wheat. The land was manured, watered, and surrounded with ditches, and generally properly cared for. Still, at the end of the year the lessees paid the king only one measure of wheat instead of ten. When the king asked them for an explanation, they said: "Our lord and king, thou knowest well that the land was barren, and brought thee no revenue at all; now even after so much of our labor invested, it did not produce more than this measure." A similar plea will the Israelites make in the future before the Holy One, blessed be He: "Lord of the Universe! thou knowest how the evil thoughts allure us." As it is written [Ps. ciii. 14]: "For he knoweth our frame" (and on that consideration will be forgiven).

"*And misanthropy.*" This means: One should not say: Love the sages, but hate the disciples; or, Love the disciples, and hate the common people; but, Love every one except the infidels, the enticers, the misleaders, and the informers. So also says David [Ps. cxxxix. 21, 22]: "Behold, those that hate thee I ever hate, O Lord! and for those that rise up against thee do I feel loathing. With the utmost hatred do I hate them: enemies are they become unto me."

It is also written [Lev. xix. 18]: "But thou shalt love thy neighbor as thyself: I am the Lord." Because I have created him; and if he practiseth what thy people do thou shalt love him, but not otherwise.

R. Simeon b. Elazar said: The above passage was said as a strict admonition: If thou wilt love him, thou art assured of a good reward; otherwise (remember), I am the judge and I will see to it that thou art punished.

MISHNA *N.* R. Jose: "Thy neighbor's property must be as sacred as thine own. Set thyself to learn the Law, for it is not an heirloom unto thee. Let noble purpose underlie thine every action."

MISHNA *O.* R. Simeon: "Be careful in reading the

Shema, and in prayer ; do not look upon the prayer as an obligatory task, but as a privilege granted by mercy and grace before God, for it is written [Joel, ii. 13] : ' For gracious and merciful is he, long-suffering and of great kindness, and he bethinketh himself of the evil.' Never think thyself too great a sinner to approach Him."

MISHNA *P. R. Elazar* :* "Be most zealous in the pursuit of study ; be prepared always to answer a scoffer ; remember in whose service thou laborest." (He also added :) "Know who is thy Master, that he may be trusted to recompense thee for thy work."

MISHNA *Q. R. Tarphon* was in the habit of saying : "The day is short, the work is great, the workmen are slothful, the reward is rich, and the Master is urgent."

MISHNA *R.* He also said : "It is not incumbent on thee to complete the whole task, but thou art not at liberty therefore to neglect it entirely. If thou hast learned much Law thou wilt be given much reward ; and faithful is the Master of thy work, who will pay thee the reward of thy work ; and know also that the gift of the recompense of the righteous is for the world to come."

Tosephtha—Aboth of R. Nathan.

† " *Thy neighbor's property must be as sacred as thine.*" It means that one should be as careful of his friend's property as he is of his own ; and as he is desirous that there shall be no slur cast on his belongings, so shall he desire that there should be none on those of his friend.

Others explain the above thus : When a disciple comes to thee with the request to teach him, if thou art able comply with his request ; otherwise, dismiss him at once, and do not accept his money, as it is written [Prov. iii. 28] : "Say not unto thy neighbor, Go, and return, and to-morrow will I give, when thou hast it by thee."

" *Set thyself to learn the Law.*" How so ? When Moses

* The text reads "Eliezer," but this must be a misprint, as Elazar was the fifth of the disciples, each of whom had three maxims.

† Chapter XVII. of the original.

our master saw that his sons knew not enough of the Law to be able to succeed him, he wrapped himself up and prayed: Lord of the Universe! designate to me the one who should be at the head of the people, as it is written [Numb. xxvii. 15-17]: "And Moses spake unto the Lord, saying, Let the Lord, the God of the spirits of all flesh, appoint a man over the congregation, who may go out before them, and who may come in before them." Said the Holy One, blessed be He: "Moses, take Joshua, appoint an interpreter for him, and at the head of the great men in Israel let him lecture in thy presence." Thereupon Moses said to Joshua: Joshua! these people which I deliver in your care are not to be regarded as he-goats or sheep, but as kids and lambs; for they have not as yet had experience in the commandments, and therefore cannot be considered as such. As it is written [Songs, i. 8]: "If thou knowest this not, O thou fairest of women! go but forth in the footsteps of the flock, and feed thy kids around the shepherds' dwellings."

Rabban Johanan b. Zakkai once went in the market, and he noticed a girl picking up barley from under the feet of the cattle of the Arabians. "My daughter, who art thou?" he asked her, but she made no reply. Again he put the same question to her, but again she was silent. Finally she said: "Wait a little." She enveloped herself with her hair, stepped up to him, and said: "Rabbi, I am the daughter of Nakdimon b. Gurion." "And what has become of thy father's money?" he asked her; and she answered: "Rabbi, on him was verified the saying which was proverbial in Jerusalem: 'One who desires to preserve his wealth, should lessen it (spending it in charities; but as my father did not sufficiently spend in charities, it all vanished).'" "And what has become of that of thy father-in-law?" he again interrogated her; and she answered: "Rabbi, through my father also his was lost." Thereupon said Rabban Johanan b. Zakkai to his disciples: "Whenever I used to read the passage: 'If thou knowest this not, O thou fairest of women! go but forth in the footsteps of the flocks,' I could not make out what punishment was contained therein; but after what I have seen to-day, I can safely say that the punishment is meant that Israel must be under the domination of the lowest nation of the heathens; and not merely that, but also must lie among the manure of their cattle."

The same girl then asked him: "Rabbi, dost thou recall that thou hast signed thy name to my marriage contract?" He

answered: "I do"; and turning to his disciples, he continued: "Verily, I signed my name to the marriage contract of this girl, which was for a million Tyrian dinars. Her father's family never left their house to enter the Temple, until a woollen cloth was spread for them."

It happened that a girl and her ten maids were captured, and a heathen brought her up in his house. One day he gave her a pitcher and told her to bring him some water. One of her maids got up and took it from her. "Why hast thou done this?" he inquired of her; and she answered: "Master, I swear by thy life that I am one of five hundred maids belonging to her mother." When he heard this, he liberated the girl and her ten maids.

The following happened to another young girl who was captured and brought up in the house of a heathen. One night he had a dream, in which he was commanded to send her away. His wife, however, prevented him from doing so. Again he had a dream, in which he was told that if he would not send away the girl he would die. He did so, but desiring to know what became of her, he followed her. She kept on walking until she became thirsty. She went down to a spring to drink, and placing her hand upon the wall, she was bitten by a snake and died. She floated upon the water until he went down, took her out, and buried her. When he returned home, he said to his wife: "The people to which this girl belonged is punished by no other but their Father in heaven."

"*Let noble purpose underlie their every action.*" It means, for the sake of the Torah, as it is written [Prov. iii. 6]: "In all thy ways acknowledge him, and he will make level thy paths."

Said R. Simeon: Be punctual in the reading of Shema, and in prayer; and when thou prayest, let it not be as a conversation, but supplication before the Holy One, blessed be He, as it is written [Jonah, iv. 2]: "That thou art a gracious God, and merciful, long-suffering, and abundant in kindness, and repentant of the evil."

Said R. Elazar (see Mishna, and in addition he said): "Nothing of the Torah shall be forgotten by thee. Know for whom thy exertion is and with whom thou hast made a covenant; and who is thy master, who is surely to be trusted that he will recompense thee for thy work."

Tosephtha—Aboth of R. Nathan.

* (As Rabban Johanan b. Zakkai used to recount the praise of his disciples), so was R. Jehudah the Nassi recounted of the following sages: R. Tarphon, R. Aqiba, R. Elazar b. Azariah, R. Johanan b. Nuri, and R. Jose the Galilean.

He called R. Tarphon "a pile of stones"; others say, "a pile of nuts," which, should one be taken away, the whole pile is stirred and there is a rolling of nuts one upon the other. So it was with R. Tarphon, when a disciple came to him and said: "Teach me," he taught him the Scriptures, Mishna, Midrash, Halakhoth, and Agadoth; and when he left him, he was full of the blessing of the Torah.

He called R. Aqiba "a sealed treasure," and compared him to a workman who, taking his basket, goes outside, and whatever he may chance to find he puts into it. However, when he returns home, he assorts every article. So has R. Aqiba done (when he was studying), and made rules to the Torah to be easily comprehended, as rings are made to vessels to make it easy to take a hold of them.

He called R. Elazar b. Azariah "a huckster's basket," and compared him to a huckster who, taking his basket, goes about the country, and the people come flocking around him inquiring for various articles, and find that he has everything. So it was with R. Elazar b. Azariah, when a disciple came to him, he taught him everything that he desired; and when he left him, he was full of the blessings of the Torah.

He called R. Jose the Galilean "a gatherer of good things with no pride about him," who collected the good manners of all the sages and the Mishnaioth that all the sages have taught.

When R. Jehoshua became of old age, etc. (See Section Moed, Vol. VI., Tract Hagiga, pp. 3 and 4: "It happened that R. Johanan b. Broka," etc., till paragraph beginning with "It happened once.")

Issi b. Jehudah gave the sages names. To R. Meir he gave the name of "sage and scribe"; to R. Jehudah, "a sage when he desires to be"; to R. Elazar b. Jacob, "a small vessel (not of much knowledge), but very clear"; to R. Jose, "a man of good reasoning in the science of the Law"; to R. Johanan b. Nuri, "a basket of a peddler containing a variety of every-

* Chapter XVIII. of the original.

thing"; to R. Jose the Galilean, "a gatherer of the very best things, with no pride about him"; to R. Simeon b. Gamaliel, "a vault full of the best purple dye"; to R. Simeon, "learns much and forgets little."

When, later on, R. Simeon met Issi b. Jehudah, he asked him: "Why hast thou attacked me before the scholars?" And he answered: "I have said only that thou learnest much and forgettest little, and even that little is of no importance."

CHAPTER III.

MISHNA *A*. Aqabia b. Mahalallel used to say: "Consider three things, and thou wilt not fall into transgression: know whence thou comest, whither thou art going, and before whom thou art about to give account and reckoning; know whence thou comest—from a fetid drop, and whither thou art going—to worm and maggot; and before whom thou art about to give account and reckoning: before the King of the kings of kings, the Holy One, blessed be He."

Tosephtha—Aboth of R. Nathan.

*"Said Aqabia b. Mahalallel, whoever takes to his heart the following four things will never sin": Whence he comes; whither he goes; what will become of him; and who is his judge. Whence he comes? from a dark place! Whither he goes? to a dark place! What will become of him? dust and worms! And who is his judge? the King of the kings of kings, the Holy One, blessed be He!

Said R. Simeon: He comes from a dark place and returns thither; he springs from a fetid drop, from a place which no eye can behold, and finally becomes dust and worms, as it is written [Job, xxv. 6]: "How much less the mortal, the mere worm? and the son of earth, the mere maggot?"

Said R. Elazar b. Jacob: He is a worm while living, and a maggot when dead. What is meant by "a worm while living"? the vermin that infest him; "and a maggot when dead" applies to those that are bred from him after his death.

Said R. Simeon b. Elazar: To what can this be compared? To a king who built a magnificent palace, in which he dwelt, and a tanner's ditch passed in front of its entrance. Whoever

* Chapter XIX. of the original. The phraseology of these sentences is a little different in the Mishna.

passed by said: "How beautiful and how glorious this palace would have been, if this tanner's ditch had not passed in front of its entrances." So is man. If now, when from his entrails issues forth a rancid stream, he is so proud and haughty, had a stream of sweet-smelling water or oil issued from him, how much the more proud and haughty would he have been.

When R. Eliezer fell ill, his disciples came to visit him. They sat before him and said: "Our master, teach us the best of all the things you taught us." He said: "Be careful of your friend's honor; and when you pray, know before whom you are standing, and through this you will be rewarded with life in the world to come."

MISHNA *B. R. Haninah*, the Segan of the high-priest, said: "Pray always for the welfare of the government; were it not for the fear of it, men would swallow each other alive." *R. Haninah b. Phradyon* said: "Two that sit together and do not discuss any portion of the Law, their sitting is considered that of scorners, as it is written [Ps. i. 1]: 'And sitteth not in the seat of scorners'; but two that sit together and are discussing some words of the Law have the Shekhina among them, as it is written [Mal. iii. 16]: 'Then conversed they that feared the Lord one with the other; and the Lord listened and heard it,' etc."

This is as to two. Whence is it deduced of even one who occupies himself with the study of the Law, that the Holy One, blessed be He, fixes his reward? It is written [Sam. iii. 28]: "That he sit in solitude and be silent; because He hath laid it upon him."

Tosephtha—Aboth of R. Nathan.

* Said R. Hananiah the Segan: Whoever takes the words of the Torah to his heart, all thoughts of the sword and hunger, of foolishness and fornication, evil thoughts in general and thoughts of adultery, thoughts of nonsense and thoughts of human cares, are destroyed for him, for so it is written in David's Psalms

* Chapter XX. of the original.

[xix. 9]: "The precepts of the Lord are upright, rejoicing the heart: the commandment of the Lord is clear, enlightening the eyes." But one that does not take heart the words of the Torah, to him the reverse comes, as Moses wrote in his Deuteronomy [xxviii. 46-48]: "And they shall remain on thee for a sign and for a token, and on thy seed for ever. For the reason that thou didst not serve the Lord thy God with joyfulness, and with gladness of heart, while there was an abundance of all things; therefore shalt thou serve thy enemies whom the Lord will send out against thee, in hunger, and in thirst, and in nakedness, and in want of everything."

Since it says: "In hunger," what is meant by it? At the time when one has not even a piece of barley-bread, his enemies demand of him wheat bread and fat meat. And what is meant by the words: "And in thirst"? At the time when one has not even a drop of vinegar, or beer, his enemies demand of him the best wine of the land. And what is meant by the words: "And in nakedness"? When one has not even a woollen or linen shirt, his enemies demand of him silken ones, the best of all lands. The words, "And in want of everything," mean that he will be without a light, knife, and table. Others says: Without vinegar and salt. This corresponds with the manner in which people curse when they say: "May there be no vinegar nor salt in thy house!"

He used to say the words: "Look not so at me, because I am somewhat black, because the sun hath looked fiercely at me" [Song of Songs, i. 6], refer to the counsellors of Judah, who relieved themselves of the yoke of the Holy One, blessed be He, and chose a human king to reign over them.

"My mother's children were angry with me" [ibid.] refers to Moses, who slew the Egyptian, as it is written [Ex. ii. 11, 12]: "And it came to pass in those days, when Moses was grown up, that he went out unto his brethren, and looked on their burdensome labors. . . . And he looked this way and that way, and when he saw that there was no one by." What is meant by "and when he saw that there was no one by"? Infer from this, that Moses inquired of the deliberating groups of angels, whether he should slay him (the Egyptian). They told him to do so, and he did it, not with a sword, but by a word, as it is written [ibid., ibid. 14]: "Sayest (intendest) thou to kill me, as thou hast killed the Egyptian?" From this can be learned that he killed him by the Holy Name.

Others say that the passage: "My mother's children were angry with me," refers to Moses, who fled to Midian, as it is written [Ex. ii. 15-17]: "And Pharaoh heard this thing, and he sought to slay Moses; but Moses fled from the face of Pharaoh, and tarried in the land of Midian, and he sat down by a well. . . . And the shepherds came and drove them away, but Moses arose and helped them and watered their flocks." Moses constituted himself as judge, and said: "It is usual for the males to draw the water and for the females to water the flocks, and here I see the reverse. There is in this place much perversion."

There are others who say that as long as Moses stood by the well, the water surged and came toward him, but when he left, the water also receded. At the same time, he said: "Woe to me, that I have left my people and come to dwell among heathens."

Another explanation of the above passage is, that it refers to the Israelites who made the golden calf, for although at first they said [Ex. xxiv. 7]: "All that the Lord hath spoken will we do and obey," nevertheless they soon afterward exclaimed: "These are thy gods, O Israel" [Ex. xxxii. 4].

Still others say that the above passage refers to the spies who brought and spread an evil report about the land, and caused that carcasses of Israelites fell in the desert, as it is written [Numb. xiv. 29]: "In this wilderness shall your carcasses fall."

"They appointed me to be keeper of the vineyards" [Song of Songs, i. 6]. Said the Holy One, blessed be He: Who has caused me to shower kindness upon the heathens, but Israel himself? For when the heathens live in prosperity they are pushed, cursed, and persecuted.

Others say that the above passage refers to the Israelites who were exiled in Babylon, and the prophets who were then among them told them to observe the laws of offerings and tithes. They, however, answered: "We were exiled because we refused to observe those laws, and you wish us to observe them now?"

MISHNA C. R. Simeon said: "Three that have eaten at our table, and have not blessed the Lord for His kindness, are as if they have eaten of the sacrifices of the dead, as it is written [Is. xxviii. 8]: 'For all tables are full of

vomit of filthiness, there is no place (clean).’ But three that have blessed the Lord when eating at our table, are as if they had eaten of the table of the Omnipotent, as it is written [Ezek. xli. 22]: ‘And he spoke unto me: This is the table that is before the Lord.’”

MISHNA D. R. Hanina b. ‘Hakhinai used to say: “He who awakens by night, and he who is walking alone on the road and turns aside his heart to idleness, it is his own fault if he incurs trouble for himself.”

MISHNA E. R. Nehunia b. Haqanah said: “Whoso receives upon him the yoke of the Law (*i.e.*, one who devotes himself wholly to study), the community removes from him the yoke of the government and the yoke of worldly cares; but a student who breaks from him the yoke of the Law, the community lays upon him the yoke of the government and the yoke of worldly cares.”

MISHNA F. R. ‘Halaphtha of the village of Hananiah said: “When ten sit and are occupied in words of Law the Shekhina is among them, as it is written [Ps. lxxxii. 1]: ‘God standeth in the *Congregation* of God.’ And whence is it proved of even five? It is written [Amos, ix. 6]: ‘And hath founded his *bundle** on the earth’ (and a bundle is at least of five). And whence even three? It is written [Ps. lxxxii. 1]: ‘In the midst of judges doth he judge’ (and the number of judges is generally three). And whence even two? It is written [Mal. iii. 16]: ‘Then they that favored the Lord spake often one to another.’ (The least number of persons who can speak to each other is two.) And whence even one? It is written [Ex. xx. 24 (21)]: ‘In every place where I shall permit my name to be mentioned, I will come unto *thee* and will bless *thee*.’”

MISHNA G. R. Eliezer of Bartota said: “Render unto God what belongs to Him, for thou and all thou hast are His, as David said [I Chron. xxix. 14]: ‘For all things come from thee, and of thine own have we given thee.’”

* Leeser translates it “vault,” but the Talmud translates it literally.

MISHNA H. R. Jacob said: "One who walks by the way and learns, and breaks off his study and says, 'How beautiful is this tree!' and, 'How fine is this furrow field!' is endangering his own life."

MISHNA I. R. Dosithai b. R. Janai said in the name of R. Meir: "When a scholar of the sages sits and studies, and subsequently forgets what he studied, Scripture likens him to one who endangers his own life, as it is written [Deut. iv. 9]: 'Only take heed to thyself, and guard thy soul diligently, that thou do not forget the things which thy eyes have seen and that they depart not from thy heart all the days of thy life,' etc. It might be thought that he is culpable of forgetting even when his study had grown hard to him, therefore it is written [Deut. iv. 19]: 'And they depart not from thy heart all the days of thy life,' from which it is to be inferred that he is not guilty unless he intentionally leads such a life as to forget them."

Tosephtha—Aboth of R. Nathan.

* R. Hanina b. Dosa said: Whomsoever fear of sin precedes, his wisdom prevails, as it is written [Ps. cxi. 10]: "The beginning of wisdom is the fear of the Lord."

"He also used to say: 'Whosoever deeds exceed,' etc., as it is written [Ex. xxiv.]: "We will do and obey." It was asked of R. Johanan b. Zakkai: "What praise is to be applied to one who is wise and sin-fearing?" He answered: "A mechanic who has his tools with him." "And what praise is to be applied to the one who is only wise, but not sin-fearing?" And he answered: "He is a mechanic who has no tools." He was asked again as to what praise is to be applied to the one who is sin-fearing but lacks wisdom, and he answered: "No mechanic but has tools."

"R. Elazar b. Azariah said: 'If there is no Law,' etc. He used to say: One who is possessed of good deeds and who has studied much law, to what is he to be compared? unto a tree that is planted by waters, whose branches are few but whose roots are many, and which can withstand the severest storm, as

* Chapter XXII. of the original.

it is written [Ps. i. 3]: "And he shall be like a tree planted by rivulets of water," etc. One who lacks good deeds but who has studied law, to what is he to be compared? to a tree planted in the desert whose branches are many and his roots few, which is easily uprooted by any wind, as it is written [Jer. xvii. 6]: "He shall be like a lonely tree in the desert."

"*R. Gamaliel said: 'Set a teacher,'*" etc. A teacher for wisdom and a companion to study with, and be quit of doubt and do not tithe much by estimation.

Simeon his son used to say: All my days I spent among the sages, and I found silence to be the most advisable thing, and that not discussion but practice is the principal thing; and if silence is advisable for intelligent persons, so much the more for fools. Wisdom does not bring to much talk, nor does much talk bring to wisdom; the main thing is practice. Whosoever talks much causes sin, as it is written [Prov. x. 19]: "In a multitude of words transgression cannot be avoided"; and it is also written [ibid. xvii. 28]: "Even a fool, when he keepeth silence, is counted wise." R. Simeon b. Eliezer said: "He who studies the law and is sin-fearing is like a physician who is consulted about a wound and who has his instruments and drugs with him; but one who studies the Law and is not sin-fearing is like a physician who, when consulted about a wound, has the instruments to operate with but has no drugs to heal the wound up."

MISHNA *J. R. Hanina b. Dosa* said: "He in whom fear of sin precedes his wisdom, (may be sure that) his wisdom will endure; and he in whom wisdom precedes his fear of sin, (may be sure that) his wisdom will not endure."

He also used to say: "He whose works are in excess of his wisdom, (it is certain that) his wisdom will endure; and he whose wisdom is in excess of his works, (it is certain that) his wisdom will not endure."

He also said: "He who has earned man's esteem and love, will also receive the favor of Heaven; but he who is not worthy of such esteem, cannot expect to find favor with God."

MISHNA *K. R. Dosa b. Horkhinas* said: "Sleeping away the morning, carousing at noonday, childish trifling,

and the company of the vulgar waste a man's life away."

MISHNA *L.* R. Elazar the Modai said : " He that profanes things sacred and contemns the festivals ; he who causes his neighbor to blush in public, and annuls the covenant of Abraham our father, and acts barefacedly against the Torah,* even though he is possessed of Torah and good deeds, he has no share in the world to come."

MISHNA *M.* R. Ishmael said : " Be pliant with thy chief (although he is not deserving) and yielding to the impressment,† and receive every man with cheerfulness."

MISHNA *N.* R. Aqiba said : " Mockery and frivolity are the forerunners of immorality. Tradition is the rampart about the Law ; tithes (charity) are the rampart of wealth ; good resolutions are the preservative of abstinence ; and the safeguard of wisdom is—silence."

MISHNA *O.* He used to say : " Beloved is man, that he was created in His image, and, moreover, that he was notified that he was so created, as it is written [Gen. ix. 6] : ' For in the image of God made he man.' "

MISHNA *P.* " Beloved are Israel, that they are called children of God ; moreover, that it was made known to them that they are so called, as it is written [Deut. xiv. 1] : ' Ye are the children of the Lord your God.' "

MISHNA *Q.* " Beloved are Israel, that there was given to them a precious article ; moreover, that it was made known to them that there was given to them the precious article " [as it is stated elsewhere that with this the world was created, as it is written [Prov. iv. 2] : " For good information do I give you ; my teaching must ye not forsake"].

MISHNA *R.* " Everything is foreseen and free-will is given. And the world is judged by grace ; and every one

* This is according to Maimonides ; Rashi, however, says it means : one who says that Moses wrote in the Pentateuch ridiculous things, as, for instance, that Thimna was the concubine of Eliphaz [Gen. xxxvi. 12].

† Maimonides explains it otherwise.

is judged according to the majority of his deeds" (*i.e.*, if one has done more good than evil, he is judged more favorably—Rashi).

MISHNA S. He (Aqiba) used to say: "All that we possess is merely a trust, and over all life a net is spread out. The storehouse is open, the proprietor sells on credit; the ledger lies ready and the purchaser's hand makes the entry; whoever wishes may come and borrow, but the collectors are continually going the rounds of the debtors, and obtain payment from them voluntarily or involuntarily; they know whereupon they base their claims, and their court is a tribunal of justice, and everything is prepared for the banquet" (*i.e.*, even the wicked have a share in the world to come—Rashi).

MISHNA T. R. Elazar b. Azariah was wont to say: "Without knowledge of religion there can be no true culture, and without true culture there is no knowledge of religion. Where there is no wisdom, there is no fear of God; and without fear of God there is no wisdom. Without learning there can be no counsel, and without counsel there will be lack of learning. Where there is a dearth of bread, culture cannot thrive, and lack of culture causes dearth of bread."

MISHNA U. He also used to say: "With what is he to be compared, who can boast of more learning than charitable deeds? With a tree of many branches and but few roots—there comes a storm that uproots and prostrates it, as it is written [Jer. xvii. 6]: 'And he shall be like a lonely tree in the desert, which feeleth not when the good cometh; but abideth in the parched places in the wilderness, in a salty land which cannot be inhabited. 'But what does he resemble, who can show more deeds than learning? A tree of few branches and many roots: all the storms and winds may bear down and rage upon it, they cannot move it from its place. As it is written [Jer. xvii. 8]: 'And he shall be like a tree that is planted by the waters, and by a stream spreadeth out its roots, which

feeleth not when heat cometh, but its leaf remaineth green, and in a year of drought it is undisturbed by care, and ceaseth not from yielding fruit.'"

MISHNA V. R. Elazar b. 'Hasma said: "'Qinim'* and 'Pitteche Niddah'† are essentials of Torah; canons of astronomy and geometry are after-courses of wisdom."

Tosephtha—Aboth of R. Nathan.

‡ "Sleeping away the morning." It means: One shall not wilfully sleep till past the hour of reading the Shema, for by so doing he neglects the Law, as it is written [Prov. xxvi. 13]: "As a door turneth upon its hinges, so doth the slothful upon his bed. The slothful saith, There is a leopard in the way: a lion is between the streets."

"Carousing at noonday" means: One should not make a practice of drinking wine at midday, for by so doing he is prevented from observing the Law, as it is written [Eccl. x. 16]: "Woe to thee, O land! when thy king is low-minded, and when thy princes eat in the morning." Also: "Happy art thou, O land, when thy king is noble-spirited, and thy princes eat in proper time." When is the proper time? Say, then, in the world to come, as it is written [Is. lx. 22]: "I the Lord will hasten it in its time"; also: "At the proper time shall it be said to Jacob and to Israel," etc. [Numb. xxiii. 23]. Said the Holy One, blessed be He, to Balaam: "At the time, but not *in* the time; not *in* your time, but *at* the time when I will redeem Israel."

"Childish trifling." By this is meant, that one should not make a practice of talking to his wife, sons, or daughters when he is studying at home; for by so doing he neglects the Torah, as it is written [Josh. i. 8]: "This book of the law shall not depart out of thy mouth; but thou shalt meditate therein, day and night."

"The company of the vulgar" means: One should not lounge with idlers in the market, lest he neglect the Torah, as it is written [Ps. i. 1, 2]: "Happy is the man who walketh not in the

* The young doves sacrificed by a woman after confinement.

† The three kinds of blood of menses, which are difficult to be distinguished from each other.

‡ Chapter XXI. of the original.

counsel of the wicked . . . and sitteth not in the way of scorners; but whose delight is the law of the Lord." Said R. Meir: For what purpose is it said: "And sitteth not in the way of scorners"? Say, then, it refers to the assembly halls of the scoffers, as it is written [ibid. xxvi. 5]: "I have hated the assemblage of evil-doers; and with the wicked will I not sit"; and it is also written [Mal. iii. 19]: "For, behold, the day is coming, which shall burn as an oven, and all the presumptuous, yea, and all who practise wickedness, shall be stubble"; and "presumptuous" are scoffers, as it is written [Prov. xxi. 24]: "The presumptuous and proud, scorner is his name."

Once it happened that R. Aqiba, while sitting and teaching his disciples, was reminded of the way he spent his younger days. He said: "I thank thee, Lord my God, that thou hast placed me among the studious, and not among the idlers in the markets."

CHAPTER IV.

MISHNA *A*. Ben Zoma was in the habit of saying : " Who is a wise man ? He who learns from everybody, as it is written [Ps. cxix. 99] : ' Above all my teachers have I obtained intelligence ! ' Who is a hero ? He who conquers his passions, as it is written [Prov. xvi. 32] : ' One that is slow to anger is better than a hero ; and he that ruleth his spirit, than the conqueror of a city. ' Who is a rich man ? He who is satisfied with his lot, as it is written [Ps. cxxviii. 2] : ' For thou eatest the labor of thy hands : then wilt thou be happy, and it shall be well with thee. ' ' Wilt thou be happy ' in this world, ' it shall be well with thee ' in the world to come. Who is honored ? He who honors his fellowmen, as it is written [I Samuel ii. 30] : " For those that honor me will I honor, and those that despise me shall be lightly esteemed. " "

MISHNA *B*. Ben Azai was in the habit of saying : " Hasten to fulfil the commandment of little importance as if it were of much importance, and flee from all manner of sin, for the fulfilment of one precept brings about that of another, and one transgression brings about another ; for the reward of virtue is virtue itself, and the reward of sin is sin. " He likewise said : " Despise no man, and consider nothing as too far removed to come to pass ; for there is no man but hath his day, and no event that may not come. " "

MISHNA *C*. R. Levitas of Jabneh said : " Be exceedingly lowly of spirit, for the hope of man is the worm. " " R. Johanan b. Baroquah said : " Whoso profanes the name of Heaven in secret, they punish him openly. "

Error, like design, is punishable as to the profanation of His name."

MISHNA *D.* R. Ishmael said : " He that learns in order to teach, they grant him the faculty to learn and to teach ; he that learns in order to practise, they grant him the faculty to learn, to teach, to preserve, and to practise."

MISHNA *E.* R. Zadoq was in the habit of saying : " Wear not the law of God as a crown to exalt thyself withal, nor use it as a spade to dig therewith (for wealth)." [And thus was Hillel wont to say : " And he who serves himself with the tiara perishes."] Thus thou art to learn that he who makes use of his learning in the Law to further his own selfish ends loses all merit.

MISHNA *F.* R. Jose said : " Whosoever honors the Torah is himself held in honor, and whosoever dishonors the Torah is himself dishonored with men."

MISHNA *G.* R. Ishmael said : " He that refrains himself from judgment, frees himself from enmity, and rapine, and false swearing ; and he that is arrogant in decision is foolish, wicked, and puffed up in spirit."

MISHNA *H.* He used to say : " Judge not alone, for none may judge alone save One ; and say not, ' Accept ye my opinion,' for they are free to choose, and not thou."

MISHNA *I.* R. Jonathan said : " Whosoever fulfils the Law in poverty will at length fulfil it in wealth, and whosoever neglects the Law in wealth will at length neglect it in poverty."

MISHNA *J.* R. Meir said : " Lessen your business, that you have more time for the study of the Law, and be lowly in spirit unto every man ; and if thou idlest away thy time without study of the Law, thou wilt have many idlers against thee ; and if thou laborest in the Law, He hath much reward to give unto thee."

MISHNA *K.* R. Eliezer b. Jacob said : " He who performs one precept has acquired unto himself one advocate, and he who commits one transgression has gotten

to himself one accuser. Repentance and good deeds are as a shield against punishment."

MISHNA *L.* R. Jehudah the Sandlar said: "Whatsoever congregation is for the sake of Heaven will in the end succeed; and that which is not for a divine purpose will in the end not succeed."

MISHNA *M.* R. Elazar b. Shamna said: "Let the honor of thy disciple be as dear unto thee as the honor of thine associate; and the honor of thine associate as the fear* of thy master; and the fear of thy master as the fear of Heaven."

MISHNA *N.* R. Jehudah said: "Be careful in thy study, for error in study counts for an intentional sin."

MISHNA *O.* R. Simeon was wont to say: "There are three crowns—the crown of the Law, the crown of the priesthood, and the crown of royalty. But the crown of a fair name excelleth them all."

MISHNA *P.* R. Nehorai said: "Betake thyself to a place of Torah, and say not that it will come after thee, because thine associates will confirm it unto thee, and (moreover) lean not unto thine own understanding."

Tosephta—Aboth of R. Nathan.

† "Who is a wise man? he who learns from everybody." Who is the most modest? One who is as modest as Moses our master was, as it is written [Numb. xii. 3]: "But the man Moses was very meek." Who is the richest of all? One that is satisfied with his lot, as it is written [Ps. cxxviii. 2]: "When thou eatest the labor of thy hands: (then) wilt thou be happy, and it shall be well with thee." Who is the greatest of all heroes? One that controls his passion, as it is written [Prov. xvi. 32]: "One that is slow to anger is better than a hero; and he that ruleth his spirit, than the conqueror of a city." And one that

* Rashi explains it: The honor of a disciple can be as dear to one as one's self, because the honor of the disciple is one's own glory, which cannot be so in case of a neighbor; and therefore the Torah equals it to the FEAR of one's master, which includes honor also.

† Chapter XXIII. of the original.

is the ruler of his spirit is considered as if he had conquered a city full of heroes, as it is written [ibid. xxi. 22]: "A wise man scaleth the city of the mighty"; and "mighty" means mighty in the Torah, as it is written [Ps. ciii. 20]: "Mighty in strength, that execute his word." There are others who say that it means the ministering angels, as it is written [ibid.]: "Bless the Lord, ye his angels, mighty in strength," etc. There are still others who say that the greatest hero is he who makes his enemy his friend.

"*Despise no man.*" As it is written [Prov. xiii. 13]: "Whoso despiseth the word shall fall in debt to it; but he that feareth the commandment will be rewarded."

He also used to say: "One who is taught the Law while young is like unto a heifer which was tamed while yet small, as it is written [Hosea, x. 11]: "And Ephraim is as a well-taught heifer that loved to tread out the corn." The one who is taught the Torah in his old age, however, is like a cow which was tamed when already old, as it is written [ibid. iv. 16]: "For like an untamable cow is Israel disobedient."

He also used to say: "He that is taught the Torah in his youth is similar to a woman who kneads her dough with warm water, and one that is taught the Torah in his old age is similar to a woman who kneads her dough with cold water."

* R. Eliezer b. Jacob said: "One that is taught the Law when young is similar to a screed which was written on new paper, and one who is taught the Law when old is similar to a screed which was written on old paper."

R. Simeon b. Gamaliel adds to the above the following: "One that is taught the Law when young is similar to a young man who marries a young woman; they are suited to and desire each other. One that is taught in his old age, however, is similar to an old man who marries a young woman: she is suitable to him, but not he to her. She desires him, but he avoids her, as it is written [Ps. cxxvii. 4]: "Like arrows in the hand of a mighty man, so are the children of youth"; and immediately after it is written [ibid., ibid. 5]: "Happy is the man that hath his quiver filled with them."

One that learns and forgets is similar to a woman who bears children but buries them, as it is written [Hosea, ix. 12]: "But though they were to bring up their children, yet would I bereave

* This is added here to R. Eliezer b. Jacob. In the Mishna, however, this statement is ascribed to R. Elisha b. Abuyah.

them, that there should be no man." Do not read **ושכלתם** (would I bereave them), but **ושכחתם** (would I forget them). As it is written [Deut. xi. 18]: "Therefore shall ye lay up these my words in your heart," etc., *i.e.*, the words of the Torah shall be distinguished from each other, and at same time shall be marked upon thee side by side, as it is written [Prov. vii. 3]: "Bind them around thy fingers; write them upon the table of thy heart" (*i.e.*, as the fingers are separate from each other and still side by side of each other), and it is also written [ibid. vi. 21]: "Bind them upon thy heart continually, tie them about thy throat."

MISHNA Q. R. Janai said: "Neither the security of the wicked nor the afflictions of the righteous are within the grasp of our understanding."

MISHNA R. R. Mathia b. 'Heresh was in the habit of saying: "Be beforehand in saluting every man! Be the lion's tail rather than the fox's head!"

MISHNA S. R. Jacob said: "This world is, as it were, the antechamber of the world hereafter; therefore, prepare thyself in the antechamber, that thou mayest be admitted into the banqueting hall!"

MISHNA T. He used to say: "Better is one hour of repentance and good deeds in this world than all the life of the world to come, though one hour of refreshment of spirit in the world to come is better than all the life in this world."

MISHNA U. R. Simeon b. Elazar said: "Do not seek to appease thy friend in the hour of his passion, and do not seek to console him in the hour when his dead is laid out before him; and do not interrogate him in the hour of his vow, and strive not to see him in the hour of his disgrace."

MISHNA V. Samuel the Little used always to repeat the following passage [Prov. xxiv. 17, 18]: "At the fall of thy enemy do not rejoice, and at his stumbling let not thy heart be glad, lest the Lord see it, and it be

displeasing in his eyes, and he turn away from him his wrath.'"

MISHNA *W*. Elisha b. Abuyah said: "He who learns as a lad, to what is he like? To ink written on fresh paper. And he who learns when old, to what is he like? To ink written on blotted paper."

MISHNA *X*. R. Jose b. Jehudah, the villager of Babylon,* said: "Whom does he resemble, who learns from the young? Him who eats unripe grapes and drinks the wine fresh from the wine-press! But whom does he resemble, who learns from old men? Him who eats ripe grapes and drinks old wine!"

MISHNA *Y*. Rabbi was in the habit of saying: "Look not upon the pitcher, but upon what it contains. Many a new pitcher is full of old wine, and many an old one does not even hold new wine."

MISHNA *Z*. Rabbi Eliezer the Kapar said, "Envy, sensuality, and ambition destroy life."

MISHNA *AA*. He likewise said: "Those born unto the world are destined to die; the dead to live on again; and those who enter the eternal life, to be judged. Therefore let it be recognized, understood, and remembered, that He the Almighty, the Creator, Architect, He is the counsellor, He the judge, He the witness, He the accuser. He is always ready to give judgment; blessed be He! for, before Him there is no injustice, no oversight, no regard for rank, no bribery. Know that all will appear in the account! Accept not the assurance of thy passions, that the grave will be a place of refuge for thee. For without thy consent wert thou created, wert born into the world without thy choice; thou art now living without thine own volition, without thine approval thou wilt have to die; so likewise without thy consent thou wilt have to render account before the Supreme King, the Holy One, blessed be He!"

* The most of the Tanaim came from Palestine, and when there was one from Babylon he was pointed out.

Tosephtha—Aboth of R. Nathan.

*Said Elisha b. Abuyah: "A virtuous man who has studied the Law diligently is similar to one who builds a foundation of stones and a superstructure of bricks; though they be inundated, yet they cannot be moved. One who is not virtuous, in spite of having studied the Law, is similar to one who lays stones on a brick foundation: the smallest freshet will overturn the building."

He used to say: "The former is also similar to lime which is spread upon stones, even heavy rain cannot melt it; and the latter is similar to lime which is spread on bricks, the lightest shower will melt it."

He also used to say: "The former is also similar to a cup which has a *φηφοο* (a four-cornered polished stone), even when it is turned over, still some of its contents remain; but the latter is similar to a cup without a *φηφος*, as soon as it is turned over, everything in it is spilled.

He used to say: "The former is also similar to a horse which has a complete harness; and the latter is similar to a horse which lacks a bridle: the man who mounts him is soon thrown off."

He also used to say: One who is taught when young, absorbs the words of the Torah in his blood, and he can utter them explicitly, but the reverse is with one who is taught when old. There is also a proverb to this effect: "If thou hast not desired them in thy youth, how wilt thou reach them in thy old age?"

He also used to say: "The words of the Torah are as hard to purchase as golden vessels, and as easy to lose as glassware, as it is written [Job, xxviii. 17]: 'She cannot be estimated after gold and glass.'" He brings together gold with glass, as golden vessels when broken can be repaired; but glassware when broken cannot be repaired, unless melted and formed again. And what does it mean: "And not in exchange for her (can) vessels of refined gold (be taken)" ? [ibid.]. That the countenance of him who occupies himself with the words of the Torah, and observes them, shines as refined gold; but the countenance of him who occupies himself with them, and does not observe them, becomes dark as glass does.

He also used to say: "It is possible for a man to study the Law continuously for twenty years and forget it in the course of

* Chapter XXIV. of the original.

two years." How so? If he has not gone over what he had learned for six months, he will pronounce the unclean clean, or *vice versa*. If he has neglected to go over his studies for twelve months, he will confuse the sayings of the sages; in eighteen months, he will forget the beginning of the Tracts; and in twenty-four, even that of the chapters; and finally will have to be silent altogether. Of him said Solomon [Prov. xxiv. 30, 31]: "By the field of a slothful man I once passed along, and by the vineyard of a man void of sense: and, lo, it was all grown over with thorns, nettles had covered its surface, and its stone wall was broken down." And when the wall of a vineyard falls, the entire vineyard is soon destroyed.

He also used to say: "One who causes his friend to perform a meritorious deed, it is as if he himself had done it." This can be compared to a human king who caught a bird and gave it to one of his servants, saying: "If thou wilt be careful of this bird, I will reward thee; otherwise, I will take thy life for its." So also has the Holy One, blessed be He, said to the Israelites: "The words of the Torah which I gave to you, if you will observe them I will reward you; otherwise, I will take your lives for them," as it is written [Deut. iv. 9]: "For it is not a vain word for you; on the contrary, it is your life."

Tosephtha—Aboth of R. Nathan.

* Ben Azai said: "If the mind is tranquil because of acquired wisdom, it is a good sign;† but if made restless by acquired wisdom, it is a bad sign. If the mind is tranquil on account of faith in the Creator, it is a good sign; but if the mind is restless on account of believing in the Creator, it is a bad sign. If one has the sympathies of the sages at the hour of his death, it is a good sign for him; if he has not, it is a bad sign for him. When dying, if his face is turned upward, or he looks straight in the faces of the persons around him, or if his countenance shines, it is a good sign for him. The reverse is unfavorable."

When R. Johanan b. Zakkai was dying, he raised his voice

* Chapter XXV. of the original.

† The explanation at length of this saying is to be found at p. 50 of our "Eben Harosha." See also the letter of the late Professor Steinthal printed in our "Schulchan Aruch und seine Beziehungen, etc.," in which he fully agrees with us. See also Section Moed, Vol. VI., Tract Hagiga, p. 32, foot-note, concerning Ben Azai.

in weeping. Said his disciples to him: "Master, thou art as a high pillar, the light of the world, a strong hammer—wherefore criest thou?" He answered: "Am I going before a human king? Such a one is angry at me, it can be only for this world; if he imprisons or slays me, it is only for this world. Moreover, I might appease him with words or bribe him with money. But I am going before the King of kings of kings, the Holy One, blessed be He: if He should be angry at me, it includes both worlds, and whom I cannot appease with words or bribe with money. Besides, there are two ways before me: one leads to the garden of Eden and the other to Gehenna, and I do not know whether I will be condemned to Gehenna, or I will enter the Garden of Eden, as it is written [Ps. xxii. 30]: 'Before him shall bend the knee all that are going down into the dust,' etc."

It is also written [Ex. xxx. 23]: "And then will I take away my hand"; also [Ezek. ii. 10]: "And he spread it out before me, and it was written within and without," etc. "Within" means this world; "without" means the world to come. Others say: "Within" means the sufferings of the righteous, and the welfare of the wicked in this world; and "without" refers to the reward of the upright, and the expiation of the wicked in the world to come.

"And there were written therein lamentations, and dirges, and woe" [ibid.]. "Lamentations" refers to the expiation of the wicked in this world, as it is written [ibid. xxxii. 16]: "This is the lamentation wherewith they shall lament for her; the daughters of the nations shall lament for her." "*Dirge*"* refers to the reward of the upright in the world to come, as it is written [Ps. xcii. 4]: "Upon a ten-stringed instrument, and upon the psaltery; and with the sweet sound* of the harp." "*And woe*" refers to the expiation of the wicked in the world to come, as it is written [Ezek. vii. 26]: "Mishap shall come upon mishap, and report shall be spread upon report."

Before he (Rabban Johanan b. Zakkai) died, he said: "Clean the house of all defilement, and put in a chair for Hezekiah, King of Judah."

He used to say: "Whoever dies with a sound mind, or when yet able to talk, or while conversing about the Law, or while

* "Sweet sound" in Hebrew is הניח; "dirge" is דנה. The Talmud plays upon the similarity of the two words.

doing something meritorious, or in a state of gladness, or while laughing, it is a good omen for him; if otherwise, it is a bad omen. If one die on the eve of Sabbath, or at the close of the Day of Atonement, it is a good omen for him; but if at the close of the Sabbath or on the eve of the Day of Atonement, it is a bad omen."

There is a tradition that when R. Eliezer fell ill, it was on the eve of a Sabbath. When R. Aqiba and his comrades visited him, he was sleeping in his chamber; so they stayed in the dining-room. When Hyrcanus his son entered to remove his phylacteries, he was prevented from doing so by his father, who began to cry. He left the chamber, and said to the sages: "My masters, methinks that my father is not clear in his mind." R. Eliezer, however, overheard him, and rejoined: "My son, it is not I who am not clear in my mind, but thou. For thou hast neglected the lighting of the lamps, for which thou art liable to a death penalty by the hand of heaven, and hast instead occupied thyself with the removal of my phylacteries, for which thou art guilty only because of *Shbuth*." When the sages heard that his mind was clear, they sat down at a distance of four ells* from his bedside. They inquired of him as to cleanness and uncleanness of many subjects among them; also an amulet or torn phylacteries, are they subject to defilement or not? He answered: "They are. Dip them as they are, and be careful about them, for they form part of the great Halakhoth which were told to Moses on Sinai." And they kept on asking him concerning cleansing, defilement, and the legal baths, saying: Rabbi, What is this? and, What is that? and he answered accordingly—clean, or unclean.

Then R. Eliezer said to the sages: "I wonder whether the scholars of this generation will be punished with death by the hand of heaven?" They inquired: "Rabbi, why so?" And he rejoined: "Because they have not served me."

Later on he said to Aqiba b. Joseph: "Aqiba, why hast thou not served me?" He answered: "Rabbi, I had not the opportunity." And he rejoined: "I wonder whether thou wilt die a natural death." There are others who say that he did not rejoin anything.

When R. Eliezer spoke thus to his disciples, his blood froze within him. Said R. Aqiba: "Rabbi, what will my death be?"

* As he was at that time excommunicated.

He answered: "Aqiba, thine will be the hardest of all!" Thereupon the latter sat down before him, and said: "Rabbi, now teach me." And he taught him three hundred Halakhoth concerning a bright spot (in the skin of one's flesh). At the same time he raised his two arms, and laid them on his breast, saying: "Woe to me! that my two arms, which are like two holy scrolls, must leave this world. If all the seas were ink, and all the reeds were pens, and all mankind were writers, they could not write down everything I have learned and repeated, and what I heard while serving the sages in the college, and I have not left out of the Torah even as much as a drop of the sea. Moreover, I learn three hundred Halakhoth in the verse, 'Thou shalt not suffer a witch to live' [Ex. xxii. 17] [there are others who say three thousand Halakhoth], and nobody ever asked me about them, except Aqiba b. Joseph; for he said to me once: 'Rabbi, teach me how melons are planted, and how they are pulled out.' I said one thing, and the entire field became covered with melons. He then said: 'Rabbi, thou hast taught me their planting; teach me also how they are pulled out.' And I said one thing, and all the melons were gathered together in a heap."

R. Elazar b. Azariah inquired of him as to cleanness and uncleanness of many subjects, and he answered: "It is clean," or "unclean," accordingly, correctly; and when answering of one thing that it was clean, his soul left him while saying "clean." Whereupon R. Elazar b. Azariah rent his garments, and, weeping, went out and told the sages: "My masters, come and see R. Eliezer, who is clean for the world to come, because his soul left him while saying 'clean.'"

After the Sabbath, R. Aqiba came and found his coffin while being borne from Cesarius to Luda; he immediately rent his garments, and tore his hair till the blood flowed and dropped to the ground. He wept and cried: "Woe to me! Rabbi, because thou hast died. Woe to me! my master, because thou hast left the whole generation as an orphan." When standing in line he said: "'My father, my father, the chariot of Israel and its horsemen' [II Kings, ii. 12], there are many foreign coins which no money-changer can change besides you (*i.e.*, I have many hard questions of law which cannot be solved by any one besides you)."

* "Ben Azai said: '*Hasten to,*'" etc. He used to say: "If

* See Chapter IV., Mishna B.

thou hast performed a meritorious deed, and art not sorry for it, it will draw many meritorious deeds in its train; but if one transgresses, and is not sorry for it, it will draw many sins in its train. For one meritorious deed draws another, and one transgression draws another in its train, as the reward for a meritorious deed is the performance of another, and the punishment for a transgression is a transgression."

He also used to say: "Set something apart for charity, before you are compelled to do so by others, so that you get the reward of both the charity and the setting it apart, and not that the reward for the latter shall go to the one who compelled you to do it."

He also used to say: "Lower thy seat two or three rows, from the place you intend to occupy. For it is better thou shalt be told to ascend than to descend, as it is written [Prov. xxv. 7]: 'For better it is that it be said unto thee, Come up higher, than that thou shouldst be put lower in the presence of the prince.'"

There are three persons whose life is not worth living: one who must eat at the table of others; one who lives in an attic; and one whose wife dominates over him. There are others who say: One who suffers in his body.

He used to say: "It is easier to rule the whole world than to associate and discuss with hypocrites."

Tosephtha—Aboth of R. Nathan.

* R. Aqiba said: "The safeguard for honor is refraining from laughter; the safeguard for wisdom is silence; the safeguard for vows is abstinence; that for cleanness is holiness; and that for meekness is the fear of sin."

He used to say: Do not mingle with the scoffers, for thou mayest learn their doings; do not eat with an ignorant priest, for thou runnest the risk of desecration. Be not free with vows, lest thou wilt trespass upon oaths; do not get into the habit of dining sumptuously, for this may bring thee to eat the bread of charity; do not come to a doubt (upon slight evidence), and it will prevent thy coming to a certainty (upon scant proof); and do not go to a foreign country, for thou mayest be compelled to follow the ways of idolaters. So also said David [I Sam. xxvi.

* Chapter XXVI. of the original.

19]: "Because they have driven me out this day so that I cannot attach myself on the inheritance of the Lord, saying, Go, serve other gods." Canst thou for a moment think that King David was an idolater? He only meant to infer that he who leaves Palestine and goes to a foreign country is considered as if he were an idolater.

He also used to say: "Whoever is buried in other countries, it is as if he were buried in Babylon; whoever is buried in Babylon, it is as if he were buried in Palestine; whoever is buried in Palestine, it is as if he were buried under the altar, because the whole (soil) of Palestine is fit for an altar; and whoever is buried under the altar, it is as if he were buried under the throne of glory, as it is written [Jer. xvii. 12]: 'A throne of glory, exalted from the beginning, is the place of our sanctuary.'"

He used to say: "The ignorant can never be truly pious."

He also used to say: "Why do disciples die while young? Not because they are adulterers, or robbers, but because they interrupt their studies, and occupy themselves in idle conversation, and also because they do not begin again where they stopped."

R. Simeon b. Elazar said: "The Israelites who live outside of Palestine are unconsciously worshipping idols. How so? And idolater gives a feast in honor of his son, and he invites all the Jews of the place, and although they eat and drink of their own, and their own servants wait on them, yet it is considered as if they had eaten the sacrifices of the dead, as it is written [Ex. xxxiv. 15]: 'Any one call thee, and thou eat of his sacrifice.'"

"*And contemns festivals.*" R. Aqiba said: "Whoever marries a woman not suitable to him transgresses five negative commandments; for 'thou shalt not avenge,' 'nor bear any grudge' [Lev. xix. 18]; for 'thou shalt not hate thy brother in thy heart' [ibid., ibid. 17]; for 'thou shalt love thy neighbor as thyself' [ibid., ibid. 18]; and [Lev. xxv. 36] 'that thy brother may live with thee': as he hates her, he desires her death, consequently he abolishes the commandment of the multiplication of mankind."

He also used to say: "Whoever eats unhealthy food transgresses thrice: he despises himself, as well as the food, and pronounces a benediction upon unwholesome things."

R. Jehudah b. Ilai said: "When one dies and leaves a son, who did not care to learn the Torah from him, and he goes and

learns it from others, his only desire is to be flattered (and as the father was too proud to flatter, therefore he did not have the merit of teaching his son)."

R. Elazar the Kapar said: "Do not be as the lintel, which no hand can reach; neither as the upper cross-beam, on which the engravings are defaced; and not as the middle threshold, at which sometimes the feet strike; but as the lowest one, on which every one steps, and which, when in the end the entire building is demolished, is still left in its place."

Tosephtha—Aboth of R. Nathan.

* R. Jose said: Whoever venerates the Torah is himself honored by the people, as it is written [I Sam. ii. 30]: "For those that honor me will I honor, and those that despise me shall be lightly esteemed." "*Those that honor me*" refers to Pharaoh, King of Egypt, who honored the One who said, "Let there be the world," and went out at the head of his court; and when his servant remarked that kings usually went in the rear of their court, he answered: Am I then going before a human king? I am going before the King of kings of kings, the Holy One, blessed be He. Therefore the Holy One, blessed be He, also honored him and meted out his retribution Himself, as it is written [Habakkuk, iii. 15]: "Thou didst pass along over the sea with thy horses."

R. Joshua b. Kar'hah said: "Pharaoh rode into the sea on a stallion, as it is written [Ex. xv. 19]: 'For the horse of Pharaoh went in,' etc.; but when his retribution came, it was done with a horse and chariot, as it is written [Habakkuk, iii. 15]: 'Thou didst pass along over the sea with thy horses,' " etc.

"*Those that despise me shall be lightly esteemed*," refers to Sennacherib, who despised the One who said, "Let there be the world"; therefore he was despised by the Holy One, blessed be He, as it is written [Is. xxxvii. 24, 25]: "Through thy servants hast thou . . . till besieged places." Therefore the Lord punished him through an angel, who shaved his head and beard, and he returned to his kingdom shamefacedly.

"*R. Ishmael the son of R. Johanan b. Broka said: 'Whoever learns for the purpose of teaching,'*" etc. He used to say:

* Chapter XXVII. of the original.

"Though thou hast not undertaken to accomplish the entire Law, yet thou art not free to neglect it altogether; and the more one occupies himself with it, the more reward he accumulates."

"*R. Eliezer b. Hisma said*," etc. R. Johanan b. Nuri, however, said: "The Halakhoth, the purification, and the law of menstruation and *Qinim* are the essentials of the Torah."

He used to say: "The support of the wise, the institution of courts and their maintenance, bring much good to the world."

R. Johanan b. Dehabai said: "Whoever says this Halakha is not seemly, forfeits his share in the world to come."

He used to say: "Do not keep away from a precept which has no limit, or from a labor which has no end. This can be compared to one who was hired to take water from the sea and spill it on the land. When, seeing that the sea does not decrease and the land is not submerged, he becomes disgusted and refuses to continue the work, he is to be told as follows: 'You ignoramus! Why should you become disgusted? Continue your work, and get your pay of a golden dinar every day.'"

"*R. Eliezer b. Shamua said*: '*Let the honor of thy disciple*,'" etc. Whence do we know that one shall be as particular regarding the honor of his disciple as regarding that of his colleague? From Moses our Master, who said to Joshua: "Choose for us men" [Ex. xvii. 9]. He did not say *choose for me*, but *for us*. Infer from this that he regarded him as his equal, although he was master and Joshua the disciple. And whence do we know that one should be as particular regarding the honor of his colleague as regarding that of his master? It is written [Numb. xii. 11]: "Then said Aaron unto Moses, Alas, my lord." Was not (Moses) his younger brother? Infer from this that he regarded him as if he were his master. And whence do we know that one should be as particular in regard of the honor of his master as regarding that of Heaven? As it is written [ibid. xi. 28]: "And Joshua the son of Nun, the servant of Moses from his youth, answered and said, My lord Moses, forbid them." We see that Joshua equalled Moses to the Shekhina.

At first they used to say: There is grain in Judea, straw in Galilee, and chaff on the other side of the Jordan; afterward they changed it to: There is no grain in Judea; there is no straw in Galilee, but chaff; and on the other side of the Jordan there is neither.

Tosephta—Aboth of R. Nathan.

* R. Nathan said: "There is no love such as the love of the Torah; there is no wisdom such as the wisdom of manners; there is no beauty such as the beauty of Jerusalem; there are no riches such as the riches of Modea; there is no strength such as the strength of Persia; there is no adultery such as the adultery of the Arabians; there is no haughtiness such as the haughtiness of Elam; there is no hypocrisy such as the hypocrisy of Babylon, as it is written [Zech. v. 11]: 'And he said unto me, To build for it a house in the land of Shinar'; and there is no witchcraft such as the witchcraft of Egypt."

R. Simeon b. Elazar said: "A sage living in Palestine is praiseworthy. When he leaves it for a foreign country, his wisdom diminishes; and although his wisdom diminishes, still he has preference to a sage who never lived in Palestine. This can be compared to metal of Nadai which is brought to the countries of the sea: although depreciated in its original value, it is nevertheless more valuable than all other iron of the world."

Rabban Simeon b. Gamaliel said: "Whoever maintains peace in his own household, it is considered as if he maintains it among every one in Israel; and whoso causes envy and contention in his household, it is considered as if he had done so among every one in Israel; for every one is king in his own house, as it is written [Esther, i. 22]: 'That every man should bear rule in his own house.'"

Rabban Gamaliel said: "The following four regulations of the Romans annihilated the subjugated nations: the unlimited taxes, the high license on bath-houses, and theatres, and grain tithe."

He used to say: "The words of the Torah are as difficult to acquire as silken garments, and are lost as easily as linen ones. Nonsense and foolish things are easily acquired, but are hard to lose as a sack is; for sometimes one buys a sack in the market for a sela, and uses it for four or five years."

R. Jehudah the Prince said: "Whoever indulges in the pleasures of this world, the pleasures of the next are withheld from him; but one who does not, will not forego them there."

He also used to say: "The upright who fare badly in this world can be compared to a cook who prepares a feast for him-

* Chapter XXVIII. of the original.

self: although it had cost him much trouble, still he has done it for himself. The wicked, however, who fare badly in this world, are as the cook who prepared a feast for others: although it had cost him much trouble, nevertheless he has done nothing for himself, but for others."

He further used to say: "All those things which are done in private shall be done as if they were done publicly."

"*Hillel said: 'Do not isolate thyself from the community.'*"

He also used to say: "One who eats much, merely increases his excrement, and who (adds flesh to his body) multiplies worms and moths; but whoever increases his good deeds, secures bodily rest."

R. Elazar b. Shamua said: "The disciples are divided into three classes: Hewn stones, corner-stones, and a polished stone. A disciple who has studied Midrash, and only knows how to answer the question of the scholar appertaining to Midrash, and answers in that is compared to a hewn stone which has only one surface; one who has studied Midrash as well as Halakhoth, and he is able to answer a scholar in both, is like a corner-stone which has two surfaces; and one who has acquired a knowledge in Midrash, Halakhoth, Agadoth, and Tosephthas, and is enabled to answer in all four branches, is like a polished stone which has four surfaces, one on each of its four sides."

R. Jehudah b. Ilai said: "Whoever constitutes the Torah as the chief good, and considers wordly affairs as a secondary thing, will attain importance in the world. If, however, he does the contrary, he will become insignificant in the world. This can be compared to a regiment which has to go between two roads, one of fire and the other of snow. If it keeps near that of fire, it will be scorched; and if near that of snow, it will freeze. It is therefore best to go in the middle, and it will thus be guarded from heat and cold."

Tosephtha—Aboth of R. Nathan.

*"R. Simeon b. Elazar (in the name of R. Meir) said: '*Conciliate not thy friend in the hour of his anger,*'" etc. He used to say: "If some of thy neighbors praise, and others reprimand thee, love the latter and hate the former; for the latter are

* Chapter XXIX. of the original.

bringing thee to a life in the world to come, and the others are withdrawing thee from it."

He also used to say: "Wherever a righteous man goes his heart goes along; if he stands still, his heart does so also."

He further used to say: "One who applies himself to the study of the Law is assisted in his application. However, if he neglects it, he is further prevented from it by such as a lion, wolf, tiger, hyena, and snake; or soldiers or robbers surround and punish him, as it is written [Ps. lviii. 12]: 'Verily, there is a God that judgeth in the earth.'"

Abba Saul (b. Nanes) said: "The scholars are divided into four classes: One studies, but does not teach others; a second teaches others, but does not study himself; a third one both studies for himself and teaches others; and a fourth neither studies himself nor teaches others. The first class learn a chapter, or two or three, study them repeatedly until they know them by heart, but do not teach them to others; the second learn an entire section two or three times, teach it to others, but not having studied it repeatedly forget it; the third learn one, or two, or even three, entire sections, teach them to others, and study them themselves, and therefore do not forget them; and the fourth class are those who have learned an entire section two or three times, but have not taught it to others, neither have they studied it themselves, and thus they forget it."

R. Hanania b. Jacob said: "One who keeps awake at night studying the Law, it is a good omen for him; however, if he spends the night only in conversation, it is a bad omen for him."

R. Jacob b. Hananiah said: "One who is awake by night, but does not study, it were better for him not to have been born."

R. Elazar the Kapar said: "If one honor his friend for pecuniary considerations, he will in the end be dismissed in disgrace; but if he scorns him for a meritorious purpose, in the end he will be dismissed honorably. Whence is the former deduced? From the case of Balaam the wicked, who honored Balak for a mercenary purpose, as it is written [Numb. xxii. 18]: "And Balaam answered and said unto the servants of Balak: If Balak would give me his house full of silver and gold." And whence do we know that he was dismissed in disgrace? As it is written [ibid. xxiv. 11]: "And now flee thou to thy place . . . but, lo, the Lord hath kept them back from honor." Whence is the latter case derived? From that of Moses our master, who

scorned Pharaoh for a meritorious purpose, as it is written [Ex. xi. 8]: "And all these thy servants shall *come down* unto me, and bow themselves down unto me, saying." Was, then, Pharaoh standing upon the roof, and Moses on the ground? Say, then, that Moses said to Pharaoh: "Even all thy servants who bow before thee on thy altar will come down and entreat me, but I will not listen to them." And whence do we know that he was dismissed honorably? It is written [ibid. xii. 31]: "And he called for Moses and Aaron by night."

They answered: "Are we, then, thieves, that we shall go out in the night?" Wait till the Holy One, blessed be He, will bring us seven pillars of honors, and accompanied by them we will go forth joyfully and openly, as it is written [Numb. xxxiii. 3]: "On the morrow after the passover-sacrifice the children of Israel went out with a high hand."

On account of the four different means of forgiveness, R. Mathia b. Heresh went to visit R. Ishmael b. Elazar the Kapar in Ladakia. He interrogated him: "Hast thou heard the four different means of forgiveness on which R. Ishmael used to lecture?" He rejoined: "I have heard they are three, but repentance must be to every one of them." It is written [Jer. iii. 22]: "Return, ye backsliding children, I will heal your backslidings." And again [Lev. xvi. 30]: "For on that day shall (the high-priest) make an atonement for you to cleanse you." Also [Ps. lxxxix. 33]: "Then will I visit with the rod their transgressions, and with plagues their iniquity." And also [Is. xxii. 14]: "Surely this iniquity shall not be forgiven unto you until ye die." How can these four contradictory passages be explained? Thus: If one has violated a positive precept, and has repented, he is forgiven immediately—to this case the first passage is applied. If one has violated a negative precept and has repented, the repentance is suspended until the Day of Atonement, when he is forgiven—to this the second passage is applied. If one has committed a sin for which he is liable to *Kareth*, or death by the court, and has repented, the repentance and the Day of Atonement are suspended until he is cleared by sufferings—to this case the third passage is applied. However, one who has profaned the name of heaven has not the power to repent, and no sufferings clear him, and the Day of Atonement does not atone for him; but repentance and sufferings are suspended, and only death absolves him—to him is applied the last passage.

Issi b. Jehudah said: "Wherefore do scholars die before their time? Not because they commit adultery or robbery, only because they condemn themselves."

R. Itz'hak b. Pin'has said: "Whoever is versed in Midrash, but not in Halakha, has not tasted of wisdom; and he who is the opposite, has not tasted of the fear of sin."

He used to say: "One who is versed in Midrash, but not in Halakhoth, is like unto a strong man, but who is unarmed; one who is the opposite is like an armed weakling. One, however, who is versed in both is like unto a man who is both strong and armed."

He further used to say: "Be careful in greeting thy neighbors. Do not enter a house of strife, neither strive to see it. Be among thy colleagues, and be thou a head to a fox rather than a tail to a lion."

Tosephtha—Aboth of R. Nathan.

*"R. Nathan b. Joseph said: † 'He who neglects the words of the Law on account of his riches, he will finally do so on account of poverty; but he who observes the Law even when he is poor, he will finally do so when rich.' " He used to say: "The consoling of the mourners, the visiting of the sick, and the bestowing of favors bring much good to the world."

R. Meir said: "One who transgresses one precept doubtfully, it is considered as if he had done it in certainty. How so? One commits a sin and has cognition of it, he brings a sin-offering of the value of a sela, or the tenth part of an ephah of the value of a *Dupondius*. However, if he is in doubt whether he sinned or not, he must bring a trespass-offering of the value of two selaim. (So is the Law.) Now, let us see. It is certain that goodness of heaven exceeds considerably heavenly chastisement, is there not room to draw an *a fortiori* conclusion that if chastisement, which is less than goodness, still if one is in doubt whether he did or did not sin, heaven requires him to bring a trespass-offering to pacify his conscience and to be rewarded for bringing the offering, so much the more in case of goodness of heaven which exceeds chastisement, that heaven rewards him in case of doubt as if it were sure that he did it."

* Chapter XXX. of the original.

† In the Mishna, however, this saying is ascribed to R. Jonathan.

R. Nathan b. Joseph said: There is a case where one transgresses ignorantly, and nevertheless it is considered as if he had done it wantonly. How so? If one has killed a person unawares, and escapes to a city of refuge, and the avenger of the blood find him before he reach the city of refuge and kill him, he is free. However, if one killed a person wantonly, and the avenger of the blood kills him (before the court has pronounced sentence, not heeding the warning of witnesses), it is equal to ordinary murder, although the avenger thought that he might do so as a relative of the murdered person, and he may be killed for the crime. Now let us see: Which is in excess, goodness or chastisement of heaven? Surely the former. Now, if chastisement, which is less, if one commits a sin erroneously, still in such a case, it is considered as if done intentionally, so much the more so in case of goodness which is in excess.

R. Aqiba said: "One who connects himself with transgressors, although he has not done as they did, he is nevertheless punished as they are. However, if he connects himself with the performers of the precepts, although he has not taken part in the performance, he nevertheless is rewarded as they are. How so? When two persons give their testimony that some one has killed a person, and it is found that their testimony is collusive, they are sentenced to death; and as they are brought to the stoning place, somebody comes running up, saying: 'I know something about these witnesses'; and when his testimony is also found to be collusive, he, too, is sentenced to death; and when he is brought to the stoning place, he wails: 'Woe to me! had I not come with them, I would not have been sentenced.' Hence the same *a fortiori* conclusion stated before must be drawn. If one connects himself with transgressors and it is so, much the more one will be rewarded if he connects himself with performers of precepts."

R. Simeon said: "The punishment of the liar is that even when he tells the truth he is not believed, as we find with the sons of Jacob, who at first lied to their father, and he believed them, as it is written [Gen. xxxvii. 31]: 'And they took Joseph's coat, and killed a he-goat'; also [ibid., ibid. 33]: 'And he recognized it, and said: It is my son's coat.' In the end, however, when they spoke the truth, he did not believe them, as it is written [ibid. xlv. 26]: 'But his heart remained cold, for he believed them not'; and [ibid.]: 'And they told him, saying: Joseph is yet alive, and he believed them not.'" There are others who

say: "The holy spirit which had left Jacob our father during the absence of Joseph returned to him at that time, as it is written [ibid., ibid. 27]: 'The spirit of Jacob their father revived.'"

Tosephtha—Aboth of R. Nathan.

* R. A'hai b. Joshiah said: "One who buys grain from the market is compared to an infant whose mother died, and which, although nursed by many other nurses, is never satiated. One who buys bread from the market, is comparable to one for whom a grave was dug for interment. One who eats of his own is like an infant reared at the breasts of his mother."

He used to say: "One who eats of his own, his mind is tranquil; but if he eats of that belonging to his father, mother, or his children, and especially of that belonging to strangers, his mind can never be tranquil."

* Chapter XXXI. of the original.

CHAPTER V.

MISHNA *A*. By ten sayings the world was created; and why so? Could it not have been created by one saying? But it was that vengeance might be taken on the wicked, who destroy the world that was created by ten sayings; and to give a goodly reward to the righteous, who maintain the world that was created by ten sayings.

Tosephtha—Aboth of R. Nathan.

“*By ten sayings the world was created.*” For what purpose is this stated? To teach that if one carries out a precept, or observes one Sabbath, or preserves a soul, it is considered as if he had preserved the entire world, which was created with ten sayings. But he who transgresses once, or violates one Sabbath, or destroys one soul, is considered like unto one who has destroyed the entire world, which was created with ten sayings. And so we find with Cain, who killed his brother Abel, as it is written [Gen. iv. 10]: “The voice of thy brother’s blood (in plural).” He shed only the blood of one person—why is the plural used? Infer from this that the blood of the decedent’s children, grandchildren, and all the descendants which were destined to be descended from him, were all crying before the Holy One, blessed be He.

R. Nehemiah said: “Whence is it deduced that a single person is equal to the whole creation? It is written [ibid. v. 1]: ‘This is the book of the generations of Adam.’ And before that it is written [ibid. ii. 4]: ‘These are the generations of the heavens and of the earth when they were created.’ We see that with reference to the creation of man almost the same wording is used as with reference to the creation of heaven and earth, which goes to show that one is as much as the other. Likewise may be inferred from this, that the Holy One, blessed be He, showed him (Adam) all the generation which were to spring from him, as if they were standing and playing before him.” There

are others who say that the righteous only were shown to him, as it is written [Is. iv. 3]: "Every one that is written down into life in Jerusalem."

R. Joshua b. Kar'hah said: "It is written [Ps. cxxxix. 16]: 'My undeveloped substance did thy eyes see, and in thy book,' etc. Infer from this that the Holy One, blessed be He, showed unto Adam all succeeding generations, together with their preachers, directors, leaders, prophets, heroes, criminals, and their pious. In this or that generation, such and such a king will reign; in another, a certain sage will exist, etc."

R. Eliezer the son of R. Jose the Galilean said: "Nine hundred and seventy-four generations before the creation of the world, the Torah was already written and reposing in the lap of the Lord, and sung praises together with the angels, as it is written [Ps. viii. 8, 9]: 'Then was I near him as a nursling; and I was day by day (his) delight, playing before him at all times; playing in the world, his earth.' They have compared this to one who desired to engrave many subjects on a piece of wood, and as it was not of sufficient size, he was in despair. What could he do? Let him engrave upon the earth, where he has enough space. So also did the Holy One, blessed be He, whose great name shall be praised for ever and evermore, when He in His wisdom and understanding created the entire world. He created the heavens and the earth in the upper and lower regions, and created in man all that he created in his world: the world contains forests, so also does man, viz., his hair; the world contains evil beasts, so does man, viz., lice; there are thorns in the world, so also are they in man—his ears; there is odor, so also in man—his nose; light—man's sight; evil-smelling liquids, so also in man—the excretion of the nose; salty water, so also in man—tears; rivers, so also in man—his urine; castles, so also in man—his lips; gates, so also in man—his teeth; sweet water, so also in man—his saliva; stars, so also in man—his cheeks; towers, so also in man—his neck; cathedrals, so also in man—his arms; nails, so also in man—his fingers; a king, so also in man—his head; advisers, so also in man—his kidneys; millstones, so also in man—his stomach; regulations, so also in man—his spleen; manure, so also in man—his belly; pits, so also in man—his navel; spring-water, so also in man—his blood; trées, so also in man—his bones; hills, so also in man—his ashes; a mortar and pestle, so also in man—his knees; horses, so also in man—his legs; hills and valleys, so also in man—when

standing he is like a hill and when lying he is like a valley. Hence all that which the Holy One, blessed be He, created in His world, He also created in man."

MISHNA B. Ten generations were there from Adam to Noah, to show how great was His long-suffering; for all the generations were provoking him, till He brought the deluge upon them.

Tosephtha—Aboth of R. Nathan.

* "*Ten generations were there from Adam to Noah.*" For what purpose was this stated? To teach that all these generations persisted in provoking the Lord, nevertheless He did not bring the flood on the world, for the sake of the upright and pious. There are others who say: As long as Methuselah lived, the flood descended not upon the world; and it was even suspended for seven days after his demise; as it is written [Gen. vii. 10]: "And it came to pass, after the seven days." What seven days? The period of mourning for the upright, who prevented the retribution.

Another explanation is: The above passage teaches that the Holy One, blessed be He, granted them an additional respite, after the original one hundred and twenty years, of seven days, in which time to repent.

Still another explanation is, that the Lord changed the order of the world for seven days, causing the sun to rise in the west and to set in the east, so that perchance they would notice it, become frightened, and repent; however, it had no effect.

Still another explanation is, that the Lord spread His table before them during seven days, and gave them an inkling of what there was in the world to come, so they might reflect and say: Woe to us, for all this good which is lost to us, and for the destruction of our offspring, as it is written [ibid. vi. 12]: "And God looked upon the earth, and, behold, it was corrupt."

R. Elazar b. Parta said: "It is written [ibid., ibid. 3]: 'My spirit shall not always strive for the sake of man.' It means that the Lord said: 'I will not judge them until I will double their rewards,' as it is written [Job, xxi. 13]: 'They wear out

* Chapter XXXII. of the original.

their days in happiness; and in a moment they go down to the nether world.' "

R. Jose the Galilean said: " It is written: ' My spirit shall not always strive.' It means that the Lord said: ' I will not equal the evil thoughts to the good thoughts so long as their fate has not yet been sealed.' After that, however, both are equal in transgression."

He used to say: " The evil spirit is removed from the upright and the good spirit predominates, as it is written [Ps. cix. 22]: ' And my heart is deeply wounded within me.' From the wicked, however, the good thoughts are removed and evil thoughts are given them instead, as it is written [ibid. xxxvi. 2]: ' Saith vice itself to the wicked, So I feel it within my heart, that he should have no dread of God before his eyes.' To people of mediocrity both are given: the one who is nearer to the good thoughts is ruled by them, and one who is nearer to the evil thoughts is ruled by them, as it is written [ibid. cix. 31]: ' For he ever standeth at the right hand of the needy, to save him from those that judge his soul.' "

R. Simeon b. Elazar said: " It is written [Gen. vi. 3]: ' My spirit shall not strive,' etc. This means the Lord said: ' I will not judge them before I have rewarded the upright.' This is only as to this world; but as to the world to come, it is written [ibid. cxlvi. 46]: ' When his spirit goeth forth, he returneth to his (native) earth.' "

R. Aqiba said, of the same verse: " The Lord said: ' They have not reflected that they are flesh and blood.' On the contrary, they were haughty, and said unto God: ' Depart from us ' " [Job, xxi. 14].

R. Meir said, of the same verse: " This means that the Holy One, blessed be He, said: ' This generation said: God does not judge, there is no judge in the world; God has left it.' "

Rabbi said, of the same verse: " This means that the Holy One, blessed be He, said: ' They have not instituted a Sanhedrin on earth, therefore will I institute for them a Sanhedrin on high.' "

MISHNA C. Ten generations were there from Noah to Abraham, to show how great was His long-suffering; for all the generations were provoking Him till Abraham our father came, and received the reward of them all.

Tosephtha—Aboth of R. Nathan.

*“*Ten generations*,” etc. For what purpose was it necessary to state this? To teach that all these generations have provoked Him, and there was not one who walked in the way of the Holy One, blessed be He, till Abraham our father, as it is written [Gen. xxvi. 5]: “Because that Abraham obeyed my voice . . . and my laws.” Are there then two Laws? Infer from this that the Lord provided Abraham with two reins, which, like two sages, made him understand, advised him and taught him all night, as it is written [Ps. xvi. 7]: “I will bless the Lord, who hath given me counsel: also in the night season my reins admonish me.” And not only that, but Abraham our father was wont to practise charity first and justice afterward, as it is written [Gen. xviii. 19]: “For I know him, that he will command,” etc. When two disputants came before him, and one of them complained that the other owed him a manah, Abraham was wont to deposit a manah of his own with one of them, and then said: Make your complaints. When he found that one really owed the other, he said to the one with whom he deposited the manah: “Give it to thy neighbor”; and if neither owed the other, he said: “Divide it between yourselves, and depart in peace.” However, David the king practised justice first and charity after, as it is written [II Samuel, viii. 15]: “And David did what was just and right unto all his people.” When two disputants came to him, and one of them claimed that the other owed him a manah, he told them to make their complaints, and after finding one of them liable, he used to give the other the manah; otherwise, he said: “Divide your claims, and depart in peace.”

MISHNA *D.* With ten temptations was Abraham our father tempted, and he withstood them all, to show how great was the love of Abraham our father.

Tosephtha—Aboth of R. Nathan.

“*With ten temptations*,” etc. They are as follows: two at “get thee out of thy country”; two with his two sons; two

* Chapter XXXIII. of the original.

with his two wives; one with the kings; one at "*the* pieces"; one at Ur of the Chaldees; and one at the circumcision. Wherefore so many? For the reason that when Abraham our father will claim his reward, the angels shall say: More than us, even more than all of us, is he worthy to receive his rewards, as it is written [Eccl. ix. 7]: "Go, eat with joy thy bread, and drink with a merry heart thy wine."

In comparison to these ten temptations, the Holy One, blessed be He, performed ten miracles for his descendants in Egypt, and also brought ten plagues (on the Egyptians); and performed ten miracles for the Israelites at the sea, and brought ten plagues on the Egyptians at the sea. The Egyptians roared at them with their voices, so also did the Lord roar at them at the sea, as it is written [Job, xxxvii. 5]: "God thundereth with his marvellous voice." The Egyptians came to the sea with bows and arrows, so also did the Lord appear, as it is written [Habakkuk, iii. 9]: "Laid quite bare is thy bow"; also [Ps. xviii. 15]: "And he sent out his arrows, and scattered them." The Egyptians came to the sea armed with swords, so also did the Lord, as it is written [ibid.]: "And he shot forth lightnings, and discomfited them"—lightning means sword, as it is written [Ezek. xxi. 14, 15]: "The sword, the sword is sharpened, and also polished: in order to make a thorough slaughter it is sharpened, in order that it may glitter* is it polished."* The Egyptians came armed with spears, so also did the Lord, as it is written [Habakkuk, iii. 11]: "At the shining of the flaming glitter of thy spear." The Egyptians were proud of their shield and buckler; so was the Lord, as it is written [Ps. xxxv. 2]: "Take hold of shield and buckler, and rise up for my help." The Egyptians came with sling-stones, but the Lord with hail-stones, as it is written [Ps. xviii. 13]: "From the brightness before him his thick clouds passed away (with) hail-stones and coals of fire."

When our fathers stood by the sea, Moses said to them: "Arise and pass through it!" and they rejoined: "We will not pass, till we see the sea become chips, chips."† Whereupon Moses struck the sea with his staff, and it was converted into chips, as it is written [Habakkuk, iii. 14]: "Thou didst strike through with his own spears the chiefs of his villages." Again:

* The Hebrew term for both "glitter" and "lightning" is ברק.

† The text reads "nekabim," and the verse quoted begins with "nakab-tha"; hence the supposition.

Moses said to them: "Arise and pass through it," and they rejoined: "We will not pass till the sea becomes a valley." Moses struck the sea again, and it became a valley, as it is written [Ps. lviii. 13]: "He divided the sea, and caused them to pass through"; also [Is. lxiii. 14]: "As a beast goeth down into the valley." Moses again urged them to pass through the sea, and they answered: "We will not, till it becomes separated into parts"; as it is written [Ps. cxxxvi. 13]: "To him who divided the Red Sea into parts." When urged again, they said: "We will not pass till the bottom becomes loamy." Whereupon Moses struck the sea with his staff, and the bottom became loamy, as it is written [Habakkuk, iii. 15]: "But (thou) didst pass along over the sea with thy horses, over the piled-up billows* of great waters." Again they refused to pass through, until the bottom of the sea should become a desert; and Moses caused it to be so, as it is written [Ps. cvi. 9]: "And he led them through the depths, as through the wilderness." They refused again until the sea became converted into small particles, and Moses caused it to be so, as it is written [ibid. lxxiv. 13]: "It was thou that didst divide by thy strength the sea." They again refused until it should become rocky, and Moses caused it to be so, as it is written [ibid.]: "Thou brokest in pieces the heads of the crocodiles on the water," and that can be broken on rocks only. They again refused until the sea should become dry land, and Moses made it so, as it is written [ibid. lxvi. 6]: "He changed the sea into dry land"; also [Ex. xv. 19]: "But the children of Israel went on dry ground through the midst of the sea." They refused again until the waters became as walls, and Moses made them so, as it is written [Ex. xiv. 22]: "And the waters were a wall unto them, on their right hand, and on their left." They still refused till there should be bottles, and Moses complied again, as it is written [ibid. xv. 8]: "The flood stood upright as a wall."† And the infants were drinking oil and honey out of these bottles, as it is written [Deut. xxxii. 13]: "And he made him to suck honey out of the rock," etc. There are others who say: "Living water issued out of the sea, when they were between the walls, and they drank of it, as the sea water is salty; for it is stated "the flood," and that means sweet water, as it is written [Songs, iv. 15]: "A well of living waters,

* חֲמֹר means both "loam" and "billows."

† נֶרֶךְ is "wall," בִּטְיָא is "bottle." The Talmud plays on the similarity of the two words.

and flowing down from Lebanon." The clouds of glory were above their heads, to protect them from the sun.

R. Eliezer said: "The deep was arched over their heads, while passing through the sea, to save them from pain." The former and the latter both say: The upper and the lower waters overthrew the Egyptians, as it is written [Ex. xiv. 27]: "And the Lord overthrew the Egyptians in the midst of the sea."

MISHNA *F*. With ten temptations did our ancestors tempt God in the wilderness, as it is written [Numb. xxv. 22]: "And have tempted me these ten times, and have not hearkened to my voice."

Tosephtha—Aboth of R. Nathan.

* "By means of ten trials the Holy One, blessed be He, tested our forefathers," and they were found wanting in all of them. They are as follows: In the wilderness, in the plain, opposite Suph, between Paran and Thophel and Laban and Chazeroth and Di-zahab. "In the wilderness" they made the golden calf, as it is written [Ex. xxxii. 8]: "They have made themselves a molten calf." "In the plain" they quarrelled with Moses on account of water, as it is written [ibid. xvii. 3]: "And the people thirsted there for water." "Opposite Suph"—their rebellion at the Red Sea. There are others who say: This has reference to Michah's graven image. "Between Paran"—where the incident of the spies occurred [Numb. xiii. 3]: "And Moses sent them out from the wilderness of Paran." "And Thophel" refers to the nonsense (slander)† they talked of the manna. "And Laban"—this is the dissension of Korah. "And Chazeroth"—near which place the incident of the quails occurred. All these are seven, and somewhere else it is written [Deut. ix. 22]: "And at Thah'erah, and at Massah, and at Kibroth-hattavah." (Making altogether ten.) What does Di-zahab refer to? Aaron said to them: "Ye have enough of the sin of the gold which ye brought for the calf."

R. Eliezer b. Jacob said: "This sin with which the Israelites were afflicted, is enough for that time till the resurrection of the dead."

* Chapter XXXIV. of the original.

† טפלה in Hebrew means also "nonsense."

Ten names of praise are applied to the Holy One, blessed be He: "Adonai," "Jah," "Eloim," "Eloah," "Eloechu," "Eloechem," "El," "Eheh-ascher-Eheh," "Shadai," "Zebaoth." Said R. Jose: "I do not agree as to the name 'Zebaoth,' for it is written [Deut. xx. 9]: 'That they shall appoint captains for the *armies*,' the Hebrew term for 'army' being 'Zebaoth.'" (These being *proper* names of God, we have not translated them.)

Ten ignominious names are applied to the idols. They are as follows: Abominations, idols, molten images, graven images, false gods, groves, sun-images, Atzabim, Aven, images.

Two signs (the inverted letter Nun) are placed in the Torah at a small section, viz.: "And it came to pass, when the ark set forward," etc. [Numb. x. 35, 36]. Said Rabban Simeon b. Gamaliel: "It would have been advisable to remove this section and put it in another place. Something like this we find elsewhere [Judges, xviii. 20]: 'And Jonathan, the son of Gershon, the son of Menasseh,' was he the son of Menasseh, and not the son of Moses? But because his deeds were not like those of his father Moses, therefore he is traced to Menasseh."

Likewise we find [Zech. iv. 14]: "These are the two sons of the clear oil, that stand by the Lord of the whole earth." This refers to Aaron and the Messiah, and we do not know who is more beloved; but, as it is written [Ps. cx. 4]: "The Lord hath sworn, and will not repent of it, thou shalt be a priest for ever." It is to be inferred from this that the latter is more beloved.

It is said [Ps. lxxx. 14]: "The boar out of the forest doth gnaw at it." Is it not written *out of the river*?* The difference in the two words implies this: As long as Israel act contrary to the will of the Omnipotent, the idolaters are likened to them as a boar out of the forest, which kills the people, damages the cattle, and is an affliction to mankind. However, when the Israelites act according to the will of the Omnipotent, the idolaters are likened unto them, as the boar out of the river (hippopotamus), which does not kill people, nor injures any creatures. Many words of the Torah are dotted. They are as follows: "May the Lord judge between me and *thee*" [Gen.

* יָרֵךְ in Hebrew means a "river" and יָעַר means a "forest"; in the verse quoted the latter word is used, but the Massorah says that the middle letter is suspended above the line, and the Talmud maintains that this shows that originally the first-mentioned word was used, but subsequently the middle letter was changed and the change indicated by the suspension.

xvi. 5]. The second Yod is dotted in the word "ubenecha," which hints that she (Sarah) applied it to Hagar. Others say she meant those who caused quarrelling between her and him. "And they said unto *him*, Where is Sarah thy wife?" [ibid. xviii. 9]. The Aleph, Yod, and Vav are dotted to imply that, although they knew where she was, still they inquired after her. "And he perceived not when she lay down, nor when she *arose*" [ibid. xix. 33]. The second Vav is dotted, to imply that he perceived only when the younger arose. "And Esau ran to meet him, and embraced him, and fell on his neck and *kissed him*" [ibid. xxxiii. 4]. All the letters of the word "vayishokehu" are dotted, to signify that he was not sincere. R. Simeon b. Elazar said: "It implies, on the contrary, that this kissing was sincere, but all his other acts were insincere." "And his brothers went to feed his father's *flocks* in Shechem" [ibid. xxxvii. 12]. There are dots on the word "eth," to imply that they did not go to feed the flocks, but to eat, drink, and commit follies. "All that were numbered of the Levites, whom Moses numbered *with Aaron*" [Numb. iii. 39]. The entire word is dotted, to imply that Aaron was not included in the number. "Or be on *a distant* journey" [ibid. ix. 10]. The Heh in the word "rechokah" is dotted, to imply that it does not really mean a distant journey, only that he was prohibited from passing the threshold of the outer court (of the Temple). "And we have laid waste (all) up to Naphach, *which* reacheth unto Medeba" [ibid. xxi. 30]. The Resh in the word "asher" is dotted, to imply that only the idolaters laid waste the countries. Concerning the first day of Tabernacles, it is written [ibid. xxix. 15]: "And a *tenth part each*." The Vav of the word "eissoron" is dotted, to imply that there should be only one-tenth part. And, lastly: "The secret things belong unto the Lord our God; but those things which are publicly known belong *to us* and to *our children for ever*" [Deut. xxix. 30]. The entire two first words and the Ayin of the third are dotted, to imply that Ezra said: "If Elijah will come and question me why I have written thus, I will answer: 'I have already dotted them.' However, if he will say: 'Thou hast written well,' I will erase the dots."

In the Torah there is written eleven times the word היא (which means "she"), when it ought to be הוא (he). (See Massorah.)

Ten times did the Shekhina descend upon the earth. Once in the Garden of Eden, as it is written [Gen. iii. 8]: "And they

heard the voice of the Lord God walking in the garden." Once in the generation of the (builders of) the tower, as it is written [ibid. xi. 5]: "And the Lord came down to see the city and the tower." Once in Sodom, as it is written [ibid. xviii. 21]: "And I will go down now, and see if they have done according to the cry against them." Once in Egypt, as it is written [Ex. iii. 8]: "And I am come down to deliver it out of the hand of the Egyptians." Once at the sea, as it is written [Ps. xviii. 10]: "And he bent the heavens, and came down." Once at Sinai, as it is written [Ex. xix. 20]: "And the Lord came down upon Mount Sinai." Once at the Temple, as it is written [Ezek. xlv. 2]: "This gate shall remain locked, it shall not be opened . . . because the Lord, the God of Israel, hath entered in by it." Once at the pillar of cloud, as it is written [Numb. xi. 25]: "And the Lord came down in a cloud." And once when it will come down in the days of Gog and Magog, as it is written [Zech. xiv. 4]: "And his feet will stand on that day upon the Mount of Olives."

Ten degrees the Shekhina removed itself from one place to another: From the cover to the cherub, as it is written [II Samuel, xxii. 11]: "And he rode upon a cherub, and flew along"; from the cherub to the threshold, as it is written [Ezek. ix. 3]: "And the glory of the God of Israel ascended up from the cherub, whereupon it had been, to the threshold of the house"; from the threshold to the two cherubim, as it is written [ibid. x. 18]: "And the glory of the Lord went forth from off the threshold of the house, and halted over the cherubim"; from the cherubim to the roof, as it is written [Prov. xxi. 9]: "It is better to dwell in a corner of a roof"; from the roof to the wall of the outer court, as it is written [Amos, vii. 7]: "And, behold, the Lord was standing upon a wall (made) by a plumbline"; from the wall of the outer court to the altar, as it is written [ibid. ix. 1]: "I saw the Lord standing upon the altar"; from the altar to the city, as it is written [Micah, vi. 9]: "The voice of the Lord calleth unto the city"; from the city to the mount, as it is written [Ezek. xi. 23]: "And the glory of the Lord ascended from the midst of the city, and halted upon the mount," etc.; from the mount to the desert, as it is written [Prov. xxi. 19]: "It is better to dwell in a desert land"; and once when it ascended on high, as it is written [Hosea, v. 15]: "I will go (hence, and) return to my place."

A prophet is called by ten different names. They are as

follows: Ambassador, faithful, servant, messenger, seer, watchman, man of scrutiny, dreamer, prophet, man of God.

There are ten names for the Holy Spirit, namely: Proverb, metaphor, riddle, word, saying, calling, commandment, prophecy, sacred speech, and vision.

Joy has ten different expressions: Gladness, joy, rejoicing, joyfulness, pleasure, relish, satisfaction, complacency, delight, cheer.

Ten are called "living": The Holy One, blessed be He, as it is written [Jer. x. 10]: "But the Lord God is the truth: he is the living God"; the Torah, as it is written [Prov. iii. 18]: "A tree of life is she to those that lay hold on her: and every one that firmly graspeth her will be made happy"; Israel, as it is written [Deut. iv. 4]: "But ye that cleave unto the Lord your God are alive, every one of you, this day"; good deeds, as it is written [Prov. xi. 30]: "The fruit of the righteous is of the tree of life"; the Garden of Eden, as it is written [Ps. cxvi. 9]: "I will walk before the Lord in the lands of life"; the tree, as it is written [Gen. ii. 9]: "And the tree of life in the midst of the garden"; Palestine, as it is written [Ezek. xxvi. 20]: "But I will bestow glory in the land of life"; charitable deeds, as it is written [Prov. xii. 28]: "On the path of righteousness there is life"; the wise, as it is written [ibid. xiii. 14]: "The instruction of the wise is a source of life"; light, as it is written [Job, xxxiii. 30]: "In the light of life."

MISHNA E. Ten miracles were wrought for our fathers in Egypt, and ten by the sea.

MISHNA G. Ten miracles were wrought in the Sanctuary: No woman miscarried from the scent of the holy meat, and the holy meat never stank; and a fly was not seen in the slaughter-house; and an uncleanness befell not the high-priest on the Day of Atonement; and a defect was not found in the sheep, nor in the two loaves, nor in the shew-bread; and rains did not extinguish the fire of the fuel heaped upon the altar, and wind prevailed not against the pillar of smoke; they stood serried, and bowed down at ease; and serpent and scorpion harmed not in Jerusalem, and a man never said to his fellow, "The place is too strait for me to lodge in Jerusalem."

MISHNA *H.* Ten things were created at twilight of the eve of Sabbath: the mouth of the earth and the mouth of the well, and the mouth of the ass, and the bow, and the manna, and the rod, and the Shomir worm, and the character and the writing, and the tables. And some say the evil spirits also; and the sepulchre of Moses, and the ram of Abraham our father; and some say the first tongs with which subsequently other tongs were made.

Tosephtha—Aboth of R. Nathan.

* Ten miracles were performed for our forefathers in Jerusalem: The holy meat was never spoiled; no woman miscarried from the scent of the holy meat; no one was ever injured; no accident ever happened to any one; no one ever stumbled; no conflagration ever occurred; no rain was ever there; no man ever said: "I could find no oven wherein to roast the paschal lamb"; no man ever said: "I could find no bed wherein to sleep"; no man ever said to another: "I could find no quarters in which to pass the night."

Jerusalem never was defiled by leprosy, nor condemned as a misled city; no ledges, galleries, or channels could be built on the public streets, because they would form a tent for uncleanness; a corpse could not be left there over night, nor human bones be carried through the streets, and no stranger was permitted to settle within its walls. No graves could be maintained there except those of the house of David and the prophetess Huldah, which existed since the days of the early prophets. It was said that there was a grotto which caused the uncleanness to run into the brook Kidron. No plants must be planted there, and no gardens or parks might be laid out there, except gardens of roses, which existed there since the days of the early prophets. No geese nor hens might be bred there, much less swine; no dung might remain there, because of defilement. A stubborn and rebellious son is not judged there, such is the decree of R. Nathan, for it is written [Deut. xxi. 19]: "Then shall his father and his mother lay hold on him, and bring him out unto the elders of his city, and unto the gate of his place"; but as they are not his city and place, he cannot be judged. Houses can-

* Chapter XXXV. of the original.

not be sold there together with the ground on which they stand. No house can remain as a permanent possession after a twelve-month. No rent may be taken for houses, but it may be for beds and mattresses. Said R. Jehudah: "It is not allowed to take rent even for that." What did they do with the skins of the holocaust? They were given to the lodging-house keepers. R. Simeon b. Gamaliel said: "The innkeepers were in the inside and the lodging-house keepers on the outside. The innkeepers used to buy sheep, having nice wool, for four to five selahs, and sell them to the Jerusalemites, and made big profits on them."

One verse says: "In one of thy tribes" [Deut. xii. 14]; and another says: "Out of all your tribes" [ibid., ibid. 5]. The first relates to the tribes of Judah and Benjamin, and the second to Jerusalem, which belongs to all Israel. What belonged to Judah? The Temple Mount, the chambers, and the outer courts; and to Benjamin belonged the Temple, the porch, and the Holy of Holies, and a triangle extended into the part of Judah in which the altar was built. Benjamin was favored, and became the host of the Mightiness, as it is written [ibid. xxxiii. 12]: "And between his shoulders will he dwell."

Said R. Jehudah: At the time when it became known that the Temple would be built on the boundaries of Judah and Benjamin, they had improved and separated the suburb of Jericho. And who ate its products all these years? The children of the Kenite, the father-in-law of Moses, as it is written [Numb. x. 32]: "It shall be, that the same goodness which the Lord may do unto us will we do unto thee." However, when the Temple was built, they vacated. And whence do we know that they were sustained by charity? They said: "When the Lord will reveal His Shekhina, He will reward Jethro and his children, as it is written [ibid., ibid. 29]: For the Lord hath spoken (to bring) good upon Israel." Said R. Simeon: They were prominent men and were proprietors of houses, fields, and vineyards. However, because of the work of the Lord they left everything and went away, as it is written [I Chron. iv. 23]: "There were the potters, and those that dwelt in plantations," etc. They dwelt with the king in his work. And where did they then go? To Jabez, to study the Torah, and thus have become a people of the Omnipotent. Jabez was a very good and righteous man: he was a truthful man and pious, and occupied himself with the study of the Law; therefore the pious went to a pious.

"Ten miracles were wrought, etc.; and an uncleanness befell

not the high-priest on the Day of Atonement"—except R. Ishmael b. Kimchith, who went out to converse with a certain dignitary, and some saliva dropped out of his mouth on his garments; and his brother entered and officiated as high-priest in his stead, and their mother had the satisfaction of seeing her two sons as high-priests on the same day.

The sages saw her, and said to her: "What piety hast thou practised?" And she rejoined: "The ceilings of my house never saw my hair."

"*No woman miscarried.*" It never happened that there was anything left of the holy meat; and when they ate too much of it, they drank the waters of Shiloach, which assisted digestion.

"*And a defect was not found,*" etc. Broken earthen vessels were sunk in the ground.

"*And wind prevailed not,*" etc. And when the pillar of smoke went up from the sacrificial altar, the smoke went up straight as a staff until it reached the clouds; but the pillar of the incense went up from the golden altar in the direction of the Holy of Holies.

"*They stood serried and bowed down,*" etc. When the Israelites came up to kneel before their Father in Heaven, it was so that they were compact and no one could put his finger between them, but when kneeling every one had ample space. The greatest wonder of all was, that even when a hundred people entered at once there was no need for the inspectors of the synagogue to proclaim: "Make room for your brother!" (Some think that) the greatest wonder of all was, that when all stood up in prayer they were compact and no one could put his finger between them, but when they bowed there was a space of a man's height between them.

Said Rabban Simeon b. Gamaliel: Jerusalem is destined that all the nations and kingdoms should be gathered together in it, as it is written [Jer. iii. 17]: "And all the nations shall be gathered unto it, to the name of the Lord"; and further: "Let the waters be gathered together" [Gen. i. 9]. As "the gathering together" there means that all the waters of creation shall be in one place, so also "the gathering together" here means that all the nations and kingdoms shall be assembled in it.

Tosephtha—Aboth of R. Nathan.

*“*The men of Sodom*”—have no share in the world to come, and they are not judged, as it is written [Gen. xiii. 13]: “But the men of Sodom were wicked and sinners before the Lord exceedingly.” “Wicked”—one with another; “sinners”—in consanguinity; “before the Lord”—inasmuch as they desecrated the name of God; “exceedingly”—they did all that intentionally. And it is written [Ps. i. 5]: “Therefore shall the wicked not be able to stand in the judgment, nor sinners in the congregation of the righteous.” The first part of the passage relates to the generation of the flood, and the second to the men of Sodom. R. Nehemiah said: “Even in the congregation of the wicked they are not included, as it is written [ibid. civ. 35]: ‘May the sinners cease from off the earth, and the wicked be no more.’”

Small children of the wicked have no share in the world to come, and are not judged, as it is written [Mal. iii. 19]: “For, behold, the day is coming which shall burn as an oven . . . who will not leave them root or bough.” Such is the dictum of R. Eliezer. R. Joshua, however, said: They are included, and the words, “who will not leave them root or bough,” refer to their own bodies, as it is written [Dan. iv. 11]: “He called with might, and thus he said: Hew down the tree and lop off its branches, strip off its leaves and scatter its fruit”; and further [ibid. 12]: “Nevertheless leave the body of its roots in the earth, but (bound) with fetters of iron and copper.” As in both passages roots are mentioned, and as the roots mentioned there refer to the trunk of the tree, so the roots here refer to the body of man. If so, what do the words, “who will not leave them root or bough,” imply? That no reward shall be found on which they could depend.

Others say: “They are included, and to them refers what is written [Is. xlv. 5]: “This one will say, I belong to the Lord; and the other will call himself by the name of Jacob; and the other will inscribe himself with his hand unto the Lord, and surname himself by the name of Israel.” “This one will say, I belong to the Lord,” refers to the perfectly righteous; “and the other will call himself by the name of Jacob” refers to the small children of the wicked; “and the other will inscribe him-

* Chapter XXXVI. of the original.

self with his hand unto the Lord" refers to the wicked who left off their wickedness, turned back, and repented; and, "and surname himself by the name of Jacob" refers to proselytes.

Korah and his company have no share in the world to come, and are not judged, as it is written [Numb. xvi. 33]: "And the earth closed over them, and they disappeared from the midst of the congregation." Such is the decision of R. Eliezer. R. Joshua, however, said: "They are included, and the words, 'The Lord killeth, and maketh alive: he bringeth down to the grave, and bringeth up' [I Samuel, ii. 6], have reference to them, because here is mentioned the grave, as it is written [Numb. xvi. 33]: 'And they went down, they and all they that appertained to them, alive into the pit.'*" Also there it is mentioned, in both cases the bringing up from the grave is included." Said R. Eliezer to him: "If so, how are we to understand, 'And the earth closed over them and they disappeared from the midst of the congregation'?" He answered: "We are to understand that they disappeared from the midst of the congregation, but not from the world to come."

The generation of the desert have no share in the world to come, and are not judged, as it is written [ibid. xiv. 35]: "In this wilderness shall they be spent, and therein shall they die"; and further [Ps. xcv. 11]: "So that I swear in my wrath that they should not enter into my rest." Such is the dictum of R. Eliezer. R. Joshua, however, said: "They are included, and the words, 'Gather together unto me my pious servants, who make a covenant with me by sacrifice' [Ps. l. 5], have reference to them." Said R. Eliezer to him: "If so, how dost thou explain the words, 'so that I swear in my wrath'?" He answered that this had reference to the spies, and all equally wicked of that generation. "But," continued R. Joshua, "I am anxious to know how thou dost apply the words: 'Gather together.'" "I apply them," said the other, "to Moses, Aaron, the pious of the generation, and the tribe of Levi." R. Jose the Galilean said: "They are not included, for it is written [Numb. xiv. 35]: 'In this wilderness shall they be spent, and therein shall they die'; and further [Deut. xxi. 4]: 'And they shall break there the neck of the heifer in the valley.' As the word 'there' mentioned here means that it shall die and not be moved from its place, so also the 'there' mentioned in that

* The Hebrew term for both "grave" and "pit" is *sheol*, hence the analogy.

passage means that they shall die and not be moved from their places." An objection was raised, namely: Is in that passage the word "there" mentioned in connection with the wicked only, and not with the upright? Is it not said [Gen. xlix. 31]: "*There* they buried Abraham and Sarah his wife"; and further [ibid. 5]: "In my grave, which I have dug for me in the land of Canaan, *there* shalt thou bury me"; and also [Numb. xx. 1]: "And Miriam died *there* and was buried *there*"; and further [ibid. xxxiii. 38]: "And Aaron the priest went up . . . and died *there*"; and further [Deut. xxxiv. 5]: "And Moses the servant of the Lord died there in the land of Moab, according to the order of the Lord"? Said Rabban Gamaliel: It is written [Deut. xi. 21]: "In order that your days may be multiplied, and the days of your children in the land which the Lord swore unto your fathers to give unto them." It refers to the resurrection, when the parents and the children both will enjoy the same longevity. R. Jose the Galilean sides with R. Eliezer, and R. Gamaliel sides with R. Joshua.

The ten tribes have no share in the world to come, and are not judged, as it is written [Deut. xxix. 27]: "And the Lord plucked them out of their land . . . and he cast them into another land, as it is this day." Said R. Simeon b. Jacob: "As the day in which they have rebelled will never return, even so will they not return." R. Aqiba, however, said: "As the day is first dark and then lightens up, so also their darkness will be followed by light."

The following seven have no share in the world to come: A scribe, a teacher of little children, even the best of physicians, the city judge, the store-keeper, the beadle, and the butcher.

There are three kings and four commoners who have no share in the world to come. The three kings are: Jeroboam, Achab, and Menasseh; the four commoners are: Balaam, Doeg, Achitophel, and Gehazi. Said R. Jehudah: Menasseh has already repented, as it is written [II Chron. xxxiii. 13]: "And he prayed unto him, and he permitted himself to be entreated by him . . . and brought him back to Jerusalem, unto his kingdom." They argued against him thus: "Had the verse stated merely, 'and brought him back to Jerusalem,' we would then agree with thee, but since it is added, 'unto his kingdom,' it can be said that He returned him to His kingdom, but not to a life in the world to come."

Said R. Meir: "Absalom has no share in the world to come."

Said R. Simeon b. Elazar: "Achaz, Achaziah, and all the kings of Israel who were wicked have no share in the world to come."

Said R. Johnan b. Nuri: "Also one who pronounces the Name as it is written has no share in the world to come."

He used to say: "One who scans the Song of Songs (like a secular poem), and one who cannot speak above whispering or has turned yellow in consequence of a wound or recites (in ridicule) the passage, 'I will put none of those diseases upon them,' etc. [Gen. xv. 26], has no share in the world to come." And the sages say: Every disciple who has studied, and then abandons his studies, has no share in the world to come, as it is written [Numb. xv. 31]: "Because the word of the Lord hath he despised"; and further [Jer. ii. 5]: "What fault did your fathers find in me, that they went away far from me?"

R. Meir said: "Whoever does not visit the college which is in his city has no share in the world to come"; and R. Aqiba said: "Also those who do not serve the sages."

MISHNA I. Seven things mark the clod,* and seven there are for the sage. The wise man does not speak before those who surpass him in wisdom and years; he does not interrupt another in his speech, he is not hasty in answering; he does not ask questions rashly; asks with propriety and to the point; speaks first upon the matter first in order, and last upon last; when he does not understand the matter under discussion, he confesses, "I do not understand it"; and admits it when he has been convinced. The opposite of these things mark the clod.

Tosephtha—Aboth of R. Nathan.

† There are seven creations of as many grades of importance. The sky is very important; but more important are the stars, because they light up the world. Of a higher grade than the stars are the trees, because they produce fruit, and the stars do not. More significant than the trees are the pernicious winds, because they move hither and thither, and the trees do not. Greater than the pernicious winds is the beast, for the beast is

* According to Maimonides.

† Chapter XXXVII. of the original.

active and eats, which the former cannot do. Of a higher kind of development is man; for man is intellectual, and the beast is not. More excellent than man are the ministering angels; for they are able to traverse from one end of the world to another, which man cannot do.

Man possesses six qualifications three of which belong also to the beast, and three to the angels: Man eats and drinks, multiplies, and excretes just like a beast; but he is endowed with intellect, walks erect, and speaks in the holy language, just as the angels do.

The evil spirits (Shedim; Deut. xxxii. 17) possess six qualifications three of which belong to man, and three to the angels; namely, they eat and drink, multiply, and die as men do; but they have wings, a knowledge of the future, and traverse from one end of the world to another, just as the angels do.* There are others who say: They also can assume any shape and form they like, and see but are not seen.

The rabbis taught: † There are seven sorts of hypocrites (who try to show themselves as if they were of the true Pharisees), and they are: Shichmi; Niqpi; Qoosai; Medukhia; "What more is my duty, and I will do it?"; Pharisee of love; and Pharisee of fear.

Shichmi—i.e., who acts like Shechem (Gen. xxxiv.), (who allowed himself to be circumcised, not to please God but for his own benefit). *Niqpi—i.e.*, one who walks tiptoe (so that he strikes his feet against stones or other obstacles in the way), in order to show his meekness and thereby attract attention. *Qoosai—i.e.*, one who shows himself as walking with his eyes shut in order not to look upon women, and strikes his head against a wall and bleeds. Such is the interpretation of R. Nahman b. Itz'hak. *Medukhia—i.e.*, who so bends his body while walking that he resembles a pestle. Such is the interpretation of Rabba b. Shila. "What more is my duty," etc. Why is this hypocrisy? It means that he is boasting of having done every possible good thing, and challenges that he shall be told what more there is to be done and he will do it. "Pharisee of love," etc. Abayi and Rabha both said to the scholar who repeated

* See Section Moed, Vol. VI., Hagiga, 37. The repetition here is because of this addition.

† Here is a statement which is repeated in Tract Sota, 22b, under the heading: "The rabbis taught." As there it is more comprehensible, we prefer to give it here in that form.

this: "Do not place love and fear with the hypocrites, as R. Jehudah said in the name of Rabh: 'Always shall one occupy himself with Torah and merits even not for the sake of Heaven, for once he makes it his custom to do so he will finally come to do it for the sake of Heaven.'"

Said R. Nahman b. Itz'hak: "That which is hidden (in one's heart) is only so from human beings, but not from Heaven; and even visible hypocrisy can only be punished by the Upper Court." Said Janai the king to his wife: "Do not fear of the Pharisees, neither of those who claim to be their opponents; but do fear of the colored ones (who put on false colors), who in reality act like Zimri (Numb. xxv.), and demand the reward of Phinehas."

There are seven things which, if used moderately, are wholesome to the body, and if in excess, are the reverse: Wine, work, sleep, wealth, travel, warm water, and the letting of blood.

With seven things God created the world. They are as follows: Wisdom, understanding, knowledge, strength, might, kindness, and mercy. And as He has created the world with seven things, so also has He created seven ancestors—three fathers and four mothers.

Seven attributes are serving before the Throne of Grace, viz.: Faithful, Righteous, Justice, Kind, Merciful, Truth, Peace, as it is written [Hosea, ii. 21, 22]: "And I will betroth thee unto me for ever: yea, I will betroth thee in righteousness, and in justice, and in loving-kindness, and in mercy. And I will betroth thee unto me in faithfulness; and thou shalt know the Lord"; and further [Ps. lxxxv. 11]: "Kindness and truth are encountered together; righteousness and peace kiss each other." And what signifies, "and thou shalt know the Lord"? Any one who is possessed of these attributes has a knowledge of the wisdom of the Omnipotent.

There are seven dwelling-places: The high, the low, the atmosphere, and the four winds. Said R. Meir: There are seven heavens: Curtain, firmament, welkin, dwelling-house, habitation, settled place, nebulae. Accordingly the earth has seven names: Land, earth, realm, dry land, globe, and nether world. Why is it so named? Because it is seasoned with every thing. Others say, because it destroys all.

"*A wise man does not speak before those who surpass him in wisdom and years.*" This refers to Moses, as it is written [Ex. iv. 30]: "And Aaron spoke all the words which the Lord had

spoken unto Moses, and he did the signs before the eyes of the people." Now, then, who of the two was competent to speak? Naturally, Moses; for he had the message direct from God, and Aaron only heard it from Moses. But Moses considered that it was not seemly to speak in the presence of his elder brother; he therefore conferred upon Aaron the honor of being speaker.

"*Does not interrupt*," etc.—refers to Aaron, as it is written [Lev. x. 19]: "And Aaron spoke unto Moses: Behold, this day have they offered their sin-offering, and their burnt-offering," etc. He was silent till Moses ceased speaking, and did not even say to Moses to be brief in his utterances. There are others who say that Aaron took him aside and said: "My brother Moses, tithes, which are less important than any other offering, a mourner (before the burial of the dead) is prohibited from eating them; a sin-offering, which is of great importance, so much the more should it be forbidden to him." And Moses at once admitted that he was right, as it is written [ibid. 20]: "And when Moses heard this, it was pleasing in his eyes," and in the eyes of the Mightiness.

"And he was angry with Elazar and Ithamar the sons of Aaron" [ibid. 16]. Learn from this that when one teaches his disciples he usually keeps his eyes on the great one, and when he is angry, he turns his anger to the one who is least: for he was angry even with Aaron.

Aaron was older than Moses, and the Lord is greater than Aaron, and why did He not speak to Aaron? Because his other sons did not prevent Nadab and Abihu from committing a sin.

We find with Abraham our father, when he was praying for the men of Sodom, the Holy One, blessed be He, said: "If I find in Sodom fifty righteous within the city, then will I spare the whole place for their sake" [Gen. xviii. 26]. The One who said: "There shall be the world," very well knew that there were not in Sodom even four or five righteous, only He waited till Abraham finished, and then answered him, as it is written [ibid. 33]: "And the Lord went away when he had finished speaking with Abraham; and Abraham returned unto his place."

"*He is not hasty in answering*"—refers to Elihu the son of Barachel the Buzite, as it is written [Job, xxxii. 7]: "I had said, Days shall speak." Infer from this that they were sitting silently before Job. When he rose, they also arose; when he sat down, they did likewise; when he ate or drank, they did as he did, until Job asked their permission to speak, as it is writ-

ten [ibid. iii. 1-3]: "And after this time Job opened his mouth, and cursed his day. . . . Let that day whereon I was born perish, and the night when it was said, There hath been a male child conceived." The night when my mother came to my father and told him that she was pregnant shall perish. And whence do we know that they did not all speak at once? As it is written [ibid. 2]: "And Job commenced, and said"; and, "Then answered Eliphaz the Themanite, and said" [ibid. iv. 1]; and, "Then answered Bildad the Shuchite, and said" [ibid. viii. 1]; and, "Then answered Zophar the Naamathite, and said" [ibid. xi. 1]; and, "And Elihu the son of Barachel the Buzite commenced, and said" [ibid. xxxii. 6]. Scripture has enumerated them one by one for the purpose of informing all who come into the world that the wise does not speak before one who is greater than he.

"And does not interrupt another in his speech; asks with propriety"—refers to Jehudah, as it is written [Gen. xliii. 9]: "I will be surety for him."

"Asks unwarranted"—refers to Reuben, as it is written [ibid. xlii. 37]: "And Reuben said unto his father, thus: Two of my sons shalt thou slay."

"Speaks first upon the matter which is first in order," etc.—refers to Jacob. Others say to Rebecca, and still others say to the men of Haran.

"And says: 'I have not heard it,' when he actually did not hear"—refers to Moses, as it is written [Numb. ix. 7, 8]: "And these men said unto him . . . and Moses said unto them, Wait ye, and I will hear what the Lord," etc.

"Admits the truth"—also refers to Moses, as it is written [Lev. x. 20]: "And when Moses heard this, it was pleasing in his eyes." Also the Holy One, blessed be He, confessed to the truth, as it is written [Numb. xxvii. 7]: "The daughters of Zelophchad speak rightly."

MISHNA J. Seven kinds of punishments come on account of seven cardinal transgressions. When some men tithe, and some do not tithe, dearth comes from drought; some of them are hungry, and some of them are satiated. When they have not tithed at all, a dearth comes from tumult and from drought. And when they have not separated the first dough, a deadly dearth comes.

MISHNA *K*. Pestilence comes unto the world for the capital crimes mentioned in the Torah, which are not to be brought before the tribunal,* and for the seventh-year fruits.

MISHNA *L*. The sword comes upon the world for suppression or perversion of judgment, and also for false interpretation of the Law.

MISHNA *M*. Noisome beasts come into the world for vain swearing, and for profanation of the Name. Captivity comes upon the world for idolatry, for incest and for shedding of blood, and for not observing the Sabbatical year.

MISHNA *N*. At four seasons the pestilence waxes: in the fourth year, in the Sabbatical year; at the ending of the latter, and at the ending of the Feast in every year—in the fourth, on account of the poor's tithe in the third; in the seventh, on account of the poor's tithe in the sixth; and at the ending of the seventh, on account of the fruit of the Sabbatical year; and at the ending of the feast in every year, on account of the largesses of the poor.

Tosephtha—Aboth of R. Nathan.

† “*Seven kinds of chastisements*,” etc. Said R. Jose: Because of the sin of the first dough, there is no blessing in the fruit, and the people are delivered into the hands of their enemies, as it is written [Lev. xxvi. 16]: “And ye shall sow in vain your seed; for your enemies shall eat it.” For the sin of offerings and tithes the heavens withheld the rain and dew, as it is written [Job, xxiv. 19]: “Drought and heat speedily consume the snow waters,” etc.

A plague comes to the world because of the sin of gleanings, forgotten sheaves, the corners and the tithes for the poor.

It happened that a woman who was the neighbor of a landowner sent her two children to glean in his field, but he did not

* According to Rashi, it means when the Jewish tribunal ceased its existence during the last years of the Second Temple; and according to other commentaries it means Kareth and heavenly death, with which the earthly tribunals had nothing to do.

† Chapter XXXVIII. of the original.

let them. In their absence their mother wished that they return home, thinking they might bring something to eat; and they, too, wished to return home, thinking that their mother might have something to give them to eat. Coming home empty-handed and finding nothing at home to eat, the disappointment and the sorrow all around were so great that all three died in one day. Said the Lord: Ye took away their lives, I also will take away your lives, as it is written [Prov. xxii. 22, 23]: "Rob not the poor, because he is poor, neither crush the afflicted in the gate; for the Lord will plead their cause, and despoil the life of those that despoil them."

"*The sword comes upon the world*," etc. When R. Simeon b. Gamaliel and R. Ishmael b. Elisha the high-priest were seized and condemned to die, and the former was wondering and saying: "Woe to us, that we are to be slain as intentional violators of the Sabbath, idolaters, uncoverers of consanguinity, or blood-shedders." Said the latter to him: "Dost thou desire that I shall say something before thee?" And he answered: "Say!" Whereupon he said: "Mayhap when thou wert dining poor people came to thy door, but were forbidden to enter by the doorkeeper?" And R. Simeon answered: "By heaven, this was not done. On the contrary, watchmen were placed at my door: when they saw the poor approaching, they brought them to my table and were given food and drink, and they blessed heaven." "Perhaps when thou wert sitting at the Temple mount and lecturing, and all the multitudes of Israel were sitting before thee, thou hadst become haughty for a moment?" "No, my brother Ishmael, I have never done that; but man should be prepared for affliction (without any reason whatever)."

They then beseeched the executioner in the following manner: One said: "I am a priest, the son of a high-priest. Kill me first, and spare me the pain of seeing my colleague die." And the other said: "I am a prince, the son of a prince. Kill me first, and spare me the pain of seeing my colleague die." And he advised them to cast lots. They did so, and it fell on Rabban Simeon b. Gamaliel. Whereupon the executioner took the sword and cut off his head. R. Ishmael held it to his bosom, and wept and cried: "The holy mouth, the truthful mouth, a mouth whence issued precious stones, diamonds, and pearls, who has hidden thee in the dust, and who has filled thy tongue with dust and ashes? Thou art meant in the prophetic excla-

mation [Zech. xiii. 7]: 'Awake, O sword, against my shepherd, and against the man whom I have associated with me.' " Scarcely had he finished when also his head was struck off. To them Scripture refers when it is said [Ex. xxii. 23]: " My wrath shall wax hot, and I will slay you with the sword; and your wives shall be widows, and your children fatherless." As the men are slain, is it not self-evident that the women become widows? (Why, then, does Scripture say: " And your wives shall be widows"?) To convey the idea that they were and were not widows; *i.e.*, there was no evidence that the men were killed, as it happened in Bythar, where not a soul escaped to give evidence of any man's death, and consequently the women could not marry again. " And the children shall become fatherless " means that they could not inherit the property of their father, for the same reason.

" *Captivity comes upon the world,*" etc. Because of idolatry, as it is written [Lev. xxvi. 30]: " And I will destroy your high places "; and [ibid. 33]: " And you will I scatter among the nations "; and further [Deut. iv. 25]: " When thou begettest children," etc.; and [ibid. 27]: " And the Lord will scatter you among the nations "; and [ibid. 28]: " And ye will serve their gods, the work of man's hands." The Holy One, blessed be He, said: " As you are desirous of being idolatrous, I will exile you to a place where idolatry prevails."

For not observing the Sabbatical year. Whence do we know this? It is written [Lev. xxvi. 34]: " Then shall the land satisfy its Sabbaths," etc. Said the Holy One, blessed be He: " Because ye do not observe the Sabbatical year, the land itself will observe it; and the number of months that ye fail to observe it, the land itself will observe it." For that reason it is written [ibid.]: " Then shall the *land* satisfy its Sabbaths, *all the days* of its desolation."

Tosephtha—Aboth of R. Nathan.

* Five are not to be forgiven: The one who sins relying that he will repent, and repents and sins again (and thus he sins too much and repents too much); the one who sins relying upon the forgiveness of the day of atonement; and the one who instigates others to sin; and the one who is guilty of profaning the Holy

* Chapter XXXIX. of the original.

Name. And were it not for the sins of mankind, the keys to the mysteries would have been intrusted to man, and he would know by what means earth and heaven were created and also what there is above. R. Aqiba used to say: "Everything is foreseen and unconcealed, and everything is according to one's understanding." He also used to say that everything was given as a pledge, and a net is spread out for all living, etc. The repentance of the wicked delays the execution of their judgment; their verdict, however, remains sealed until they make restitution. The quietness of the wicked (without having remorse) ends badly. Superiority buries its claimers.

A man arrives into this world naked and leaves it in the same state, and it is desirable that the leaving should be as (sinless) as the coming. For profaning the Holy Name there is no repentance pending, and the Day of Atonement does not forgive. Repentance forgives till the day of death, and that day wipes out (all sin). The wicked are paid (in this world) and the upright are given credit (that is to say, the wicked that have studied the Law without performing what is written therein and otherwise have done nothing good, and those upright that have studied the Law with a good intention and have done no evil—these and those are given a small portion of what they earned), and the greater part is counted to them for the future.

R. Elazar b. Zadoq says: The upright in this world can be compared with a tree whose trunk grows on a clean spot, while one of its branches extends over an unclean spot, of which people say: Cut off the branch, and the whole tree will be on a clean spot. The wicked ones can be compared with a tree standing on an unclean spot and extending its branches to a clean spot, in which case, if the branches would be cut off, the whole tree would stand on an unclean spot.

Six different names were applied to the lion: Arjah, Cphir, Lobhi, Laish, Sha'hal, Sha'haz. Six names were applied to the serpent; viz., Na'hash, Soroph, Tanin, Ziphoni, Epheh, Achshubh. Six names were applied to Solomon; namely, Solomon, Jedidiah, Koeleth, Ben Iokoh, Ogur, L'muel.

MISHNA O. Four kinds of views are held by men concerning property. He who says: "What belongs to me shall continue to be mine, and thou shalt keep thine own," holds the common view. Some consider this the view of

the men of Sodom.* "Mine shall be thine, and thine shall be mine," thus say the ignorant. "Mine shall be thine, and thou shalt also keep thine own," thus says the magnanimous. "Thine shall be mine, and mine shall continue to be mine," are the words of the godless.

MISHNA *P*. There are four kinds of dispositions among men. Some are easily enraged, but as quickly soothed—there the fault is neutralized by the merit. Some are slow to anger, but are calmed only with difficulty—there the merit is counterbalanced by the fault. One is slow to anger and easily pacified—he is of a gentle disposition. Another is easily irritated and hard to soothe—he is a wicked man.

MISHNA *Q*. There are four kinds of pupils: one understands readily but forgets soon—there the advantage is swallowed by the failing; another grasps but slowly, and seldom forgets—there the failing is outweighed by the talent; a third understands readily and is slow to forget—his is a good portion; a fourth understands slowly and forgets quickly—his is a poor endowment.

MISHNA *R*. There are four kinds of charity-givers: He who gives but does not care that others should give—his eye is evil towards others (*i.e.*, the charity-giver shall not have the pleasure of doing charity and the poor shall be deprived of it); he who makes others give, but does not give himself, does not make the best use of his own; he who gives, and makes others give, is pious; but he who neither gives nor suffers others to give is a cruel man.

MISHNA *S*. There are four kinds of visitors of the house of learning: he that goes and does not practise (*i.e.*, he accepts the lessons without any examination or study of them), the reward of going only remains with him; he that practises (*i.e.*, he who studies at home) and does not go, the reward of practice remains with him; he

* *I.e.*, "I do not wish to derive benefit from others, and no one shall derive benefit from me." This was the method of the Sodomites.

that does both is pious ; he that enrolls among the college visitors, but neither goes nor practises, is wicked.

MISHNA *T*. There are four kinds of the disciples of the wise : sponge, funnel, strainer, and sieve ; sponge—sucking up all things ; funnel—allowing all that is received in the one end to flow out at the other ; strainer—letting the wine run through and retaining the dregs ; sieve—blowing off the bran and keeping the flour.

MISHNA *U*. Love, inspired by ulterior motives, dies out when those motives disappear ; but love without such motives never fades.

MISHNA *V*. What love is that which is inspired by ulterior motives ? *E.g.*, the love of Amnon and Tamar. And what love is without such motives ? *E.g.*, the love of David and Jonathan.

MISHNA *W*. Whatsoever gainsaying is for the sake of Heaven will have good results, and that which is not for the sake of Heaven will not have the desired result.

MISHNA *X*. What gainsaying is that which is for the sake of Heaven ? *E.g.*, the gainsaying of Hillel and Sham-mai. And that which is not for the sake of Heaven ? *E.g.*, the gainsaying of Korah and his followers.

MISHNA *Y*. Whosoever causes many to be righteous, sin prevails not over him ; and whosoever causes many to sin, they grant him not the faculty to repent.

MISHNA *Z*. Moses, who was righteous and caused many to become righteous, the righteousness of the many was therefore laid upon him, as it is written [Deut. xxxiii. 21] : " He executed the justice of the Lord, and his judgment with Israel."

Jeroboam, who on the contrary sinned and caused many to sin, the sin of the many, therefore, was laid upon him, as it is written [I Kings xiv. 16] : " For the sake of the sins of Jeroboam, who did sin, and who induced Israel to sin."

MISHNA *AA*. In whomsoever are the following three things, he is a disciple of Abraham, and in whomsoever are the contrary three things, he is a disciple of Balaam.

MISHNA BB. He who possesses a good eye, a modest spirit, and a humble mind is to be counted the disciple of Abraham our father; an evil eye, a haughty spirit, and a bombastic mind is to be counted the disciple of Balaam. And what difference is there between the disciples of Abraham and those of Balaam? The disciples of Balaam go down to Gehenna, as it is written [Ps. lv. 24]: "But thou, O God, thou wilt bring them down into the pit of destruction: let not the men of blood and deceit live out half their days; but I will indeed trust in thee." But the disciples of Abraham derive benefit in this world and inherit the world to come, as it is written [Prov. viii. 21]: "That I may cause those that love me to inherit a lasting possession; and their treasures will I fill."

MISHNA CC. Jehudah b. Tema was in the habit of saying: "Be courageous as the panther, light-winged as the eagle, swift as the deer, and strong as the lion, to execute the will of thy Heavenly Father."

MISHNA DD. He used to say: "Gehenna will be the place for the bold of face, and the Garden of Eden will be that for the shamefaced."

MISHNA EE. He used to say: "One five years old should study Scripture; ten years—Mishna; thirteen years—should practise the commandments; fifteen years old—should study Gemara; eighteen years old—the bridal; at twenty—pursuits; at thirty—strength; at forty—discernment; at fifty—counsel; at sixty—age; at seventy—hoariness; at eighty—power; at ninety—decrepitude; at one hundred—it is as though he were dead and gone and had ceased from the world."

MISHNA FF. Ben Bag-Bag said: "Turn it, and turn it again (the Torah), for everything can be found therein. Study it, get old and gray with it, and never depart from it; for there is no better gauge of a moral life than—the Torah."

MISHNA GG. Ben He-He said: "The reward is commensurate with the affliction."

CHAPTER VI.

[Wise men have taught in the Mishna tongue. Blessed is He that made choice of them and their Mishna.]

MISHNA *A*. R. Meir said : " Whosoever is busied in Torah for the love thereof merits many things ; and not only so, but he is worth the whole world, as he is called friend, beloved, loves the Omnipotent and mankind ; pleases the Omnipotent and mankind. And it clothes him with meekness and fear, and fits him to become righteous, pious, upright, and faithful ; and removes him from sin, and brings him toward the side of merit. And they derive from him the benefit of good counsel, and sound wisdom, understanding, and strength, as it is written [Prov. viii. 14] : ' Mine are counsel and sound wisdom : I am understanding ; mine is might.' And it gives him kingdom and dominion, and faculty of judgment. And they reveal to him secrets of Torah ; and he is made, as it were, a spring that ceases not and as a river that flows on increasing. And he becomes modest and long-suffering, and forgiving of insult, and it magnifies him and exalts him over all things."

MISHNA *B*. Said R. Jehoshua b. Levi : " Every day a Heavenly voice goes forth from Mount Horeb, and proclaims as follows : ' Woe to the creatures for contempt of the Law, for whosoever does not occupy himself in the Law is called "blameworthy,"' as it is written [Prov. xi. 22] : ' As a golden ring in a swine's snout, so is a handsome woman that hath thrown off discretion ' ; and it is also written [Ex. xxxii. 16] : ' And the tables were the work of God, and the writing was the writing of God, engraved (*charuth*) upon the tables.' Do not read *charuth*, graven,

but *cheruth*, freedom, for there is no free man but him who is occupied in the study of the Law; as whosoever is occupied in such study, behold he exalts himself, as it is written [Numb. xxi. 19]: 'And from Mattanah to Nachaliël; and from Nachaliël to Barmoth.'

MISHNA C. He who learns from his companion one chapter, or one Halakha, or one verse, or one word, or even one letter is bound to do him honor, for thus we find with David, King of Israel, who learned from Achitophel two things only, and nevertheless he named him his master, his guide, and his acquaintance, as it is written [Ps. lv. 14]: "But it is thou, a man my equal, my guide, and my acquaintance." And is there not an *a fortiori* conclusion to be drawn from this, that as David, King of Israel, who learned from Achitophel two things only, called him his master, his guide, and his acquaintance, he who learns from his companion one chapter, or one Halakha, or one verse, or even one letter is so much the more bound to do him honor? And honor is nothing but the Torah, as it is written [Prov. iii. 35]: "The wise shall inherit glory"; and also [ibid. xxviii. 10]: "But the men of integrity will inherit what is good"; and good is nothing but the Torah, as it is written [ibid. iv. 2]: "For good information do I give you, my teaching (Torah) must ye not forsake."

MISHNA D. This is the path of Torah: A morsel with salt shalt thou eat. Thou shalt drink also water by measure (Ezek. v. 11) and shalt sleep upon the ground, and live a life of painfulness, and in Torah shalt thou labor. If thou doest thus, "happy shalt thou be and it shall be well with thee" [Ps. cxxviii. 2]. "Happy shalt thou be" in this world, and "it shall be well with thee" in the world to come.

MISHNA E. Seek not greatness for thyself, and desire not honor. Practise more than thou learnest, and lust not for the table of kings, for thy table is greater than theirs, and thy crown greater than their crown, and faithful is

thy taskmaster, who will pay thee the wage of thy work.

MISHNA *F*. Greater is Torah than the priesthood, and than the kingdom ; for the kingdom is acquired by thirty degrees, and the priesthood by twenty-four, and the Torah is acquired by forty-eight. And these are they : by learning, by a listening ear, by orderly speech, by discernment of heart, by reverence, by fear, by meekness, by cheerfulness, by purity, by attendance upon the wise, by discussion with associates, by argumentation of disciples, by sedateness, by Scripture, by Mishna, by moderation of business, limitation of worldly things, by temperance in pleasure, by little sleep, by lessening converse, by reducing merriment, by long-suffering, by a good heart, by faith in the wise, by acceptance of chastisements ; he that knows his place, and that rejoices in his portion, and that makes a face to his words, and does not claim merit to himself : he is loved, loves God, loves all creatures, loves righteousness, loves uprightness, loves reproofs, and retires from honor, and does not puff up his heart on account of his learning, and does not rejoice because he is privileged to give decision, bears the yoke with his associates, and inclines him to the scale of merit, and grounds him upon the truth and upon peace, and concentrates his mind in study, asks and answers, hears and adds thereto ; he that learns in order to teach, and learns in order to practise ; that makes his master wiser, and that considers what he has heard, and tells a thing in the name of him that said it. Lo, thou hast learned that whosoever tells a thing in the name of him that said it brings redemption to the world, as it is written [Esther, ii. 22] : “ And Esther said it to the king in the name of Mordecai.”

Tosephta—Aboth of R. Nathan.

* There are four things which bear good fruit in this world, and yield greater benefits for the world to come, if man observes

* Chapter XL. of the original.

them. They are honoring of parents, conferring favors, reconciliation of adversaries, and, above all, the study of the Law. There are four things for which one who is guilty of them is punished both in this and in the world to come; namely, idolatry, incest, shedding of blood, and, above all, slander.

A meritorious act has both principal and benefit, as it is written [Is. iii. 10]: "Say ye to the righteous, that he hath done well; for the *fruit* of their doings shall they eat." A transgression has principal but no benefit, as it is written [ibid. 11]: "Woe unto the wicked . . . for the *recompense* of his hands," etc. According to others, transgressors have benefit, as it is written [Prov. i. 31]: "Therefore shall they eat of the *fruit* of their own way," etc.

"*One who causes many to be righteous, no sin prevails upon him.*" In order that he might not go to Gehenna, while his disciples will enjoy the world to come, as it is written [Ps. xvi. 10]: "For thou wilt not abandon my soul to the grave." On the other hand, "*One who causes others to sin is never afforded the faculty to repent*"—also for the reason that the reverse of the above shall not be the case, as it is written [Prov. xxviii. 17]: "A man oppressed by the load of having shed human blood will flee even to the pit."

One who says, "I will sin and then do repentance," is not afforded the opportunity to repent; "I will sin, and the Day of Atonement will atone for it," or, "I will sin, and the day of death will wipe it out"—it does not do so.

R. Elazar b. Jose says: "One who has sinned and repented, and thenceforward seeks to perfect himself, does not move from his place until he is forgiven; and one who says that he will sin and repent thereafter, he is forgiven only up to three times, and no more."

"*There are four characters among men,*" etc. There are four characters among disciples: one who desires to teach and that others shall do likewise, he is of a good disposition; if he desires to teach, but does not like to see others do the same thing, he is of bad disposition. That others shall teach, and not he—this is medium. According to others, this is the character of Sodom (as the Sodomites did not want any one to derive any benefit from them). If, however, he wishes that neither he nor others shall teach, he is decidedly wicked.

There are four characters among those who sit in the house of learning. One who becomes friendly (with the sages who

study there) and studies with them has a share (with the sages); one who befriends himself but does not study with them has no share; one who estranges himself (from the sages) but studies himself has a share; and the one who both estranges himself and does not study has no share.

One who propounds questions and gives their answers has a share (in the world to come); one who only questions has none; one who sits and keeps silent has a share. One who befriends himself in order that he might listen and learn has a share; if he befriends himself in order that others might say that he befriends himself and sits before a wise man, he has none. If he sits at a distance in order to accord honor to one who is superior to him, he has a share; if, however, the reason is that others might say that he does not need that sage, he has none. One that propounds questions and gives their answers in order that others might say that he propounds questions and gives their answers and serves the scholars, has no share; if, however, he does so in order really to learn something, he has. If he sits silent in order to listen and learn, he has a share; if, however, the purpose is that others might say that he does so, he has none.

"There are four different characters among students," etc. One resembles a sponge: as a sponge absorbs all liquids, so does that kind of student absorb all that he studies: Scripture, Mishnah, Midrash, Halakhoth, and Agadoth. One is like a sieve: as a sieve passes through the fine flour and retains the coarse particles, so an intelligent student retains what is good in the study and leaves out what is not. One is like a funnel: as it lets in the liquid through one opening and lets it out through the other, so is it with the unintelligent student—what enters his one ear goes out through the other, until all is gone. The fourth student is like a wine-strainer which lets the wine pass through and absorbs the dregs: so also the wicked student forgets the good teachings and retains the bad ones.

R. Eliezer b. Jacob named the last one a horn (which lets in the liquids at one end and lets them out at the other). How so? For instance, a child who is given a pearl, he will drop the latter when given a slice of bread; and when given a potsherd he will drop the bread, and finally he has nothing but the potsherd.

As to disciples, R. Gamaliel the elder compares them to the following four kinds of fish: an unclean, a clean fish, a fish found

in the Jordan, and one found in the Ocean. By an unclean fish is meant a disciple of poor intellect, who, notwithstanding his study of Scripture, Mishna, Halakhoth, and Agadoth, still remains poor-minded. By a clean fish is meant a disciple of rich intellect, who studies Scripture, Mishna, Halakhoth, and Agadoth, and develops his mind. By a fish from the Jordan is meant a scholar who has studied all the mentioned subjects, but has not acquired the faculty of answering questions put to him. And by a fish found in the Ocean is meant a scholar who studied all the above subjects and has the ability of answering the questions put to him.

With regard to sight, it may be said that there are four different misfortunes: those that see and are visible, *e.g.*, the wolf, the lion, the leopard, the bear, the hyena, the serpent, robbers, and soldiers (who in time of war commit robbery); those that are visible but do not see, *e.g.*, the sword, the arrow, the spear, the knife, the stick, the lance; those that see but are not visible, *e.g.*, the plague of an evil spirit; and those that neither see nor are visible, *e.g.*, the plague of stomach trouble.

There are four sages: One who sees R. Johanan b. Nuri in his dream may hope to be fearful of sin; R. Elazar b. Azariah—he may hope for riches and greatness; R. Ishmael—he may hope for wisdom; R. Aqiba—he may fear being chastised.

There are other three scholars (regarding dreams): One who sees Ben Azai may hope to be one of the pious; Ben Zoma—he may hope for knowledge; Elisha b. Abuyah—may fear being chastised.

(The same is the case) with the following three books of the prophets: Kings—he may hope for riches, greatness; Isaiah—satisfaction; and Jeremiah—chastisement.

(The same is the case) with the following books of the Hagiographa: Psalms—he may hope to be modest; Proverbs—he may hope for wisdom; and Job—he may fear being chastised.

There are also three things regarding the righteous and the wicked ones (which will be explained in Tract Sanhedrin).

"Every gainsaying," etc. Every assembly that is for the sake of performing a religious duty remains everlasting; *e.g.*, the Great Assembly. And every assembly which is not for such purpose will finally cease; *e.g.*, the assembly for division [Gen. xi.].

MISHNA G. Great is Torah, that gives life to those who practise it in this world and in the world to come, as

it is written [Prov. iv. 22]: "For they are life unto every one of those that find them, and to all his body a healing." And it is also written [ibid. iii. 8]: "It will be healing to thy body, and marrow to thy bones." And it is again written [ibid., ibid. 18]: "A tree of life is she to those who lay hold on her, and every one that firmly graspeth her will be made happy." And again [ibid. i. 9]: "For a wreath of grace are they unto thy head, and chains for thy throat." And again [ibid. iv. 9]: "She will give to thy head a wreath of grace; a crown of ornament will she deliver to thee." And again [ibid. iii. 16]: "Length of days is in her right hand; in her left are riches and honor." And again [ibid. iii. 2]: "For length of days, and years of life, and peace, will they increase unto thee."

MISHNA H. R. Simeon b. Menassia said in the name of R. Simeon b. Jo'hai: "Comeliness, and strength, and wealth, and honor, and wisdom, and age, and hoariness, and sons are becoming to the righteous, and becoming to the world, as it is written [Prov. xvi. 31]: 'An ornamental crown is the hoary head, on the way of righteousness can it be found.' And it is also written [ibid. xx. 29]: 'The ornament of young men is their strength; and the glory of old men is a hoary head'; and again [ibid. xvii. 6]: 'The crown of old men is children's children; and the ornament of children are their fathers'; and again [Is. xxiv. 23]: 'And the moon shall be put to the blush, and the sun be made ashamed; for the Lord of Hosts will reign on Mount Zion, and in Jerusalem, and before his ancients in glory.'"

S. Simeon b. Menassia said: "Those seven qualities which the wise have reckoned to the righteous were all of them confirmed in Rabbi and his sons."

MISHNA I. R. Jose b. Qisma said: "Once I was walking by the way and there met a man, and he gave me 'Peace!' and I returned him 'Peace!' He said to me: 'Rabbi, from what place art thou?' I said to him: 'From a great city of wise men and scribes am I.' He said to

me : ' Rabbi, should you like to dwell with us in our place ? I will give thee a thousand thousand dinars of gold, and goodly stones, and pearls.' I said to him : ' If thou shouldest give me all the silver, gold, and goodly stones, and pearls that are in the world, I would not dwell but in a place of Torah, as it is written in the Book of Psalms by the hand of David, King of Israel [Ps. cxix. 72] : " Better is unto me the law of thy mouth than thousands of gold and silver." Moreover, in the hour of a man's decease, not silver, not gold, nor goodly stones and pearls, accompany the man, but Torah and good words alone, as it is written [Prov. vi. 22] : " When thou walkest it shall lead thee, when thou liest down it shall watch over thee ; when thou art awake it shall converse with thee." " When thou walkest it shall lead thee " in this world ; " when thou liest down it shall watch over thee " in the grave ; " when thou art awake it shall converse with thee " in the world to come ; and it is also written [Haggai ii. 8] : " Mine is the silver, and mine is the gold, saith the Lord of Hosts.' "

Five possessions had the Holy One, blessed be He, in this world, and these are they : Torah, one possession ; Heaven and earth, one possession ; Abraham, one possession ; Israel, one possession ; the Sanctuary, one possession. Torah, whence ? As it is written [Prov. viii. 22] : " The Lord created * me as the beginning of his way ; the first of his works from the commencement." Heaven and earth, whence ? As it is written [Is. lxvi. 1] : " The heaven is my throne, and the earth is my footstool ; where is there a house that ye can build unto me ? and where is the place of my rest ? " And it is also written [Ps. civ. 24] : " How manifold are thy works, O Lord ! in wisdom hast thou made them all ; the earth is full of thy riches." * Abraham, whence ? It is written [Gen. xiv. 19] : " And he blessed him, and said, Blessed be Abram

* The Hebrew terms for these are derived from the verb נָצַח, which the Talmud translates literally, " to possess," " to acquire."

of the most high God, the possessor of heaven and earth." Israel, whence? As it is written [Ex. xv. 16]: "Till thy people pass over, O Lord, till this people pass over which thou hast purchased."* And it is also written [Ps. xvi. 3]: "In the saints who are on the earth, and in the excellent—in them is all my delight." The Sanctuary, whence? As it is written [Ex. xv. 17]: "The sanctuary, O Lord, which thy hands have established."* And it is also written [Ps. lxxviii. 54]: "And he brought them to his holy territory, even to this mount, which his right hand had acquired."*

Whatsoever the Holy One, blessed be He, created in this world, He created not but for his glory, as it is written [Is. xl. iii. 7]: "Every one that is called by my name, and whom I have created for my glory; whom I have formed; yea, whom I have made." And it is also written [Ex. xv. 18]: "The Lord will reign for ever and ever."

R. Hanania b. Aqashia said: "The Holy One, blessed be He, was pleased to give merit to Israel, therefore he multiplied unto them Torah and precepts, as it is written [Is. xlii. 21]: 'The Lord willed to do this for the sake of his righteousness; therefore he magnifieth the law and maketh it honorable.'"

Tosephtha—Aboth of R. Nathan.

† R. Simeon said there are three crowns: the crown of Torah, that of priesthood, and that of kingdom; the crown of a good name, however, is above all. Concerning the crown of priesthood: If one would offer all the gold and silver in the world for it, he could not acquire it, as it was only for Aaron and his children [Numb. xxv. 13].

The same is the case with the crown of kingdom, which cannot be gotten for all the gold and silver in the world, as it was only for David, as it is written [Ezek. xxxvii. 24]: "My servant David will be the prince for ever." But with the crown of Torah

* The Hebrew terms for these are derived from the verb *קנה*, which the Talmud translates literally, "to possess," "to acquire."

† Chapter XLI. of the original.

it is different; every one who wants to possess it, he may come and take it, as it is written [Is. lv. 1]: "Every one of ye that thirsteth, come ye to the water" (meaning the Torah). Occupy thyself with the words of the Torah, and do not occupy thyself with idle things.

It happened to R. Elazar b. Simeon, etc.*

Three things were said of charitable men: he who gives charity may be blessed, but if he gives it in the form of a loan is still better; but he, however, who gives one money to do business with, with the understanding that he shall pay him half of the profits, is above all.

There are three different kinds among scholars; one who is able to ask questions and to answer them is a wise one; one who is only able to ask questions but not to answer them is inferior to him; but he who is able neither to ask nor to answer questions is not to be considered at all.

There are three different kinds of sweat that are beneficial to the body: the sweat following a sickness; the sweat produced by a bath; the sweat of labor. The sweat following a sickness is healing, but the sweat produced by a bath has no equal.

There are six kinds of tears: three of them are good and three are bad. Those produced by weeping, smoke, and in the toilet are bad (see Sabbath, p. 355). Those produced by spices, laughing, and by sharp fruit are good.

There are three advantages in an earthen vessel: it absorbs, does not exude, and gives no bad smell to the thing that is in it.

There are three advantages in a glass vessel: it does neither absorb nor exude, and it exposes to view what is therein contained; and keeps warm in a warm temperature, and cold in a cold temperature.

The money that the Israelites carried away from Egypt returned to Egypt, as it is written [Ex. xii. 36]: "And they emptied out Egypt"; and it is also written [Gen. xlvii. 14]: "And Joseph gathered up all the money," etc.; and it is written [I Kings, xiv. 25, 26]: "And it came to pass in the fifth year," etc.

The heavenly writing on the tables returned to its origin (see Pesachim, 178).

"*R. Jehuda b. Thema said,*" etc. He used also to say: Love Heaven, love all the commandments. If you do the least wrong

* See Section Festivals, Vol. VIII., Tract Taanith, pp. 52-53, the legend at length.

to your companion, it shall be considered by you the greatest wrong; but if you have done him good, though it have been a great deal, you shall consider it little. On the contrary, if your companion has done you the least good, you shall consider it much; and if he has done you a great wrong, consider it little. Be as a tight leather-bag that has no opening to let in the wind. Be prepared to receive affliction, and be forgiving to those who oppress you.

The following articles were made and were hidden: The first tabernacle, and the vessels therein contained; the ark, the broken tables and the receptacle of the manna, the staff, the bottle of the oil of anointment; the staff of Aaron, its buds and blossoms; the garments of the first priests and the garments of the anointed priest. But the mortar of the house of Abtinas, the table, the candelabra of the Temple, the curtain, the golden plate, are still in Rome.

All that the Holy One, blessed be He, created in His world was so created only for His glory, as it is written [Is. xliii. 7]: "Every one that is called by my name, and whom I have created for my glory, whom I have formed—yea, whom I have made"; and it is also written [Ex. xv. 18]: "The Lord will reign for ever and ever."

R. Hananiah b. Akashia said: The Holy One, blessed be He, desired to reward Israel in the world to come, and therefore He magnified the Law for them and gave them a great number of merits, as it is written [Is. xlii. 21]: "The Lord willed to do this for the sake of his righteousness; therefore he magnifieth the law, and maketh it honorable."

END OF TRACT ABOTH AND OF ABOTH OF R. NATHAN.

**TRACT DERECH ERETZ—RABBA AND ZUTA.
(WORLDLY AFFAIRS.)**

TRACT DERECH ERETZ — RABBA. (WORLDLY AFFAIRS.)

CHAPTER II.*

THE Sadducees, the common informers, the wicked, the hypocrites, the heretics, of them the Scripture says [Job, xiii. 16]: "For a hypocrite cannot come before him"; the terrifying, the overbearing, the haughty, the barefaced, those who develop only their muscular strength, of them the Scripture says [Psalms, xxxvii. 17]: "For the ovens of the wicked shall be broken; but the upholder of the righteous is the Lord." Evil-thinkers, story-tellers, talebearers, smooth-tongued persons, of them the Scripture says [ibid. xxxv. 5]: "May their way be dark and slippery, and may the angel of the Lord pursue them." Those who assault their neighbor in private and those who insult him in public, those who trifle with majorities, and those who cause quarrels, they will become as Kora'h and his society, of whom the Scripture says [Numb. xvi. 33]: "And the earth closed over them, and they disappeared from the midst of the congregation." Those who forestall fruit, those who raise the prices, those who diminish the measure, those who accept payment in large-sized shekels, and those who live on usury, of them the Scripture says [Amos, viii. 7]: "Sworn hath the Lord by the excellency of Jacob. Surely I will not forget to eternity all their works."

The following leave no inheritance to their children,

* Chapter I. belongs to Tract Kedushin, and will be added to that tract.

and if they do leave to their children, nothing of it comes to their grandchildren : viz., those who play at dice, and those who raise tender cattle (in Palestine) ; those who do business with the money obtained from the fruit of the Sabbatical year, and those who pay with coins (of doubtful genuineness) coming from the sea-countries, and a priest and a Levite who obtained advances on their shares (of heave-offering and tithes), and those who disgrace the Holy Name, of them the Scripture says [Ps. ix. 18] : " The wicked shall return into hell, all the nations that are forgetful of God." And of them it is also written [Eccles. i. 15] : " What is crooked cannot be made straight." Those who motion with their hands, stamp their feet, walk on their toes (to show pride), of them the Scripture says [Ps. xxxvi. 12] : " Let not come against me the foot of pride, and let not the hand of the wicked chase me off." The conceited, the slanderers, those who indulge in obscene language, those who are wise in their own eyes, of them the Scripture says [Mal. iii. 19] : " For, behold, the day is coming which shall burn as an oven," etc.

One who lets his young son marry an older woman, and one who marries off his daughter to an old man, and one who bestows favors upon those who are unworthy, concerning such Scripture says [Deut. xxix. 19] : " The Lord will not pardon him." The collectors, the war-instigators, the publicans, of them Scripture says [Ezek. xxvii. 27] : " Thy wealth and thy warehouses, thy commerce, thy mariners and thy pilots, thy caulkers and the conductors of thy commerce, and all thy men of war that were in thee, and in all thy assemblage which was in the midst of thee, fell into the heart of the seas on the day of thy downfall." One who betrays his partner, one who does not return a thing found to its rightful owner, one who loans money to another in order to get possession of his house or fields in case of non-payment, and one who lives immorally with his wife, and one who maliciously

slanders his wife in order to divorce her, of them the Scripture says [Jer. xvii. 10]: "I the Lord search the heart, probe the veins."

Those who are wronged and do not wrong, etc. [see Yomah, p. 33, l. 9]; those who consider themselves contemptible and despicable, those who overcome their passion, and are altogether modest, of them the Scripture says [Is. xlix. 8]: "Thus hath said the Lord, In the time of favor have I answered thee, and on the day of salvation have I helped thee, and I will preserve thee, and I will appoint thee as a people of my covenant to raise up the land, to divide out desolate heritages." Trustworthy men, those who keep other people's secrets, those who gladly return articles intrusted to their care, and found things to their rightful owners, of them Scripture says [Ps. ci. 6]: "My eyes shall be upon the faithful of the land, that they may abide with me." One who loves his wife as himself, who honors her more than himself, and one who leads his children on the right path, and one who marries off his son in due time to prevent him from sin, of them it is written [Job, v. 24]: "And thou shalt know that there is peace in thy tent; and thou wilt look over thy habitation, and shalt miss nothing. And thou shalt know that thy seed is numerous, and thy offspring as the herbage of the earth."

One who loves his neighbors and is friendly to his relatives, and one who marries off his sister's daughter, and one who loans even a small amount to a poor man in his need,* of them the Scripture says [Is. lviii. 9]: "Then shalt thou call, and the Lord will answer."

One who executes his trust rightfully,† those who truthfully repent, and those who receive the repentant into their midst and instruct them so that they shall not

* Some say it means when the lender himself is in need, and it seems to us that it is the correct meaning.

† The text reads "Hamnadin," which means "those who put under the ban," but the commentators came to the conclusion that this is an error. We have translated it according to Elias Wilna.

return to their former sins, of them it is written [ibid. 8]: "Then shall break forth as the morning-dawn thy light."

Those who judge rightfully, those who reprove truthfully, those who propagate purity, and those who are pure of heart, of them it is written [Ps. lxxiii. 1]: "Truly, God is good to Israel, to such as are pure of heart." Those who sigh, weep, and in their lamentations are hopeful of the redemption of Jerusalem, of them it is written [Is. lxi. 3]: "To grant unto the mourners of Zion, to give unto them ornament in the place of ashes." Those who are merciful, feed the hungry, quench the thirst of the thirsty, clothe the naked, and distribute charity, of them the Scripture says [ibid. iii. 10]: "Say ye to the righteous that he hath done well." The poor, the bashful, and those who are humble in spirit, and those who are submissive to youth, and those who carry out their promises, of them the Scripture says [Job, xxii. 23]: "And if thou decree a thing, it will be fulfilled unto thee, and upon thy ways the light will shine." Those who exert themselves in the study of the Law, and study it for the purpose of observing it, and those who search for the opportunity to do good, and those who frequent the temples, of them the Scripture says [Prov. viii. 24]: "Happy is the man that hearkeneth unto me, watching day by day at my gates, waiting at the posts of my doors." Those who pursue righteousness, and seek peace for their nation, and those who participate in the affliction of the community, and those who stand by the community in case of distress, of them the Scripture says [Nahum, i. 7]: "The Lord is good, a stronghold on the day of distress."

On account of the following four things an eclipse of the sun occurs (see Succah, p. 40): When the head of a college (Ab Beth Din) died and was not properly lamented; when a betrothed damsel cried for help (Deut. xxii. 23-28) in town and no one offered help; male sodomy; and the shedding of the blood of two brothers at one and the same time (there is no explanation of this

in any of the commentaries, and it seems to us that there happened something like that in the author's time which is unknown to us).

On account of the following four things the eclipse of both the sun and the moon occurs : Those who write defamatory reports about others, giving false testimony, raising tender cattle, and destroying fruit-bearing trees. On account of the following four things the personal property of citizens is seized by the government : For keeping paid notes (with the intention to demand another payment), for the practice of usury, for not exercising one's power to prevent sin when he could do so, for subscribing publicly to charity and not paying the subscription.

On account of the following four things the estates of the citizen are destroyed : For robbing or withholding the wages of a wage-earner [Lev. xix. 13]; for removing the yoke from one's own neck and placing it upon the neck of another, and for haughtiness above all.

R. Dusthai b. R. Jehudah said : Do provoke the wicked (see Megilla, p. 13), as it is written [Prov. xxviii. 4] : " They that forsake the law praise the wicked, but such as observe the law *contend* with them " ; but lest one say, is it not written [Ps. xxxvii. 1] : " *Do not* fret thyself because of the evil-doers, neither be thou envious against the workers of iniquity " ? say to him that this is the answer of him whose heart-beating prevents him from doing so (because of this passage), but the true interpretation of this passage is thus : " Do not fret thyself *to be* equal to the evil-doers, neither be thou envious to be like them of the workers of iniquity."

There is no sitting above (in heaven), neither is there eating, drinking, sleep, multiplication, animosity, hatred, provocation, envy, nor stubbornness, weariness nor delay, and that is what David the King of Israel said [ibid. xviii. 12] : " He made darkness his hiding-place " (*i.e.*, it is dark and hidden to all mortals). To what end did David

say this? To none other than to praise of the Holy One, blessed be He, who is "Yah," rules on high, whose unity is one, whose name is one, and who rests in three hundred and ninety heavens, and on each His name and mode of pronunciation are marked; and in each of them there are servants, seraphim, *ophanim* (wheels, Ezek. 1.), cherubim, *galgalim*, and a throne of glory; and there is no wonder at that, for even as a mortal king has many palaces for the seasons of the year, so much the more the Everlasting, since all is His. And when Israel are doing His will, He rests in the seventh heaven, named Araboth, and does not keep distant from His world, as it is written [Numb. vii. 89]: "From between the two cherubim: and thus he spake unto him." When offended He ascends to the highest heaven, and all cries and weeping are not listened to, and fasts are ordered, and they roll themselves in ashes, cover themselves with sacks, and shed tears (and all in vain, until He has mercy upon them).

CHAPTER III.

BEN AZAI said: One who bears in mind the following four things, and never loses sight of them, will never sin; namely, whence he came, and whither he goes, who is his judge, and what will become of him. Whence he came?—from a place of darkness; and whither he goes?—to darkness. Whence he came?—from a dirty place; whither he goes?—to make unclean every one who will touch him. Whence he came?—from a fetid secretion, and from a place which is invisible to a human being; whither he goes?—to sheol and Gehenna, to be burned in fire. And who is his Judge? Remember that his Judge is not of flesh and blood, but the Lord of all the creation, blessed be He, before whom there is no iniquity, no oblivion, no consideration of person, no bribery. And what will become of him?—worms and

maggot, as it is written [Job, xxv. 6]: "How much less the mortal, the mere worm? and the son of earth, the mere maggot?" R. Simeon said: A human being has worms in his body when alive—*i.e.*, lice, and he is converted into a maggot after his death.

R. Eliezer b. Jacob said: Think of a big palace in the centre of which the vat of a tanner is placed: so is a handsome and respected man who lets an unbecoming word pass his lips. If a human being would issue from his body perfume (instead of excrement), how would he pride himself against all other creatures? (So, if this man allows his lips to pass only respectable words, he can pride himself.) When R. Eliezer was about to depart, his disciples paid him a visit and requested him to teach them only one more thing. And he said unto them: Go, and be careful, each of you, in honoring your neighbor; and when you are praying, remember before whom you stand and pray, and for the observation of these you will have a share in the world to come.

CHAPTER IV.

BE always pleasant at your entering and at your leaving. Lessen your worldly business in order to study the law. It happened with R. Simeon b. Elazar, etc. (See Taanith, pp. 52 and 53, for the whole legend repeated here.) How shall one honor his master? (See Yomah, p. 52.) And so also we find with the three angels Gabriel, Michael, and Raphael, who came to Abraham our father. Gabriel's errand was to destroy Sodom and Gomorrah; Raphael's was to heal Abraham; and Michael's, to inform Sarah. And when Abraham saw the angels, the Shekhina came and stood above him, and he addressed the angels, saying: "My masters, wait awhile, until I take leave of the Shekhina, for you also must respect her," as it is written [Gen. xviii. 3]: "And

he said, My Lord, if now I have found favor in thy eyes, pass not away, I pray thee, from thy servant." And after Abraham took leave of the Shekhina he returned, and bowed to them and brought them under the tree, as it is written [ibid. 4]: "Let a little water, etc., be fetched, and wash, etc."; And then he said [ibid., ibid.]: "I will fetch a morsel of bread." Lot, however, said [ibid. xix. 2]: "And tarry all night, and (then) wash your feet?" Some of the anonymous teachers observe that in this very point Lot showed his prudence. He reasoned: If the Sodomites will see them after they have washed their faces, hands, and feet (*i.e.*, I give them shelter overnight), they will kill me, my wife, and my daughters; but let the Sodomites see them with the dust on their feet, they will then think that they have just arrived.

He who accompanies his master ought not to depart from him without permission. When two disciples go or sit together (they need not ask for permission from each other), they are both equal.

It is customary that when entering, the master of the house enters first and the guest after him, and when leaving the house the guest leaves first and the master after him. And he who departs from his comrade, whether his comrade is greater than he or he is greater than his comrade, he must inform him of his leaving. And every one may learn this from the Lord, who said to Abraham, "I leave you," as it is written [Gen. xviii. 33]: "And the Lord went away when he had finished speaking with Abraham; and Abraham returned unto his place" (from the wording, "and the Lord went away," it is inferred that He informed him).

CHAPTER V.

NEVER shall a man enter the house of his neighbor without permission, and this conduct may be learned

from the Holy One, blessed be He, who stood at the gate of the garden, and called to Adam [Gen. iii. 9]: "And the Lord God called unto the man, and said unto him, Where art thou?" It happened with the four elders Rabban Gamaliel, R. Jehoshua, R. Elazar b. Azariah, and R. Aqiba, who went to the interior cities of Rome, in one of which there lived a friend of theirs, a philosopher—R. Jehoshua asked Rabban Gamaliel if he would like to go and see their friend the philosopher, and he answered he would not. On the next morning, however, he asked him again, and he said he would. They then went, and R. Jehoshua knocked at the door of the philosopher, and at once the philosopher concluded that this must be the manner of a wise man. When he knocked again, the philosopher arose and washed his face, hands, and feet. When he knocked the third time, the philosopher opened the door, and saw that the sages of Israel were coming from both sides of the street; namely, Rabban Gamaliel being in the centre, R. Jehoshua and R. Elazar b. Azariah to his right, and R. Aqiba to his left, and the philosopher was somewhat puzzled as to the manner of saluting them. He said within himself: "Whom of the sages shall I greet first? If I should greet R. Gamaliel first, I might thereby offend the other sages; and if I should address my greeting to all of them (without naming the head of them), I will offend R. Gamaliel." He therefore concluded to address them thus: "Peace to you, sages of Israel, and to R. Gamaliel first."

Always consider strangers as burglars, and at the same time honor them as if each of them were R. Gamaliel himself. It happened to R. Jehoshua that a man called at his house, and he gave him to eat and drink, and took him up to the roof to sleep there, and then removed the step-ladder leading to the roof. The man was a thief, and arose by night, and took things of value that Rabbi Jehoshua had on the roof and packed them up in his garment, and in the attempt to descend and carry off

the booty he fell down and almost broke his neck. When R. Jehoshua came in the morning and found him in that condition, he said to him: "You ignoramus, is this the way people like you do?" He answered: "Rabbi, I did not suspect that persons of your station would remove the ladder." And he rejoined: "Did you not notice yesterday that I was cautious about you?" From that time on R. Jehoshua proclaimed that always should strangers be considered as burglars, and still one should honor them as he would R. Gamaliel.

CHAPTER VI.

ONE who enters his neighbor's house shall do what he is told by the host (provided it is legitimate). And it happened that guests came to the house of Simeon b. Antiptaris, and he invited them to eat and drink, and they vowed by the Torah that they would not do so. Nevertheless, they afterwards ate and drank; but when they were about to depart, he punished them with stripes. When this came to the ears of R. Johanan b. Zakkai and the sages, they became angry, and said, "Who will go and inform him of our displeasure?" Said R. Jehoshua: "I will go and investigate." When he came there he found him on the threshold of his house, and he greeted him, saying: "Peace to you, master"; and he answered, "Peace to you, my master and teacher." Then Rabbi Jehoshua said: "I need shelter." And he answered: "Take it here in peace." They then occupied themselves with the study of the Law until evening. In the morning he told him: "Rabbi, I would like to take a bath." And he rejoined: "Do as you please." R. Jehoshua, however, was afraid that he would beat him. When he returned from the bath, they ate and drank. When he desired to leave, he said: "Who will accompany me?" And the host said: "I will." R. Jehoshua then thought

to himself : "What information can I give to the sages who sent me here?" He then looked backward, and when he asked him : "Rabbi, what are you looking for?" he answered : "I would like to question you about one thing. Why did you beat others who came to your house with stripes, and you did not do so to me?" He rejoined : "You are my master. You are a great sage, and of course your manners are refined. The other men, however, that came to me, I told to eat and drink, and they vowed by the Torah that they would not, and afterwards they disregarded their vow ; and I have heard from the sages that one who vows by the Torah and disregards his vows is to be punished with forty stripes." He then answered : "Be thou blessed by Heaven, that thou hast done so. I swear by thy life that he who thus conducts himself deserves that thou give him forty stripes in thy name, and another forty in the name of the sages who sent me to investigate thy method." R. Jehoshua then came back and informed the sages of what he had discovered in Simeon Antiptaris.

A man shall never be angry at his meals. It happened with Hillel the First that he invited a man to a meal. In the meantime a poor man came and stood at his door, and said to his wife : "I am to marry to-day, and I have nothing in my house." His wife then took the meal she had prepared for the house, and gave it to him. She then kneaded a new dough, and cooked other dishes, and served them before her husband and the guest. Hillel said then to her : "My child, what is the reason of the delay?" And she related to him what happened. He then remarked : "My daughter, I have also judged you from the favorable side, because it is known to me that all that you do is for the sake of Heaven."

Corner-tithe for the poor is not set aside in the cooking-pot, but in the dish. It happened with R. Jehoshua, etc. (See Erubin, pp. 120, 121, for the whole legend repeated here.)

Always shall a man try to agree with the majority of the people (this is explained in Khethuboth, p. 166, and will be translated there). For the first meal-benediction, the hard part and not the soft part of the bread is to be used. Never shall a man hold a slice of bread of the size of an egg and bite from it, and one who does so is called a glutton; and one shall not drain his cup of wine at a draught (see Pesachim, p. 171), and if he does so he is considered a glutton. But how shall he do? If he does it in two draughts, it is respectable; if in three, it is considered putting on airs.

One shall not begin to eat the heads, but the leaves of garlic or onions. If he does so, he also is called a glutton. One shall not drink two cups of wine before the after-meal benediction (and subsequently pronounce the benediction without a goblet, but he shall leave one goblet for the benediction. The commentaries explained this otherwise, the reason being that there should be no "pairs"—see Betzah, p. 49—but we cannot agree with them); if he do so, he can be taken for a glutton.

CHAPTER VII.

WHEN two are sitting at the table, the elder one commences to eat first and the younger one after him; and if the younger commences first, he is a glutton. It happened that R. Aqiba prepared a meal for his disciples consisting of two dishes of meat, one half-roasted and the other one well cooked. The half-roasted was served first; the most sensible of them took the whole piece into his one hand and with his other hand he tried to break off some part of it, but could not, and he placed it back and ate bread alone. One of them, who was less sensible, took the whole piece and bit off a piece. Said R. Aqiba to him: "Not so, my son. Put thy foot on it in the dish, and then you will probably succeed better." Finally, the

well-cooked meat was served, and they ate and were satisfied. Then said R. Aqiba to them: "My children, I did all that to see whether you had refined manners."

One shall not eat before the fourth hour, neither shall he take a bath prior to that hour. Hot water in large quantities is injurious to one's body, but in small ones is beneficial. The same is the case with wine. Three things are equal one to the other: wisdom, fear of God, and modesty. One shall not rejoice among those who are weeping, neither shall he weep among those who rejoice; he shall not be awake among those who are asleep, nor shall he sleep among those who are awake; he shall not be standing among those who are seated, nor shall he be seated among those who are standing. This is the rule: One shall not have different manners from those of his friends and of people in general among whom he is.

CHAPTER VIII.

ONE who enters a house shall not ask for food, but shall wait until invited. When the goblet is filled, he shall drink it slowly. What is meant by slowly? If it is a cold beverage—in four draughts; if a warm beverage—in three. Said R. Jehudah: This applies to the goblets of Galilee, but as regards the goblets of Judah, which were larger, he may drink it as slow as he pleases. One must not say to his friend: "Come and eat with me, as I did with you," for it gives the impression that he wants to repay with interest. In Jerusalem, however, they invited each other in turn. One shall not send to his friend a barrel of wine with oil on the top thereof, because a serious accident may result from it. It actually happened that one invited his friends to his son's wedding, and when going down to his cellar to get wine, he noticed that the barrel had oil (on the top, and thinking that it

was all filled with oil) he hanged himself for shame, and died. Hence the above warning is given.

One should not say to his neighbor, "Take oil from that jug and anoint thyself," knowing that it is empty (even when knowing that the man has no habit of anointing himself), because he puts the man under obligation to him for nothing. The same holds good of food: one should not ask his neighbor to take a meal with him when he knows that he would not do so. One should also not offer presents to his neighbor, knowing that he would not accept them, for the same reason. One should not serve his neighbor with new wine, telling him that it is old wine, because it is equivalent to robbery (if he takes money from him, and even if he does not take money from him he deceives him). For the same reason, when one serves wine to ass-drivers, he shall not say: "Take it away from this one (whom he does not like), and give it to the other one." When one is in the grain-market and has no intention of buying, he should not ask for the prices, for he misleads the sellers.

CHAPTER IX.

ONE should not use a slice of bread to cover there-with a dish. One should not wipe the dish with a piece of bread and lay it on the table, for he disturbs the mind of his neighbor. For the same reason, one shall not bite off a piece of bread and place the remainder in the dish intended for another person. One should also not drink from a goblet and give the balance to another one to drink, for it may cause danger to life. It happened that R. Aqiba stopped at the inn of a certain person, who offered him a goblet, first tasting its contents, and R. Aqiba told him to drink the whole of it. He offered him another one, first having tasted it. R. Aqiba told him to drink it all, until Ben Azai said to him: "How long

wilt thou continue doing so?" It again happened that R. Aqiba was lodging with a certain person, and he placed a piece of bread underneath the dish to support it, and R. Aqiba took hold of it and swallowed it. Said the man to R. Aqiba: "Rabbi, had you no other bread to eat than that piece with which I supported the dish?" And he answered: "First, I thought that you could burn yourself with lukewarm water (*i.e.*, you will understand a slight hint). Now I see that you cannot burn yourself even with boiling water." One shall also not empty his cup and then place it on the table, but he shall keep it in his hand until taken away by the waiter.

Five things said Rabbi in regard to bread, namely: Raw meat must not be placed on bread, nor shall a cup or dish be placed on bread, nor shall bread be used to support a dish, nor shall it be thrown from place to place; nor shall one sit at the table when others are eating, for he disturbs their appetite. One who comes to the table to take his meal shall not take his portion and give it to the waiter, for the reason that some unforeseen thing may happen during the meal (and his portion may be needed); but he shall place it in front of him until the end of the meal, and then give it to him. Guests must not give anything to the son of the host, nor to his servant or messenger, without the permission of the host. It happened once with a man who invited three guests in years of famine, that he served them three eggs. The son of the host then came and stood in front of them, and the first guest took his portion and gave it to him, and so did the second and third. When the host returned, and found his son holding one in his mouth and one in each hand, he raised him full height and struck him to the ground, and he died. The mother, hearing of what happened when standing on the roof, was so shocked that she fell down dead. When the father heard this, he also threw himself from the roof, and died. Then R. Elazar said: "Three human beings were killed on account of this."

CHAPTER X.

ONE who enters the bath-house may say : " Let it be thy will, God my Lord, that thou cause me to come in and go out in peace, that thou cause me to return to my place in peace, and save me from this and from similar peril in the world to come."

How should one conduct himself before bathing ? Thus : He shall first remove his shoes, take off his hat, remove his overcoat, take off his girdle, then take off his shirt, and after all the drawers. After bathing, when a towel is brought to him, he first wipes his head and then the other parts of his body. When the oil is brought to him, he shall first anoint his head and then other members of his body, and then he shall put on first his drawers, then his shirt, the girdle, then he shall wrap himself in his mantle, and then he shall put on his hat, and then his shoes. And if he has his son, his slave, or bondsman, they shall do it for him. Always shall the right shoe be put on first, and then the left one ; and when taking off the shoes, the left one shall be taken off first. One who enters a bath-house must not fatigue himself, nor excite himself, but let him be in every respect careful. Said R. Simeon b. Gamaliel : " One who is not careful is an ass's equal ; one who eats in the market is a dog's equal " ; and according to others, he is ineligible to be a witness. In the toilet-room the one who enters must not hurry the one who is sitting there, and the same is in a bath-house. One shall not bring oil into a bath-house in a glass vessel (for it may break and cause injury). One must not spit in the presence of his neighbor, even in a bath-house. The law relating to a bath-house and toilet may be discussed in the respective places, but other things must not be discussed, not alone in the bathing-room but in the dressing-room, and even

when the majority of the persons were dressed as well, because when even a few are undressed all are considered undressed. One shall not greet his neighbor when he is washing himself; and if he does so, the other may answer him that it is a bath-house. According to others, he may answer the greeting, and there is nothing in it. One should not put his foot in a bath-tub when another one is sitting in it, for it is a disgrace for the one bathing.

CHAPTER XI.

HE who walks the road, etc. (See the whole Boraitha in Yomah, pages 27, 28, paragraph: "We have learned according to R. Shila"). One who, soon after returning from the road, takes a bath, gets intoxicated, sleeps on the bare floor, and indulges in congressu feminae, his blood is on his head (it is equivalent to suicide).^{*} He who sells his books, or his daughter, etc. (See Megilla, p. 73.) R. Itzhak says: "A common informer is considered a murderer, as it is written [Lev. xix. 16]: 'Thou shalt not go up and down as a tale-bearer among thy people.'" R. Eliezer said: "He who hates his neighbor without cause is also considered such, as it is written [Deut. xix. 11]: 'But if any man be an enemy to his neighbor,' etc. (i.e., if he is so, he is capable of doing what is further written in the verse)." Ben Azai says: "He who hates his wife is also considered such, as it is written [ibid. xxii. 13 and 14] (i.e., if he hates her he will finally lay an accusation against her, etc., and he will hire witnesses to accuse her with a view to take her life)." R. Jose says: "One who sets a definite time for the redemption of Israel through Messiah will have no share in the world to come. And the same applies to one who hates the scholars and their disciples. The same applies to a

^{*} Here the Boraitha continues to enumerate things dangerous to life and health which seem to us unimportant in our age, and therefore we omit them.

false prophet and a slanderer." R. Meir says: "One who has a house of learning in his town, and is able to go there but does not do so, is not worthy of living, as it is written [Numb. xv. 31]: 'Because the word of the Lord hath he despised;' etc." Haughtiness is equivalent to idolatry, as it is written [Deut. vii. 26]: "And thou shalt not bring an abomination with thy house;" and it is also written [Prov. xvi. 5]: "An abomination of the Lord is every one that is proud of heart." Since the abomination mentioned in Deuteronomy is idolatry, and the same expression is used in Proverbs, hence we learn that haughtiness is equivalent to idolatry.*

* Here follows the benediction before retiring, etc., which will be explained in the proper tract.

TRACT DERECH ERETZ—ZUTA.

CHAPTER I.

THE qualities of the sages are: Modesty, meekness, eagerness, courage, bearing wrongs done to them, and being endeared to every one; submission to the members of their household, fear of sin, and judging every one according to his deeds.

Their thought concerning this world is: All that is in this world is of no importance to me, for this world is not mine. They are occupied in teaching others, and no one can see in their teaching anything wrong. Their questions are to the point and their answers are according to the Law.

One shall always be like an air-bag which is open to receive the air, and as a deep excavation which preserves the water therein contained, and as a glazed jug that preserves the wine therein; as a sponge that absorbs everything. Be as the lower threshold that all tread upon, and as a nail in the wall that is within the reach of every one to hang his clothes on.

If you have sustained a loss of your property, remember that Job lost his property, children, and health. Be careful about all that you see with your eyes, for the principal deception is by the eye. Be careful with your teeth (with your meals), that you should not eat too much. Do not discuss with the Sadducees, that you shall not fall into the Gehenna. When you hear others insult you, do not answer them. If people are praising you for having done a great thing, you shall nevertheless consider it of no im-

portance. An ordinary man shall be considered to your eyes great, if you have insulted him, until you shall have asked him to forgive you. This passage may also be so rendered : If others say something bad about thee, though it be of a serious nature, treat it as insignificant. But, on the other hand, if thou say something bad about others, though it be insignificant, thou shouldst regard it as serious and have no rest until thou beg pardon. Your behavior shall not be bad, for this is no praise for the Torah (which you possess, but let your behavior be good, for this is a praise for the Torah).

Love the Law, and respect it ; love all creatures, and respect them. Subject your will to the will of others, as was done by Leah for Rachel and by David for Saul. But ignore your will, and even the will of others, for the will of Heaven, as we find by Jacob that he did not kiss Joseph (because he was engaged in prayer). Love doubtfulness (*i.e.*, everything shall be doubtful to you until you convince yourself of it), and hate the expression : "And what of it?" (*i.e.*, even of the most unimportant things you should not express yourself thus). Keep aloof from everything that may bring to sin, and from the abominable, and from what is equal to it, that you should not be suspected by others of transgression. Do not slander your neighbor, because he who does so has no remedy. Keep aloof from grumbling, for by grumbling you may come to growl at others, and it will be added to your transgressions. With seven patriarchs covenants were made, and they are : Abraham, Isaac, Jacob, Moses, Aaron, Pinchas, and David—Abraham [Gen. xv. 18], Isaac [*ibid.* xvii. 21], Jacob [Lev. xxvi. 42], Moses [Ex. xxxiv. 27], Aaron [Numb. xviii. 19], Pinchas [*ibid.* xxv. 12], David [Ps. lxxxix. 4]. Seven patriarchs are resting in glory, and worm and maggot do not affect their earthly remains, and they are : Abraham, Isaac, Jacob, Moses, Aaron, Amram their father, and, according to others, also David, as it is written [*ibid.* xvi. 9] : "Therefore is rejoiced my heart,

and my spirit is glad ; also my flesh shall rest in safety." Nine entered the Garden of Eden when they were still alive, and they are : Enoch (Chanoch) the son of Jared, Elijah Messiah, Eliezer the bondsman of Abraham, Hirom the king of Zor, Ebed-melech the Cushi [Jer. xxxviii. 7], and Jabetz the son of R. Jehudah the Prince, Bothiah the daughter of Pharaoh and Serech the daughter of Ascher, and, according to others, also R. Jehoshua b. Levi.

CHAPTER II.

LET all thy ways be for the sake of Heaven. Love Heaven, and fear it. Tremble at, and at the same time rejoice over, all commandments. Sit before the elders, and let thy ears be attentive to their words. Incline thine ears to the words of thy comrade. Be not hasty in answering, and consider everything from the right point, and answer to the first question first, and to the last, last ; and always confess the truth. Do not discuss in the presence of one who is greater than you in wisdom. If somebody wants to teach you something, do not say that you have heard it already. If you are questioned on the most unimportant matter, and you do not know it, be not ashamed to say, "I do not know." If somebody taught you something and you did not listen to it, be not ashamed to say, "Repeat it again"; and say not that you have not listened to it, but that you did not understand it. Do everything for the sake of the Creator, and talk of thy deeds in the same sense (according to Elias Wilna). Do not make thy merits as a crown to be glorified by it, and not as a hatchet to cleave with it, nor a spade to dig with it. Accept the words of Law, even when you are in affliction. Do not seek to wrong him who wronged you. Let thy accounts always be correct, and thy conduct excellent. Keep thy promise. Love the Law, righteousness, rebukes, straightforwardness.

Do not run after honor. Be not proud when rendering a decision : Consider that all of which thou art possessed to-day may not be thine to-morrow ; and if thou art not certain, as to property already in thy possession, that it will remain with thee, what is the use of thy striving to possess what belongs to others? Remember what the prophet says [Habakkuk, ii. 6]: "Woe to him that increaseth what is not his! for how long? and to him that loadeth himself with a burden of guilt!" Let it be thy habit to finish everything in a good manner. Let thy tongue be always soft. Be a good merchant, pay well, and strive always to do good. Be afraid of a light sin, for this may bring you to a grave sin. Respect all kind of men. Do not say, I will flatter this man, that he may give me food; that man, to give me beverages; that man, to cover me: for it is better that thou shouldst bear thine own shame than to be ashamed of others who will do so unto thee. Take care that thy teeth shall not shame thee, and thou shalt not be disgraced by thy mouth, and not cursed by thy tongue, and not put to shame by thy lips. Take care that thou shouldst not need to bow to some one on account of thine own words. If thou wishest to become attached to thy neighbor through bonds of love, always consider what good thou art able to do unto him. If it be thy wish to be kept away from sin, always look to the result of it. If thou art craving for merits, consider carefully their details. If thou hast done much good to some one, consider it as very little; and thou must also not say that thou hast done it from what belongs to thee, because there is One who has done that unto thee, and thou art obliged to thank Heaven for it. If, however, some one has done thee some good, consider it as if he has done much. Do not say that Heaven has done good to me because of my good deeds; on the contrary, be afraid that it was done unto thee because of thine unworthy deeds [Deut. vii. 10]: "And repayeth those that hate him to their face, to destroy them." If,

however, thou hast done any wrong, consider it much, and say: "Woe is me that I have sinned," or, "Woe is me that I was the cause of the wrong." If others have done thee much wrong, it shall be considered in thine eyes as little, and say: "This is only a part of the retribution that I deserve."

CHAPTER III.

DELIBERATE before a word passes thy lips, and be thoughtful how thou shouldst act in worldly affairs. See always that thy steps shall be rewarded. Justify the judgment that was imposed upon thee and free thyself from anger. Judge favorably thy neighbor, and see that thy verdict shall not make him guilty (if his guilt is not fully established). Be content with thy share, and adorn thyself with the little thou dost possess. Do not hate the one who reproves thee. Thy share wilt be blessed forever if thine eye will always be good, and thy soul always satisfied. Let it be thy habit to say, "I do not know" (of a thing that thou art doubtful about), for thou mayest be caught lying. If thou neglect one command, thou wilt finally be negligent of other commandments. The same is if thou hast overlooked the words of the Law willingly: finally thou wilt be overlooked, willingly or unwillingly. If thou hast taken away others' property, thine will be taken away.

The commencement of making vows is the door to foolishness. Frivolity with women is the beginning of adultery. If thou hast guaranteed for some one, remember that it must be paid by thyself. If thou hast borrowed money, know that thou hast borrowed it to be repaid in time. If thou hast loaned money to somebody, be prepared to have difficulty in collecting it. Remember the time thou hast to repay, and settle thy accounts.

The following fifteen customs are ascribed to the sages: He is pleasant in entering, and so also when leaving; is

prudent in his fear for Heaven ; versed in wisdom ; wise in his ways, has a good conception, a retentive memory, is clear in his answers, questions to the point, and answers according to the Law ; he learns something new from every chapter taught to him ; he is going to the wise ; he learns for the purpose of teaching it and performing it.

Be as the lower threshold, upon which all persons tread, and still it lasts even when the whole building is demolished.

CHAPTER IV.

SCHOLARS always are agreeable in society, but not so ordinary people. He who occupies himself only with study of the Scripture pursues the right course, yet the sages do not think so ; with Mishnayoth, it is a course to be rewarded ; but he who occupies himself with the study of the Talmud pursues a course than which there is no better. Still, it is advisable that one shall occupy himself with the study of Mishnayoth more than with that of the Talmud. Do not exact pay for thy teaching. Moreover, take no compensation whatever for it, for the Omnipotent has given His teaching to thee gratuitously ; for the one who asks for reward destroys the whole world (because there are many who cannot afford to pay and will remain ignorant). And do not say : "I have no money to live on, and therefore I must take reward for my teaching." Remember all money is the Lord's, as it is written [Haggai, ii. 8] : "Mine is the silver, and mine is the gold, saith the Lord of hosts" (and He will supply you with money).

If you have done charity, be sure that you will be favored with money ; and if it has been your good lot to acquire money, do charity with it so long as it is in your power. Give it to those who need it in this world, in order that you may get the world to come ; for if you do not use it for charitable purposes, it will disappear sud-

denly, as it is written [Prov. xxiii. 5]: "When thou lettest merely thy eyes fly over it, it is no more." Do not complain of your being less wise than another, for you have not served (the sages) as much as he did. Neither shall you complain that the other one is rich and you are not, for it is not every man who is favored with two tables (of this and of the world to come). Do not complain that another one is beautiful and you are ugly, for at the time of death a man becomes a carcass; moreover, a carcass of any animal may be sold or presented to somebody, while no one cares even to look at a human carcass. Do not say: "That man is righteous, while I am not"; for both of you will have to account. Do not say: "That man is powerful, while I am weak"; for there is no power aside from the Torah, as it is written [Ps. ciii. 20]: "Bless the Lord, ye his angels, mighty in strength, that execute his word, hearkening unto the voice of his word." Bear always in mind the following: Know whence you come, whither you go, and before whom you will have to render an account, and do not turn your eyes on money which is not yours; for they close the gates of heaven against prayer. Let your ears not listen to vain talk, for they are most likely to get burned. Do not slander, for the mouth will be first on the day of judgment to give account. Be not possessed of slander or other bad things, or of robbery, for all the members of thy body will testify against thee on the day of judgment. Let thy feet not hasten thee to evil-doing, because it is likely that the angel of death will get there sooner, and wait for thee. Be not afraid of the court of justice on earth, where only witnesses may be bought, but fear the Court above, because thou art certain that there will be witnesses who will testify against thee. And not only this, but your own deeds proclaim thy accusation from time to time.

If you have performed all my commandments with joy, my attendants will come to meet you, and even I my-

self will say to you: "Let thy coming be in peace." Your eyes that never looked at property not belonging to you shall have light in darkness, as it is written [Is. lviii. 10]: "Then shall shine forth in the darkness thy light, and thy obscurity be as the noonday." Your ears that have not listened to vain talk shall hear of peace in the world to come, as it is written [ibid. xxx. 21]: "And thy ears shall hear the world behind thee, saying, This is the way, walk ye in it, when ye turn to the right hand, and when ye turn to the left." Your mouth that has not slandered will be coveted by those who were used to slander. Your mouth that has studied the Torah will be a blessing to those who wish to be blessed. Your hands that have kept away from robbery, what can do unto you those who do injustice? Your hands that you have not withdrawn from doing charity, what can do to you those mighty men? Your feet that have not carried you to sin, what can the angel of death do unto you?

All that is said above is a warning to you, and you may do as you please, but do not say that you were not warned.

CHAPTER V.

A SCHOLAR must not eat standingly, nor lick his fingers, nor yawn in presence of others. Talk little, laugh little, sleep little, indulge little in pleasure, say little "yea" and little "nay." One has always to know with whom he is sitting, near whom he is standing, with whom he is eating, with whom he is conversing, for whom he signs contracts and notes of debt. By four things the scholar is recognized: his pocket, his goblet, his anger, and his dress; and, some say, even his talk. The beauty of the Law is wisdom; the beauty of wisdom is modesty; the beauty of modesty is the fear of Heaven; the beauty of the fear of Heaven is noble performance; the beauty

of noble performance is secrecy (*i.e.*, not publicly, for the purpose of being praised). One shall not be awake, etc. (see above).

CHAPTER VI.

FOUR things are derogatory to scholars: to walk alone in the dark (and arouse suspicion); to be perfumed; to be the last in entering a prayer-house, and to hold much discourse at a meeting of dunces.

When entering, the greater shall be first; when leaving, the smaller shall be first. When ascending steps, the greater shall be first; when descending, the smaller shall be the first. At a public meeting, the greater shall have the preference. When entering a prison, the smaller shall do so first. For saying benedictions, the greater is first. The one entering the house must always greet first the one who is in the house. One must not lean at meals (as was the custom in the Orient) when a greater man than he is at the table. One shall not drink in public unless he turns away his face from the bystanders. The first step to sin is in one's thoughts, the second is scorn, the third is haughtiness, the fourth is cruelty, the fifth is idleness, the sixth is causeless hatred, and the seventh is an evil eye; and these were meant by Solomon [Prov. xxvi. 25]: "For there are seven abominations in his heart."

CHAPTER VII.

SEVEN things mark the clod, etc. (See Aboth, Chap. V., Mishna *J.*) A scholar must be careful in his eating, drinking, washing, anointing, in wearing the sandals, in his walking, dressing, in the use of his voice, in the act of spitting, and also with all his good deeds. As a bride, who so long as she is in her father's house pursues

privacy and modesty, and when she is given away in marriage announces publicly, saying : " All those who can come to testify against me, let them come and do so," so a scholar must pursue privacy in his deeds but publicity in his ways ; namely, he must run after truth but not after falsehood, after honesty but not after robbery, after modesty but not after haughtiness, after peace but not after war, after the advice of the old but not after that of the young. He shall rather follow behind a lion than behind a woman.

Who respects the sages ? he who gives food, drink, dress, shoes, goes out to meet and accompanies when leaving, without distinction between rabbi or disciple. And who shows them disrespect ? he who occupies the seat of his master even during his absence, or substitutes him (without permission) in lecturing, or contradicts him.

CHAPTER IX.*

R. Eliezer the Kapar said : Keep aloof from anger, for by being angry at others you will add to your transgression. Love your admonisher, for by doing so you will add wisdom to your ability ; and rather shun the one who honors you, that your wisdom be not lessened. Love the prayer-house, in order that you shall be rewarded daily ; and the house of learning, in order that your children shall come to study. Love the poor, in order that your children shall not come to poverty. Love modesty, that you may enjoy longevity ; love the pious, in order that you may be saved from the black angel. Be careful in the reading of Shema, and prayer in general, in order that you be saved from Gehenna. Your house shall be wide open, in order that you shall never lack food. Be careful that the doors of your house shall not be closed when you take your meals, that you may not be punished

* Chapters VIII. and X. are a repetition of what was stated in other places.

therefor with poverty. Be careful about the honor of your wife. Be glad of your chastisement, for this probably saves you from Gehenna. Be joyful at your table when the hungry derive benefit from it, in order that you enjoy longevity and have a share in the world to come. Be also joyful when giving charity from your house, in order that you may pacify the anger of death, as it is written [Prov. xxi. 14]: "A gift in secret pacifieth anger, and a bribe in the bosom, strong fury." If you have troubled your feet for the poor or for the sake of a merit, the following passages may be applied to you [Deut. xxviii. 6]: "Blessed shalt thou be at thy coming in, and blessed shalt thou be at thy coming out." If you keep your mouth from slander, you will spend all the days of life in peace. One who is audacious towards one who is greater than he will finally be punished with a plague. If you run to do honor to a sage, you will be rewarded with enviable children; and for running to do honor to the poor, you will be rewarded with sons of learning and a law-abiding record in Israel. Dost thou see a sage die, do not turn away from him until after burial, that thou, too, mayest receive respect and attention when it will be thy time to die. When you see your neighbor has become poor and his power is on the decline, do not refuse to help him, as it is written [Eccl. viii. 5]: "Whoso keepeth the commandment will experience no evil thing." If you have loaned him something when he was in need, the following passage will be fulfilled on you [Is. lviii. 9]: "Then shalt thou call, and the Lord will answer." If you lower yourself, the Lord will lift you up; but if you assume superiority over your fellowmen, the Lord will lower you. If others quarrel with thee, whether in a house of learning or at an ordinary meeting-place, do not leave until peace is restored, and they shall praise thee in thy absence as Pinchas b. Elazar. Great is peace, that even when it reigns among idolaters nothing can be done to them, as it is written [Hosea, iv. 17]: "Ephraim

is *bound* (bound together) to idols ; let him alone." But if they quarrel among themselves, it is said of them [ibid. x. 2] : " Their heart is divided ; now shall they bear their guilt." Hence that house in which there is strife will be destroyed, and the sages say that even a prayer-house in which there is strife will be demolished. The same is it with two chiefs of the court who live in one town and quarrel with each other, they will finally die. Abba Saul said : Strife between courts is a destruction of the world. Abba Issi b. Johanan said in the name of Samuel the Little : This world resembles the eyeball of a man. The white is the ocean that surrounds the whole land ; the black is the world ; the circle in the black is Jerusalem, and the image (the pupil) in the circle is the Temple, which will be rebuilt in the near future. Amen.

THE CHAPTER ON PEACE.*

R. Jehoshua b. Levi said : Great is peace, for it is as the leaven to dough. If the Holy One had not given peace to the world, sword and beast would devour up the whole world, as it is written [Lev. xxvi. 6] : " And I will give peace in the land."

It is written [Eccl. i. 4] : " One generation passeth away, and another generation cometh, but the earth endureth for ever." King Solomon meant to say thus : Although one generation passes away and another one comes, one kingdom disappears and another one appears ; and although evil decrees one after another are enacted against Israel, still they endure for ever. The Lord does not abandon them, and they are never abandoned. They are never annihilated, neither do they decrease, as it is written [Mal. iii. 6] : " For I the Lord have not changed : and ye sons of Jacob, ye have not ceased to be " (*i.e.*, as I

* This chapter is considered a separate treatise. See Zunz and other bibliographers.

have never changed and will never change, so ye sons of Jacob have never ceased and will never cease to be). But [Deut. iv. 4]: "Ye that did cleave unto the Lord your God are alive, every one of you, this day." R. Jehoshua said: Great is peace, for at the time Israel arose and said [Exod. xxiv. 7]: "All that the Lord hath spoken will we do and obey," the Holy One was pleased to give unto them His Torah and blessed them with peace, as it is written [Ps. xxix. 11]: "The Lord will bless his people with peace." Hezekiah said: Great is peace, for at every commandment in the Torah it is written "if," as, for instance, Exod. xxiii. 4, "If thou meet," etc., which means, *if* such a thing occurs to you, you must do the commandment; but concerning peace it is different, there it is written [Ps. xxxiv. 15]: "Seek peace, and pursue it," which means, seek peace at the place where you are, and if you do not find it, seek it in other places. Great is peace: about all the journeys of Israel it is written, "And *they* removed . . . and . . . encamped," which means *they* removed in strife and encamped in strife, but when they came to Sinai there was no more strife, and they encamped in peace, as it is written [Exod. xix. 2]: "And Israel encamped opposite the Mount" (*i.e.*, all Israel were united). The Holy One, blessed be He, then said: "Because Israel hates discord and loves peace, and all are united, this is a favorable time that I should give them my Torah." Adoniah the son of David was killed because he was quarrelsome, and it is permitted to support the accusation of a quarrelsome man, as Nathan the prophet did when Bath-Sheba accused Adoniah [I Kings, i. 14]: "I myself will come in after thee, and confirm thy words." And Rabbi said: All manner of lying is prohibited, except it be to make peace between one and his neighbor. Bar Kappara said: Great is peace, as among the angels there is no animosity, no jealousy, no hatred, no commanding, no quarrelling, because the Holy One, blessed be He, has made peace among them,

as it is written [Job, xxv. 2]: "Dominion and dread are with him: he maketh peace in his high places." "Dominion" is the angel Michael and "Dread" is Gabriel, one of whom is of fire and the other one of water, and still they do not oppose each other, for the Holy One, blessed be He, has made peace between them.

R. Jehoshua said: Great is peace, in that the covenant of the priests was made with peace, as it is written [Numb. xxv. 12]: "I give unto him my covenant of peace." The name of the Holy One, blessed be He, is also "peace" (Shalom), as it is written [Judges, vi. 24]: "And called it Adonay-shalom." R. Jose the Galilean said: The name of the Messiah is also "peace" (Shalom), as it is written [Is. ix. 5]: "The prince of peace." Said R. Jehoshua: Israel is also called "peace," as it is written [Zech. viii. 12]: "For the seed shall be undisturbed, the vine shall give its fruit," which is to be interpreted thus: "The vine will give its fruit to the seed of peace" (Israel). R. Jose the Galilean said: When the Messiah shall come to Israel, he will begin with peace, as it is written [Is. lii. 7]: "How beautiful upon the mountains are the feet of the messenger of good tidings, that publisheth peace, that announceth tidings of happiness, that publisheth salvation, that saith unto Zion, Thy God reigneth." He also said: Great is peace, because even wars are waged for the sake of peace, as it is written [Deut. xx. 10]: "When thou comest nigh unto a city to make war against it, then summon it with the word of peace." R. Jehoshua said: In the future the Holy One, blessed be He, will uphold the righteous with peace, as it is written [Is. xxvi. 3]: "The confiding mind wilt thou keep in perfect peace; because he trusteth in thee." Again he said: Great is peace, because it accompanies the living as well as the dead—the living, as it is written [Exod. iv. 18]: "And Jethro said to Moses, Go in peace"; the dead, as it is written [Gen. xv. 15]: "But thou shalt come to thy fathers in peace."

R. Jehoshua of Sachnin said in the name of R. Levi: Great is peace, in that all the benedictions and prayers conclude with "peace." The reading of Shema we conclude with "peace," "and spread the tent of thy peace"; the blessing of the priests concludes with peace, "and give thee peace"; and the eighteen benedictions conclude: "Blessed be thou, master of peace."

Said R. Jehoshua b. Levi: The Holy One, blessed be He, said to Israel, You have caused me to destroy my house and to exile my children, now pray for peace and I will forgive you, as it is written [Ps. cxxii. 6]: "Pray ye for the peace of Jerusalem." Therefore he who loves peace, runs after peace, offers peace, and answers peace, the Holy One, blessed be He, will make him inherit the life of this world and the life of the world to come, as it is written [Ps. xxxvii. 11]: "But the meek shall inherit the land, and shall delight themselves because of the abundance of peace."

END OF TRACT DERECH ERETZ—RABBA AND ZUTA.

NEW EDITION
OF THE
BABYLONIAN TALMUD

BY
DR. MICHAEL L. RODKINSON

SECTION MOED (FESTIVALS) COMPLETE, consisting of the following volumes:

- Vol. I. TRACT SABBATH, first ten chapters, pp. xxxiv + 188.
Vol. II. TRACT SABBATH (continued), fourteen chapters, pp. xxxvi-xlvii + 189-390.
Vol. III. TRACT ERUBIN, pp. xvi + 252.
Vol. IV. TRACTS SHEKALIM AND ROSH HASHANA, Hebrew and English, pp. xlv; English, 104; Hebrew, 66.
Vol. V. TRACT PESACHIM, pp. xii + 264.
Vol. VI. TRACTS YOMAH AND HAGIGA: Yomah, pp. xx + 148; Hagiga, pp. vi + 54.
Vol. VII. TRACTS BETZAH, SUCCAH AND MOED KATAN: Betzah, pp. xiv + 78; Succah, pp. x + 93; Moed Katan, pp. iv + 46.
Vol. VIII. TRACTS TAANITH, MEGILLA, AND EBEL RABBATHI (with Editor's own commentary): Taanith, pp. xiv + 94; Megilla, pp. vi + 90; Ebel Rabbathi, pp. iv + 62.

Price \$3.00 per vol. *net*.

TRACT SHEKALIM, separate edition, Hebrew and English (with Editor's own commentary on both), unbound. Price \$1.50.

SECTION JURISPRUDENCE (DAMAGES). Volume I. Ethics of Judaism (Tracts Aboth, Aboth of R. Nathan, Derech Eretz Rabba, and Zuta). *Just published; succeeding volumes in press.*

History of Amulets, Charms and Talismans; a historical investigation into their Nature and Origin. By M. L. RODKINSON. Pp. x + 93. Price \$2.00.

NEW TALMUD PUBLISHING CO.

1332 FIFTH AVE., NEW YORK

~~APR 30 1984~~



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

New Edition of the Babylonian Talmud: Tracts [!] Baba Kama

Michael Levi
Rodkinson, Isaac
Mayer Wise, ...



Library of the Divinity School.

Bought with money

GIVEN BY

THE SOCIETY

FOR PROMOTING

THEOLOGICAL EDUCATION.

Received 20 August, 1900.

Talmud. English.
NEW EDITION
OF THE
BABYLONIAN TALMUD

**Original Text, Edited, Corrected, Formulated, and
Translated into English**

BY
MICHAEL L. RODKINSON,

SECTION JURISPRUDENCE (DAMAGES)
TRACTS BABA KAMA (FIRST GATH)

Volume II. (X.)

NEW YORK
NEW TALMUD PUBLISHING COMPANY
1332 FIFTH AVENUE

BM

499.5

.E4

1896

v.10

1900, August 20.

Divinity School.

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.
2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.
3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waibayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.
4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.
5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.

COPYRIGHT, 1900, BY
MICHAEL L. RODKINSON.

CONTENTS.

	PAGE
INTRODUCTION TO THE THREE GATES OF SECTION JURISPRUDENCE,	v
SYNOPSIS OF SUBJECTS OF VOL. X.—TRACT BABA KAMA (THE FIRST GATE),	ix

CHAPTER I.

THE FOUR PRINCIPAL TORT-FEASORS ; THE DIFFERENT MODES OF RESTITUTION ; THE VICIOUS AND NON-VICIOUS ANIMALS ; THE APPRAISEMENT BEFORE THE COURT,	I
---	---

CHAPTER II.

RULES REGULATING THE PRINCIPLE OF VICIOUSNESS AND NON-VICIOUSNESS IN THE FOUR PRINCIPAL TORT-FEASORS ENUMERATED IN THE FIRST MISHNA,	30
--	----

CHAPTER III.

RULES CONCERNING PLACING VESSELS ON PUBLIC GROUND. INJURIES CAUSED BY PEDESTRIANS TO EACH OTHER WITH THEIR LOADS. THE VICIOUS AND NON-VICIOUS OXEN—IF THEY HAVE DONE INJURY TO EACH OTHER OR TO HUMAN BEINGS, ETC., . . .	57
---	----

CHAPTER IV.

RULES IN REGARD TO OXEN REPEATEDLY GORING OTHER OXEN AND HUMAN BEINGS. OXEN OF ORPHANS AND GUARDIANS AND WHAT IS CONSIDERED "GUARDED,"	82
--	----

CHAPTER V.

RULES CONCERNING A GORING OX ; EXCAVATIONS ON PUBLIC AND PRIVATE PREMISES ; EXCAVATIONS MADE BY PARTNERS, ETC., . .	106
---	-----

CHAPTER VI.

	PAGE
REGULATIONS CONCERNING THE GUARDING OF ANIMALS AGAINST DOING DAMAGE. CONCERNING THE STARTING OF FIRE; IF IT PASSES OVER A WALL. FOR WHAT DISTANCES PASSED BY A OF FIRE IS THE ONE WHO STARTED IT LIABLE? . . .	131

CHAPTER VII.

RULES AND REGULATIONS CONCERNING THE PAYMENT OF DOUBLE, AND FOUR AND FIVE, AND COLLUSIVE WITNESSES; THE RAISING YOUNG CATTLE IN PALESTINE, ETC., . . .	149
--	-----

CHAPTER VIII.

THE FIVE ITEMS OF PAYMENT IN CASE OF INJURY TO A HUMAN BEING, INDEPENDENTLY OF THE CRIMINAL LIABILITY. THE LIABILITY FOR ASSAULT WHEN NO INJURY IS SUSTAINED, . . .	182
---	-----

INTRODUCTION TO THE THREE GATES OF SECTION JURISPRUDENCE.

THE three tracts *Baba Kama*, *Metzia*, and *Bathra* (the First, Second, and Third Gates) are unique in the whole Talmud in this respect, that they bear no name indicating the contents, as is the case with all other tracts of the Talmud, and we do not find in any commentary any explanation or discussion of the fact. It may be because the reason is very simple, namely, that these three tracts are the only ones which treat purely of civil law, for even in cases of larceny only the civil side (as the actual damage, and the fine for causing it) is treated of (if there is here and there mentioned some criminal liability, it is only incidentally as a citation in course of the discussion); and as the cases are very numerous and varying in character, no appropriate title could be found to indicate the contents of each tract. Indeed, so numerous are they that we may safely say there is no civil case which can possibly arise between man and man that is not treated of in these tracts. The other tracts of this section, which are enumerated in our introduction to Volume I. (IX.), treat each of a separate and distinct subject and not of purely civil law.

For those especially interested in comparative jurisprudence we give below two articles by prominent publicists, which illustrate only two of the many important principles scattered all over the Talmud.

The first, "The Talmud," by I. D'Israeli, is an extract from "Curiosities of Literature," and is as follows:

In the order of *damages* containing rules how to tax the damages done by man or beast or other casualties their distinctions are as nice as their cases are numerous. What beasts are innocent and what convict. By the one they mean creatures not naturally used to do mischief in any particular way, and by the other, those that naturally or by a vicious habit are mischievous that way. The tooth of a beast is convict, when it is proved to eat its usual food, the property of another man, and full restitution must be made; but if a beast that is used to eat fruit and herbs, gnaws clothes or damages tools, which are not its usual food, the owner of the beast shall pay but half the

damage when committed on the property of the injured person ; but if the injury is committed on the property of the person who does the damage, he is free, because the beast gnawed what was not its usual food. And thus, if the beast of A gnaws or tears the clothes of B in B's house or grounds, A shall pay half the damages, but if B's clothes are injured in A's grounds by A's beast, A is free, for what had B to do to put his clothes in A's grounds ? They made such subtle distinctions, as when an ox gores a man or beast, the law inquired into the habits of the beast ; whether it was an ox that used to gore, or an ox that was not used to gore.

However acute these niceties sometimes were, they were often ridiculous. No beast could be *convicted* of being vicious till evidence was given that he had done mischief three successive days ; but if he leaves off those vicious tricks for three days more, he is innocent again. An ox may be convict of goring an ox and not a man, or of goring a man and not an ox ; nay, of goring on the Sabbath and not on a working day. Their aim was to make the punishment depend on the proofs of the design of the beast that did the injury, but this attempt evidently led them to distinctions much too subtle and obscure. Thus some rabbins say that the morning prayer of the *Shem'ah* must be read at the time they can distinguish *blue* from *white* ; but another, more indulgent, insists it may be when we can distinguish *blue* from *green* ! which latter colors are so near akin as to require a stronger light. With the same remarkable acuteness in distinguishing things is their law respecting not touching fire on the Sabbath. Among those which are specified in this constitution, the rabbins allow the minister to look over young children by lamp-light but he shall not read himself. The minister is forbidden to *read* by lamp-light, lest he should trim his lamp ; but he may direct the children where they should read, because that is quickly done, and there would be no danger of trimming his lamp in their presence, or suffering any of them to do it in his. All these regulations, which some may conceive as minute and frivolous, show a great intimacy with the human heart, and a spirit of profound observation which had been capable of achieving great purposes.

The owner of an innocent beast only pays half the costs for the mischief incurred. Man is always convict and for all mischief he does he must pay full costs. However, there are casual damages—as when a man pours water accidentally on another man ; or makes a thorn-hedge which annoys his neighbour ; or falling down, and another by stumbling on him incur harm : how such compensations are to be made. He that has a vessel of another's in his keeping, and removes it, but in the removal breaks it, must swear to his own integrity ; i.e., that he had no design to break it. All offensive or noisy trades were to be carried on at a certain distance from a town. Where there is an estate, the sons inherit, and the daughters are maintained, but if there is not enough for all, the daughters are maintained and the sons must get their living as they can, or even beg. The contrary to this excellent ordination has been observed in Europe.

The second, of which a literal translation follows, was written in Hebrew by Dr. D. H. Farbstein, a counsellor-at-law in Zurich,

Switzerland, in the "Hashana" (Year-book) for 1900, under the title "One Cannot Grant that Which is not in Existence."

There is no law which has not its reason. Every legal principle is the result of a certain economic and political condition ; it is the product of a certain epoch, aiming to benefit the political and economic life of that historic epoch.

The legal principle that one cannot grant that which is not yet in existence had its origin in the Hebrew nation and was the product of a certain epoch, and we shall endeavor here to explain the motives which prompted the development of this legal precept.

This principle existed also in the laws of other Semitic nations in general, and in the Mahometan laws in particular. It was, however, unknown to the Roman law, as according to the Roman law one could grant that which was not yet in existence, and the sale of an article which existed only in expectation was valid, and even the mere expectation could form the subject-matter of a purchase or sale.

The reason of this difference between the Semitic laws in general, and the Jewish laws in particular, and the Roman laws on this point lies, in my judgment, in the prohibition of taking usury.

"Thy money shalt thou not give him upon usury, nor lend him thy victuals for increase" [Lev. xxv. 37] is one of the principal Mosaic laws. And as it is prohibited to give money upon usury, so also is it prohibited to raise the price ; as, for instance, if the price of an article is such and such in cash, it is prohibited to raise the price of such article if sold on credit for a certain time, for it is nothing but indirect usury.

This law was necessary as long as it was prohibited to give money upon usury ; in our own times, however, when industry and commerce have developed so much, it is very usual to buy and sell things which exist only in expectation. In the time of the Talmudists the one who sold that which was not in existence was not an ordinary merchant, but only one who needed money. For instance, a farmer needed money. He applied to the money-lender for a loan. The money-lender was willing to make the loan, but was kept back by the prohibition to give money on usury. In order to evade this prohibition he bought of the farmer the future products of his farm, paying him only a very low price. The difference between the actual value of the products and the price paid by the lender is nothing but indirect usury.

Similar methods are practised even now in those countries where usury is prohibited by the law of the land. The Talmudists, in order to prevent such and similar evasions of the prohibition to take usury, have established the principle that no one can grant that which is not yet in existence ; for the same reason, they also prohibited the fixing of a price upon future products before the market price is established. They were, at the same time, careful in stating that one cannot *grant*, and not that one cannot *buy*, affording thereby protection to the grantor only that he may rescind the sale if he elects to do so.

We see, then, that the rule that "one cannot grant," etc., was established with the end in view of preventing any evasion of the prohibition to take usury..

In those days commerce was not so developed as it is in our days, nor was money of such established currency as it is now. Nowadays one invests money in merchandise and then sells the merchandise and realizes his money with a profit, which was not so in those days ; and for that reason the taking of usury was prohibited, for money could bring no economic benefit to its owner.

But although it was prohibited to grant that which was not yet in existence, still it was allowed to grant that which would bring benefit in the future—as, for instance, to lease land for cultivation—for the substance producing the benefit is in existence.

This distinction between interest (compensation for the use of money) and rent (compensation for the use of an article producing benefit) was drawn also by the Catholic theologians of the middle ages, who also prohibited the taking of usury, but permitted the receipt of rent.

We, however, cannot fully agree with Dr. Farbstein, for the following reasons :

(a) The principal things concerning which this rule was made were marriage and inheritance. If one marries a woman upon the condition that she should become a proselyte, the marriage is null and void, because it is on condition of something which was not yet in existence. The same is the case as regards inheritance—one cannot say to a woman : “ I will leave my estate to the children you may bear.” In both these cases, usury cannot be the reason.

(b) The rule that a man cannot grant that which is not yet in existence is not an established one by all the sages, for there were many of the most popular—as R. Eliezer b. Jacob, R. Meir, and R. Juhudah the Prince—who held that one might grant that which is not yet in existence (see Kiddushin, 62 *b*, at the end), and certainly all of those sages were aware of the prohibition of usury.

It seems to us, therefore, that the sages who hold that such a thing cannot be sold is because they considered speculative transactions as robbery, so that they prohibited all kinds of gaming existing at that time ; and the one who participated in such games was disqualified as a witness, because he was considered a robber. We find, however, in this volume, p. 198, that a woman may sell the benefit of her marriage contract, although it looks like speculation ; for she may die during the life-time of her husband, and her husband will inherit from her. But even this is discussed, and seems to be an enactment of some sages for the benefit of the woman. (See text.)

SYNOPSIS OF SUBJECTS

OF

TRACT BABA KAMA (THE FIRST GATE).*

CHAPTER I.

MISHNA I. There are four principal cases of tort, etc. One thing is common to all. They are all likely to do damage and must be guarded against. The case of doing damage by digging up gravel. The different explanations of the word "mabeh" by Rabh and Samuel (foot-note). There are thirteen principal tort-feasors. The depository,† etc. There are twenty-four principal tort-feasors. What are the derivatives of all those principals? Why are the four principals, ox, excavation, mabeh, and fire, enumerated separately in the Scripture? From what and what kind of property must damage be collected? When the standard is taken, is it taken of one's own lands or of those of the public in general? In order not to close the door to borrowers, the sages have enacted that creditors should be paid out of the medium estates. If one conveys his estates to one or several persons, from whom and from what estates shall the creditors collect the money due them? In case one does a meritorious thing he shall do it up to one-third, 1-16

MISHNAS II. TO V. In all that I am charged with taking care of I have prepared the damage. There is a more rigorous rule in case of the ox than in the cases of the pit and the fire, and *vice versa*. How so? If one left his ox in charge of five persons, and one of them left intentionally and the ox caused damage, what is the law? No appraisement is made for a thief or robber. If one hypothecates his slave or his ox and thereafter sells him. There is a difference between movable and immovable real estate. Slaves are considered movable real estate. During the killing, the bringing of the suit, and the making of the award there shall be one and the same owner. There are five cases which are considered non-vicious and

* See introduction to Synopsis in Tract Aboth, Vol. I. (IX.), p. xi.

† Farther on we use the term "gratuitous bailee," as being more comprehensive.

five which are considered vicious. The tooth is considered vicious to consume, etc. What is a Bardalis? What is meant by "best estates"? The meaning of the verse Is. xxxii. 20, 16-29

CHAPTER II.

MISHNAS I. TO III. What tendency makes the foot to be considered vicious? Cocks that were flying from one place to another, and broke vessels with their wings. Cocks that were hopping on dough or on fruit, and made the same dirty, or that were flying and the wind produced by their wings damaged vessels, or that were pecking at a rope from which a water-pail was suspended, and, severing the rope, broke the water-pail—what is the law? The distinction between primary and secondary force. A dog that snatched and carried off a cake from the burning coals, and with the burning coal that stuck in the cake set fire to the barn, etc. There can be viciousness in case of "gravel in the usual way." If an animal was walking in a place where it was impossible not to kick up gravel, and she kicked, and by so doing kicked up gravel and caused damage; or if an animal caused damage by shaking the tail—what is the law? What tendency makes the tooth to be considered vicious? It happened that an ass consumed a loaf of bread contained in a basket and chewed up the basket, etc. If an animal was standing on private ground and an article was rolling toward the private ground, etc. About one who takes up his dwelling in the court of his neighbor without the latter's knowledge. One who rents a house from Reuben must pay the rent to Simeon, etc. If one uses an unoccupied house of another for storing wood and straw, etc., what is the law? A certain person erected a palace on the ruins belonging to orphans, etc. A dog or a goat that jumps down from the top of a roof and breaks vessels liable for the whole damage. If, however, they fall down, there is no liability. Is one's fire considered one's arrow or one's property? There is no liability for damages done by fire to concealed articles. How can such a case be found in the biblical law? The mouth of an animal (consuming something on the premises of the plaintiff), is it considered as if yet in the court of the plaintiff? There were certain goats belonging to the family of Tarbu that were doing damage to the property of R. Joseph, . . . 30-47

MISHNAS IV. TO VI. What ox is considered non-vicious and what vicious? One that has been warned for three days. The three days in question, are they such as to make the ox vicious, or do they also involve the owner? For one who sets his neighbor's dog on a third person, what is the law? An ox that gored, pushed, bit, lay down on, or kicked while on public ground pays half. The *a fortiori* argument regarding the half-payment of the horn. An ox that steps with his foot on a child lying on the premises of the plaintiff, what is the law in regard to the payment of atonement money? A human being is considered always vicious. One who carries a stone in his lap without being aware of it, and while getting up from his seat drops it, as regards damages he is liable. One who drops a vessel from the top of a roof upon the ground which has been covered with

pillows, and if another person remove them before the dropping of the vessel, etc., what is the law? Is a slave considered one's body, and an ox one's property? 47-56

CHAPTER III.

MISHNAS I. TO V. If one place a jug on public ground and another person stumble over it and break it, what is the law? One who kicks another with his knee is fined three selas; with the foot, five; with the fist, thirteen; what is the fine if one strike his neighbor with the handle or the iron of the hoe? A jug that broke on public ground and its contents caused a person to slip and fall, or one to be injured by its fragments, what is the law? About one who renounces ownership to his articles that cause damage. One who empties water into public ground, or one who builds his fence of thorns; or a fence that falls into public ground, and some persons were injured thereby, he is liable. The former pious men used to bury their thorns and broken glass in their fields three spans below the surface. All those who obstruct a public thoroughfare by placing chattels therein and cause damage are liable. If one carrying a barrel followed one carrying a beam, and the barrel was broken by the beam, what is the law? Potters and glaziers that walked one following the other, and one stumbled and fell, etc. If they all fell because of the first one, the first is liable for the damage of all of them, 57-69

MISHNAS VI. TO XIII. Two that walked on public ground, one running and the other one walking, etc., what is the law? One who chopped wood on public ground and caused damage on private ground, etc. One who enters a carpenter's shop without permission, and was struck on his face by a flying splinter. About employees who came to demand their wages from their employer and were gored by his ox or bitten by his dog. About two non-vicious oxen that wounded each other.

The difference in the explanation of the verse Exod. xxi. 35. About a non-vicious ox that has done damage and was sold, consecrated, slaughtered, or presented to somebody. About an ox of the value of two hundred selas that gored another ox of equal value and the carcass was of no value whatever. There are cases when one is liable for the acts of his ox and is free if they are his own acts, and *vice versa*. How so? The rule is that the burden of proof is upon the plaintiff. If one claims that he is positive, while the other one is not positive, what is the law? 69-81

CHAPTER IV.

MISHNAS I. TO IV. An ox that gores four or five oxen one after another, the last of them must be paid from the body of the goring ox, if he was yet considered non-vicious. About an ox that is vicious towards his own species, but not towards other species, or towards human beings, etc. There is a case where an ox became vicious "in alternate order." About an ox

belonging to an Israelite that gored an ox belonging to the sanctuary (see footnote). An ox of a sound person that gored an ox belonging to a deaf-mute, idiot, or minor, there is a liability. If the reverse was the case there is none. There is a difference of opinion of the Tanaim as to whether a guardian is appointed in order to collect from the body of the ox. Guardians pay from the best estates, but do not pay the atonement money. About one who borrows an ox with the understanding that he was non-vicious and it was found out that he was vicious, 82-93

MISHNAS V. TO IX. An ox that killed a man by goring him, if he was a vicious one, the atonement money is to be paid, but not when he was a non-vicious one. How can there be found a vicious ox in regard to man? If one confers, saying, "My ox has killed a certain person," or "his ox," he has to pay on his own testimony. If one's fire has done damage without intention, is there a liability or not? About an ox that was rubbing against a wall, whereby the wall fell upon a human being and killed him. About an ox belonging to a woman, to orphans, or their guardian, etc., that killed a man. About an ox that was sentenced to be put to death and his owner consecrated him. About an ox delivered to a gratuitous bailee or a borrower, etc. About an ox which was properly locked up, but yet broke out and did damage. Whence is it deduced that one must not raise a noxious dog in his house, nor maintain a defective ladder? 93-105

CHAPTER V.

MISHNAS I. TO VI. About an ox that gored a cow and the new-born calf was found dead at her side. The cow and her offspring are not separately appraised. A potter that placed his pottery in the court of another, or one who led his ox into the court of another without permission, what is the law? When he assured the safety of the ox, did it only extend to himself or also to all cattle? About a woman that entered a house to bake, and the house-owner's goat, having consumed the dough, became feverish and died. About one who enters a court without permission and injures the court-owner, or the latter is injured through him. About one who said: "Lead in your ox and take care of him," and he did damage or was injured. About an ox which intended to gore another ox, and injured a woman and caused her to miscarry. To whom must the compensation for the miscarriage be paid, to the woman or to her husband? Does the increase in the valuation also belong to the husband? About an Israelite's pledge which is in the hands of a proselyte, and the latter dies without heirs. About one who digs a pit on private ground and opens it into public ground, or *vice versa*. One who digs and opens a well and delivers it over to the community is free. About one who digs a pit on public ground and an ox or an ass falls into it. Are the vapors therein contained, or is the shock received by the animal, the cause of death when falling into a pit? 106-120

MISHNAS VII. TO IX. When a pit belongs to two partners, and one of them passes by and does not cover it, and so also does the second, the latter only is liable. About a pit which was ten spans deep and which was com-

pleted by another one to be twenty, and still by another one to be thirty spans deep. Each span of water equals two of dry ground. If one dig a pit ten spans deep and another widen it toward one direction only, what is the law? One who sells his house, the title passes with the delivery of the keys. If he sells a flock of cattle, title passes with the delivery of the Mashkhukhith (the forerunning goat kept at the head of the flock as a leader). If he covered the pit sufficiently to withstand oxen but not camels, and camels came along and made the cover shaky and then oxen fell therein, what is the law? What about the *germon* of damage? About one who places a stone on the edge of the opening of a pit, and an ox stumbles over the stone and falls into the pit. About an ox and a man who together push some other into a pit. There is no difference between an ox and another animal as regards falling into a pit, to have been kept distant from Mount Sinai, payment of double, restitution of lost property, unloading, muzzling, Kilayim, and Sabbath. Nor is there any difference between the above-mentioned and a beast or bird. Why in the first commandments is it not written "that it may be well with thee," while in the second commandments it is? 120-130

CHAPTER VI.

MISHNAS I. TO III. If one drive his sheep into a sheep-cot and properly bolt the gate, but still they manage to come out and do damage, he is free. There are four things for which one who does them cannot be held responsible before an earthly tribunal, although he will be punished for them by the Divine court. Is armed robbery, when not committed publicly, still considered theft as regards the payment of double? For frightening away a lion from one's neighbor's field the law awards no compensation. How does it pay what it damaged? About one who came before the Exilarch and complained of another who destroyed one of his trees. One who destroys a young date-tree, what amount of damage must he pay? There was a case, and Rabh acted in accordance with R. Meir; but in his lectures, however, he declared that the Halakha prevails in accordance with R. Simeon b. Gamaliel (see foot-note). About one who puts up a stack of grain on another's land without permission. One who started a fire through the medium of a deaf-mute, etc., 131-142

MISHNAS IV. TO VIII. The law about one who starts a fire and it consumes wood, stones, or earth. No chastisements come upon the world unless there are wicked ones in existence. When pestilence is raging in town, stay indoors, etc. Why does the verse begin with the damage by one's property and end with damage done by one's person? About a fire that passed over a fence four ells high. If one starts a fire on his own premises, how far must it pass to make the starter liable? About one who causes his neighbor's stack of grain to burn down, and there are vessels therein which also are burned. If one allowed another to place a stack of wheat and he covered it with barley, or *vice versa*, what is the law? Is it customary with people to keep pearls in a money-pouch? The law about a spark that escapes from under a blacksmith's hammer and does damage, . . . 142-148

CHAPTER VII.

MISHNA I. The payment of double is more rigorous than the payment of four and five fold. The law about one who stole a lamb, and while in his possession it grew into a ram, etc. That a change acquires title is both written and taught. Why did the Scripture say that if he slaughtered and sold it he must pay four and five fold? A stolen thing, which the owners have not resigned hope to regain, cannot be consecrated, etc. The pious man used to place money in the vineyard on a Sabbatical year, declaring: "All that is plucked and gathered of this fruit shall be redeemed by this money." A writ of replevin which does not contain the following directions: "Investigate, take possession, and retain it for yourself," is invalid, . . . 149-159

MISHNAS II. TO VII. About two witnesses who testify that the one stole an ox or a sheep, and either the same or other witnesses testify that he slaughtered or sold the same. If he stole from his father. From what time on is a collusive witness disqualified to give testimony? If two witnesses testify that a certain person blinded his slave's eye, and thereafter knocked out one of his teeth, and they also testify that the owner of the slave admitted it, and subsequently the witnesses are found collusive, what must the collusive witnesses pay? If two witnesses testify that he stole it, and one witness, or he himself, testified that he slaughtered or sold it, he pays only two, but not four and five fold. One who admits that he has incurred the liability of a fine, and thereafter witnesses appear, what is the law? About a confession which is made after the appearance of witnesses, and the different opinions in regard to it. If the thief sells all but one hundredth part of it or he is a co-owner of it, what is the law? One who steals an animal which is lame or blind, or which belongs to a copartnership is liable, but partners that steal together are free. About one who steals an animal within the premises of the owner and slaughters or sells it outside of it, or *vice versa*. Why did the Scripture treat more rigorously with the thief than with the robber? Ponder over the greatness of labor, etc., . . . 159-174

MISHNA VIII. No tender cattle must be raised in Palestine but in its forests. A shepherd (who raises tender cattle) that repented, we do not compel him to sell out all his cattle at once. No tender beasts shall be raised in Palestine, except dogs, cats, and monkeys. R. A'ha b. Papa said in the name of R. Hanina b. Papa three things. Upon ten conditions did Joshua divide the land among the settlers. The ten enactments of Ezra. No swine is permitted to be raised at any place. Rabbi, the Prince of Palestine, objected to the use of the Syriac language, and insisted that only the Holy and the Greek languages should be used in Palestine. R. Jose objected to the use of the Aramean language in Babylon, and insisted that the Holy and the Persian languages should be used. No dogs shall be kept unless on a chain. In the towns adjoining the frontier they must be kept on a chain only in the day time, 174-181

CHAPTER VIII.

MISHNAS I. AND II. The four items of damage: pain, healing, loss of time, and disgrace. How so? It happened that an ox lacerated the arm

of a child, and the case came before Rabha, etc. When the damage is paid for, how should the pain be appraised separately? Healing. If pus collected by reason of the wound, and the wound broke out again, etc. The sages say that healing and loss of time go together. If the defendant should say, "I will cure you myself, the plaintiff may object," etc. Shall we assume that the appraisement for the deafness is sufficient, or each of the injuries must be appraised separately? (See foot-note.) If one strikes another and makes him temporarily unfit to labor, what is the law? Disgrace—all those who sustain injury are looked upon as if they were independent men, etc. One who causes disgrace to a nude, blind, or sleeping person is liable. If one causes shame to a sleeping person who subsequently dies while asleep, what is the law? Is the reason because of the hurting of his own feelings, or because of the feelings of his family? Is a blind person required to perform all the commandments? and what R. Joseph, who was blind, said of that, 182-193

MISHNAS III. TO V. The law is more rigorous in regard to a man than in regard to an ox, etc. One who assaults his father or mother, but does not bruise them, and one who wounds another on the Day of Atonement, are liable to pay all the items of damage. To whom belongs the compensation received by one's minor daughter for a wound? About an investment for a minor and the nature thereof. Is a slave considered a "brother"? The Halakha prevails that the benefit in case of a woman who sells her right in the marriage contract belongs to herself; and if she bought estates therewith, her husband has nothing even in their income. If one blow into the ear of another, he pays one sela for the disgrace he caused him. What if one strikes another with the palm or with the back of his hand on the cheek? This is the rule: Rank and station of the parties are taken into consideration. May a witness be a judge in the same case? A non-vicious ox that killed a man and also caused damage to another, must his owner pay for the damage, besides the payment of the atonement money? All that was said concerning disgrace is only for the civil court, as to how much the plaintiff should receive, but there can be no satisfaction for the injury to the feelings, for which, if he would even offer all the best rams of the world, they would not atone, unless he prays the plaintiff for forgiveness. The origin of a series of sayings by the rabbis as well as by ordinary people. If one says to another, "Break my pitcher," etc. A money-pouch containing charity funds was sent to Pumbeditha, and R. Joseph deposited it with a certain man who did not take good care of it and it was stolen from him, and R. Joseph held him responsible. What Abayi said to him about it, 193-210

TRACT BABA KAMA (THE FIRST GATE).

CHAPTER I.

THE FOUR PRINCIPAL TORT-FEASORS; THE DIFFERENT MODES OF
RESTITUTION; THE VICIOUS AND NON-VICIOUS ANIMALS; THE
APPRAISEMENT BEFORE THE COURT.

MISHNA I.: There are four principal causes of tort (expressly mentioned in the Scripture): the ox; the (uncovered) excavation; the mabeh (the pasture of one's cattle in another's field); and the fire. The measure of the damages done by the ox is different from that of the damages done by the mabeh, and *vice versa*; and that of both, which are animated beings, is not like that of the damages caused by the fire, which is not animated. And the measure of damages caused by the three last mentioned, which are movable, is different from that of the damages caused by the (uncovered) excavation, which is stationary. One thing, however, is common to all, and that is, that they are all likely to do damage, which must be guarded against, and if damage is done, the one responsible for it must make good from his best estates.

GEMARA: If the Mishna states that there are "principals" there must be derivatives. Are those derivatives as their principals or not? Said R. Papa: "Some of them are and some of them are not" (as explained further on). The rabbis taught: "It was said of the ox that he has three principals, the horn, the tooth, and the foot. Of the horn the rabbis taught: It is written [Ex. xxi. 28]: "If an ox *gore*," and goring is only with the horn, as it is written [Deut. xxxiii. 17]: "And his horns are like the horns of reem; with them shall he push (*gore*)," etc. What is the derivative of the horn? Hurting, biting,

lying upon,* and kicking; (because they are usually done intentionally, as goring). Why is "goring" called a principal? Because it is written [Ex. xxi. 28]: "If an ox gore?" Let also hurting be a principal, because it is written [ibid., ibid. 35]: "And if a man's ox *hurt*." That hurting means goring, as we have learned in the following Boraitha: "It starts out with hurting, and it ends with goring, to teach thee that the hurting mentioned here means goring." Why does the Scripture in case of a man use the term "gore," while in the case of an animal it uses the term "hurt"? For a man, who is fortunate,† (who is guarded by his planet) "gore" is used (because it is certain that the ox gored him intentionally with all his might to harm him), but of an animal, which is not fortunate, "hurt" is used, and by the way it teaches us that an ox which is vicious toward a human being is considered vicious toward an animal, which case is not so in the reverse. But is then "biting" not the derivative of the "tooth"? Nay, the tooth usually derives benefit by doing the damage (consuming), which is not the case with biting. Are not lying upon and kicking the derivatives of the foot (because it cannot be done without bending of the feet)? Nay, damage by the foot is of frequent occurrence (because whenever the animal walks and there is something in the way it damages it), which is not the case with the above. But to what does R. Papa refer in stating that the derivatives are not like their principals? Shall we assume that he refers to those just stated? This cannot be, for they are all of the same nature, as stated above, and the owner must guard against it, and he must pay the damage. We must therefore say that there is no difference between the principal and derivatives of the horn, and R. Papa's statement refers to the derivative of the foot, in case of doing damage by digging up gravel with the foot, in which case only one-half of the amount of the damage must be paid, and which is Sinaic (*i.e.*, the restitution is for actual damage and not as a fine, which is always the case whenever one-half damage is paid). But why is this case called a derivative of the foot? (only one-half of the damage is paid, while in the case of the principal the whole must be paid). It is a derivative in respect that (by the same tradition that if the damage-doing animal

* Spoiling vessels thereby.

† According to the other explanation of Rashi it is because a human being is provident, *i.e.* careful, and it is not easy to kill him unless by penetrating his body with the horns with great force.

is not of sufficient value to pay the amount of the damage) the balance must be paid from the best of one's estates, which is only so in case of damage by the foot. Is the latter part of this then certain? Did not Rabha further on (page 33) propound a question wherefrom the damages shall be collected? (This does not matter.) Rabha was not certain about it, but R. Papa was. Why, then, is it called a derivative of the foot, even according to Rabha's theory, who was not certain about it? To equal it to the foot in that respect, that it is not liable if the damage was done on public ground (as damages done by the foot are not paid unless done on the ground belonging to the party damaged).

"*And mabeh*," etc., "*and fire*," etc. What is meant by "*mabeh* *"? Said Rabh: "It means a man"; Samuel, however, said it means the tooth (of the ox). Why does Rabh not explain it as Samuel? Because when the Mishna states "*ox*," it means everything with which an ox can do damage (consequently "*mabeh*" must be something else). And what is the reason of Samuel? Is Rabh's opinion, then, not correct? The Mishna states *ox*. Said Rabh: "It states '*ox*' for the damage done by the foot, and '*mabeh*' for that done by the tooth, and it must be explained as follows: The law of damages done by the foot, which is of frequent occurrence, cannot be applied to that of the tooth, which is not of frequent occurrence; on the other hand, the law of damage done by the tooth, which usually benefits thereby, cannot be applied to that of the foot, which derives no benefit."

But what is the matter with the horn? Why is it left out? This is included in the statement, "And if they do damage, the one responsible," etc. Why is it not mentioned expressly?

* Modern scholars come to the conclusion that originally the Mishna read *המבעיר*, which means one who started a fire, instead of *המבעה*, which latter word cannot be found either in the Scripture or in the Mishna elsewhere, and that this latter word originates from an error on the part of the transcriber in writing an *ה* instead of *יר*. And it seems to us that this view of the scholars is correct, for we find in one Tosephtha plainly the word "*Hamabir*" instead of "*Hamabeh*." We may add to this that Rabh's explanation, "It means a man," shows also that "*Hamabir*" is the correct word. We have therefore omitted all the citations of the passages to explain the meaning of the word "*Hamabeh*," as they are too far-fetched and were probably added by the expounders of Rabh's statement. Abraham Krochmal, however, maintains that in the first Mishnayoth it was used "*Hamabir*," but Rabbi, the editor of his Mishnayoth, wrote "*Hamabeh*," for the reason that this word has two meanings which can be applied to foot and tooth. (See his Notes on the Talmud, Lemberg, 1881, page 260.)

The Mishna states only cases of those which are considered vicious from the very beginning (and must pay the full amount of damage, as tooth and foot, etc.), but not cases of those which are not considered vicious from the beginning (as the horn, which pays the full amount of damages only on the third time of doing damage). Why does Samuel not concur with Rabh? He maintains that it cannot mean a "man," because this latter is enumerated in a subsequent Mishna: "A vicious ox, and an ox doing damage on the estate of the party suffering the damage, and the *man*." Why is "man" not mentioned in the first part of the Mishna? Our Mishna treats only of injuries done by one's property, but not of injuries done by one's person. Now as to Rabh, is then the "man" not enumerated in the subsequent Mishna? (Why, then, state it also in our Mishna?) Rabh may say: "It is mentioned in the later Mishna only because other vicious ones are mentioned therein, and according to him (who says that 'mabeh' means a man) the statement in the Mishna, 'the law of damages,' etc., must be explained thus: "The law of damages of an ox differs from that of a man in that the former pays 'atoning money,' while the latter does not (if a vicious ox kill a man by goring he pays atoning money, therefore if only the law of the ox would be stated, that of the man could not be deduced therefrom, because if a man kill another man unintentionally he is banished; if intentionally he suffers the death penalty, and pays no atoning money); and the law of a man differs from that of an ox in that the former is liable (in case of personal injuries caused to another man, in addition to the payment of actual damages) to four things (explained further on), which is not the case with the ox; the one thing common to both is that they are likely to do damage, and one is charged with taking care of them." [Is it then usual for an ox to do harm? It means a vicious one. But is it then usual for a man to do harm? Yea, when asleep. How is it to be understood? It is usual for a man when asleep to contract and stretch out his limbs, and all that is then in his way he damages.] But is not the man charged with his own care of himself? This can be explained as R. Abbuhu said elsewhere to one Tana: "Read, 'The man is charged with his own care of himself'"; so also is it to be read in our Mishna (and the statement in the Mishna that one is charged with taking care of them refers to the others mentioned).

R. Oshiyah taught: There are thirteen principal tort-fea-

sors: the depositary; the one loaning for use; the bailee for hire; the bailor for hire; the actual damage sustained through the personal injury; the expense incurred in curing the injury; the earnings lost through such injury and the shame suffered (this will be explained in Chapter VIII.), and those four principals mentioned in our Mishna, which make thirteen. (The depositary is liable for arbitrary damage; the one loaning for use is liable even for an accident; and the bailee for hire and the bailor for hire are responsible even for theft and loss, and, manifestly, for arbitrary damage; actual damage means that if one inflicts an injury on another person he must pay the difference in value of the person injured; the pain suffered, *i.e.*, so much as one whose arm, for instance, was to be amputated by an instrument would pay to be relieved by a drug from such pain as amputation would cause; all the others are explained further on in this volume.) Why did the Tana of our Mishna not state those nine? It is correct according to Samuel, because the Mishna treats only of injuries done by one's property, and not of injuries by one's person, but according to Rabh (who says that "mabeh" means a man, and so injuries by one's person *are* treated of) why does he not state them? The Mishna treating of "a man" means to include all damages done by a man. And according to R. Oshiyah, are they not included in the "man" stated in the Mishna? There are two kinds of damages done by man, *viz.*, those done by him to another *man* (which constitute a crime), and those done by him to an ox (in which case the liability is restricted to civil damages only). If so, why not state the same thing in regard to an ox? Let him state a case where an ox injured a man, and a case where he injured another ox. What question is this? As to a man there is a difference between the injury done to a man and that done to an ox, for in the former he is liable for the four things, and in the latter case he pays only actual damages (and therefore both are stated); but in the case of an ox, what difference is there between the injury done by him to a man and that done by him to an ox? In both cases he pays only actual damages.

R. Hyya taught: "There are twenty-four principal tortfeasors, *viz.*, those who pay double [see Ex. xxii. 4]; those who pay four or five [ibid. xxi. 37]; the thief (who confesses his guilt, in which case he pays only the actual value) and the robber (who is also a principal because he is mentioned in the Scripture [Lev. v. 23]; the collusive witness; the one who commits rape (is a

principal because mentioned in Deut. xxii. 29); the seducer [mentioned in Ex. xxii. 16]; the slanderer [Deut. xxii. 19]; the one who defiles heave-offering; the mingler (one who mingles together heave-offering with ordinary food); the one who brings a drink-offering (to the idols); (the three latter are not mentioned in the Scripture, but still they are principals for they pay pecuniary damage, and the latter is stated in the Scripture); and these with those thirteen mentioned above make twenty-four.

But why does R. Oshiyah not enumerate these mentioned here? He enumerates only those who pay actual damages, but not those who pay in form of a fine. If so, why does he not enumerate the thief and the robber who pay actual damages (as explained above)? He does so, for he states the depositary and the one loaning for use (in the case of the depositary it very often occurs that he sets up as a defence that it was stolen from him, and we have learned elsewhere that if one sets up a defence of theft or robbery he is responsible as a thief and robber). And as to R. Hyya, does it not state the depositary and the one loaning for use? He states separately property which came *lawfully* into his possession (as in the case of the depositary, etc.), and property which came *unlawfully* into his possession (as the thief).

It is correct according to the Tana of our Mishna, who states "principals" because there are also derivatives (which were enumerated above), but according to R. Hyya and R. Oshiyah if they state "principals" there must be derivatives; what are they? Said R. Abbuhu: They are all *as* principals in that respect that the damage must be paid from the best estates. What is the reason? It is deduced by an analogy of expression; in all those cases either the word "for" or "give" or "pay" or "money" is written. (Where it is written "for" we deduce it by analogy from the "for" stated as to the vicious ox, as there it is from the best estates (which in turn is deduced from the tooth and foot); so also it is here, if "give" or "pay" is written we deduce it from the ox that gored a slave where these words are written; if "money" is written we deduce it from the pit where the same word is written; and in all those cases it is paid from the best estates.)

"*The law of the damage done by an ox is not like that,*" etc. For what purpose does he mention this here at all? Said R. Zbid in the name of Rabha: "He means to say with that, that no question should be raised why the Scripture does not state

one of the tort-feasors and leave the others to be deduced (by way of analogy) therefrom, for one cannot be deduced from the other (as it is stated above; Rabh according to his theory and Samuel according to his).

"*And that of both which are animated,*" etc. For what purpose does the Tana mention this? Said R. Mesharshia in the name of Rabha: "He means to say that it should not be questioned why the Scripture does not state two of the tort-feasors (the ox and the mabeh), and fire would be deduced from these two; for this one cannot be deduced from those two (for the one is not like the others, etc., as stated in the Mishna). Said Rabha: "If any one of these should be mentioned with the 'pit,' all others could be deduced from those two by reason of having something common to all (as *e.g.*, if he would state the pit and the horn, the tooth could be deduced thus: the pit, the nature of which is not to move and do damage, must pay; the more so the tooth, the nature of which *is* to do so; and if you should say the pit is made from the very beginning to do damage, which is not so with the tooth, I will cite you the horn (which is not made so); and if you will say that the horn does the damage intentionally, I will cite you the pit and the conclusion will return (the former argument will be reinstated); the one thing common to all is that it is their nature to do damage, and one is charged with taking care of them, etc. I will also bring in the tooth. In such a way I would also deduce the foot, if the pit and the horn should be stated; and if it should be objected that the pit is from the beginning made to do damage, which is not so with the foot, the horn would be cited; and if it should be objected to on the ground that the horn does damage intentionally, the pit would be cited. And so forth as to all, with the exception of the horn, for the objection might be raised that they are all considered vicious from the beginning (which is not so with the horn). For what purpose, then, did the Scripture enumerate all of them? To teach their different peculiarities; viz., the horn—to distinguish between a vicious and a non-vicious one; the tooth and foot—to exempt them from liability if the damage was done on public ground (for it is written, Ex. xxii. 4, "and they feed in *another* man's field," but not on *public* ground); the pit—to exempt it from liability if vessels fell into it (and were damaged); the man—to make him liable to pay for the four things (which is not so in the case of the others); fire—to exempt it from liability if it consumed concealed articles (as

e.g., if articles were concealed in a stack of grain, in which case the liability is only for the grain, but not for the articles).

"*The one thing common to them all*," etc. What does this mean to include? (As from the statement it seems to include all other things the nature of which is to do damage, and one is charged with taking care of them, what other such things can there be?) Said Rabbina: "It means to include that which we have learned in the following Mishna: 'If notice be given to one to remove (within a certain time usually given by a Beth Din) a wall, or to cut a certain tree, (and he failing so to do within such time) they fall, he is liable.'"^{*} How is the case? If he renounced his ownership of them, then according to both Rabb and Samuel it is like the case of the pit; as a pit because it does often damage one must take care of it, so also is the case here.* If he has not renounced ownership, then, according to Samuel who says that they are all deduced from the pit, are they the same as the pit? Nay, the case is that he *has* renounced ownership, but lest one say that they are not like the pit which is originally made to do damage, which is not the case with the above things (the building of a wall or the planting of a tree), then the case of the ox proves that; and lest one say that the ox is different because of its usual way of doing damage with its feet, then again the case of the pit may prove and so the conclusion will return (and the original argument is reinstated).

"*To pay the damages*." The rabbis taught: It is written [Ex. xxii. 4]: "With the best of his own field, and with the best of his own vineyard shall he make restitution." That means the best field and the best vineyard of the plaintiff (*e.g.*, if A's ox grazed upon a parcel of land belonging to B, the best land of B is taken as a standard, and A must pay an amount of damages equal to the difference in value of such a parcel of land before and after having been grazed upon). Such is the dictum of R. Ishmael; R. Aqiba, however, said: "The passage intends to state only that damages are collected from the best estates of the defendant (*i.e.*, the parcel of land of the plaintiff is appraised, and if the defendant wishes to pay in land he must do so with land of his own best estates), and so much the more in case of damages to consecrated articles. Is it possible that ac-

* This is no contradiction of what was stated above, that a pit does not do damage often, for it means that it does not do so as often as the foot, which treads on everything in its way.

ording to R. Ishmael restitution must be made with the best land even if land of an inferior quality be damaged? Said R. A'ha bar Jacob: "The case treated of here is that the best land of the plaintiff was of the same quality as the worst land of the defendant, and they differ on this point. R. Ishmael holds that the land of the plaintiff is taken as a standard, and the passage stating that he shall pay from the best estates, means from the best estates of the plaintiff, and R. Aqiba holds that that of the defendant is taken as a standard for best."

What is the reason of R. Ishmael's statement? The word "field" is written below (with the best of his own *field*) and also above (and they feed in another man's *field*) (*ibid.*, *ibid.*); as above it has reference to the land of the plaintiff, so also in the statement below (and the passage is to be expounded thus: When the defendant has land which equals the best of the plaintiff's, he must pay out of such land the amount of the damage). And R. Aqiba? He may say, it is written: "With the best of his own fields, etc., he shall make restitution." That means not that of the plaintiff (and no deduction by analogy is admissible when the statement is so plain). R. Ishmael, however, may say: In this case we must derive the benefit of both the analogy of expression and the passages; the analogy of expression as I have explained, and the benefit from the passage I derive for explaining that it refers to a case where the defendant has both best and worst land, and the plaintiff has only best land, and the worst land of the defendant is inferior to the best of the plaintiff, in which case he cannot say to the plaintiff, collect your damages from my worst (because the passage gives the benefit to the plaintiff to be paid from the best), and therefore he must make restitution from his own *best* estates.

Abayi propounded the contradiction of the following passages to Rabha: It is written [*ibid.*, *ibid.*]: "With the *best* of his own fields," etc., which means from the best estates only and with nothing else, and we have learned in another Boraitha: "It is written [Ex. xxi. 34]: 'And to return money (make restitution)'; means this to include *equivalents of money, even bran?*" (Rabha answered): This presents no difficulty. When he returns of his own will he may give even bran, but if through the court he pays from the best estates. Said Ula, the son of R. Ilai: "The wording of the passage seems to lead to the same

conclusion, for it is written 'shall he make restitution,' which signifies *involuntarily*." Said Abayi to him: "Is it then written 'restitution shall be made'?" (which would mean involuntarily). It is written "*he shall* make," etc., which can also mean voluntarily. When R. Papa and R. Huna, the son of R. Jehoshua, returned from the college they explained the above passage as follows: "Anything (of personal property) is considered as the best of estates, for if he cannot sell it (at a reasonable price) at one place, he can take it to another place (and therefore if he makes restitution with personal property he may do so even with bran); except (if he makes restitution with) land, he must do so only with the best estates in order to enable him to procure a buyer."

R. Samuel bar Abba of Akkrunia propounded the following question to R. Abba: When the standard (as to which are the best and which are the worst lands) is taken, is it taken of those lands of his own, or of those of the public in general? (*i.e.*, has the defendant to make restitution out of his *own* best estates, and if his worst lands are as good as the best of the public in general, must he nevertheless pay out of his *own* best, or if his worst lands are as good as those of the public in general, may he make restitution out of his worst lands?—for they are as good as those of the public in general). According to R. Ishmael this is no question, for he says that those of the defendant are taken as a standard (and therefore if his worst are as good as those of the plaintiff he pays out of his worst estates), but the question is only according to R. Aqiba, who holds that those of the defendant are to be taken as a standard. How is it? Shall we assume that the passage "the best of his own fields" means to exclude the lands of the plaintiff, or it means to exclude the lands of the public in general? And he answered him: The Scripture states expressly "of his *own* land," and you ask whether the land of the public in general is taken as a standard? R. Samuel objected: We have learned (in case there are to be collected a woman's claim under her marriage contract [Kethubah], damages, and other debts): If one has only good lands, all the claims are collected from the good lands; if he has only medium lands, all are collected from those lands; if only poor-quality lands, all are collected from those lands; if he has all the three, damages are collected from the good; ordinary creditors collect from the medium; the Kethubah is collected from the poor-quality lands; if he has good and medium land only,

damages are collected from the good; ordinary debts and the claim of his wife are collected from the medium lands; if he has medium and poor-quality lands only, damages and ordinary debts from the medium and the wife's claim from the poor-quality lands; if he has only good and poor land, damages from the good and the other two from the poor-quality land. Now, we see that the middle part of this Boraitha states "that if he had medium and poor land, damages and ordinary debts are collected from the medium and the other two from the poor land," and if it is as you say, that his own lands are taken as a standard, let the medium he has be considered the best (as they are *his* best), and the creditors shall be referred to the poor lands? Therefore said Rabbina: They differ as to the statement of Ula. For Ula said: "According to the Scripture the creditors are paid out of the poorest, for it is written [Deut. xxiv. 11]: 'In the street shalt thou stand, and the man to whom thou dost lend shall bring out unto thee the pledge into the street.' Now if it depends on the will of the debtor, he usually brings out the poorest article he possesses as a pledge; but why have the sages enacted that creditors shall be paid out of the medium? In order not to close the door to the borrowers." The one master holds of Ula's enactment, the other one does not (but adheres strictly to the meaning of the passage).

The rabbis taught: "(One who had to pay damages, ordinary debts, and the wife's claim), if he convey all his estates (the good, medium, and poor) to one person, or to three different persons at the same time, they pass to the grantees subject to the same liabilities as if in the hands of the grantors (*i.e.*, the one who bought the good pays off the damages, the one who bought the medium pays off the creditors, etc.). If at different times, all are paid from the estate sold last (for the buyers of the prior estates may each say: When I bought my land there were other lands from which to pay). If this estate is not sufficient, the last but one is resorted to; if still insufficient, the last but two is resorted to." How is the case, if he conveyed to one person? Shall we assume that he conveyed them by one deed, then surely they pass subject to the original liability, for even if he sold them to three persons, in which case one must have priority, you say that they pass subject to such liabilities, still more so if he sold to one? (what was the necessity of stating it?) Therefore we must say that it means that they were conveyed one after another (on three different days), and

why does he state three? To teach that although each one of them may say: "I left room enough for payment," the same thing may be said even if sold to one. He will say on each parcel of land: When I bought this parcel of land there were other parcels out of which to pay. The case here is that the good lands were the last to be sold (in which case it is more advantageous for him to let them collect according to their rights than to advance the argument that he left room for payment). So also said R. Shesheth. If so, shall they all collect of the good lands? (for at the time the first two estates were sold all the liability shifted over to the best lands). The grantee may tell them: "If you will be quiet and collect according to your original rights well and good, but if not I will return the deed for the sale of the poor land to the grantor (and then the liability will shift over to those lands, for no claims are collected from conveyed lands when there are free lands), and all of you will have to collect your claims from the poor land."

It is certain that when the grantee conveyed the medium and the poor lands, and left the best for himself, that they all collected their claims from the best lands, for those were the only ones which remained, and the others were no more in his possession so that he could refer to them saying, "I do not care for the enactment of the sages (for my benefit)"; but in case he conveyed the good land and left for himself the medium and the poor, how is it? (shall the claims be collected from the second grantee because he took his lands subject to the liability? and from the first grantee they cannot collect, for he can say he accepts the enactment of the sages, and the good estates which were at the time of the first conveyance free were subject to the liability for payment of the claims?). Abayi intended to decide that all collect from the best estates. Said Rabha to him: "Did not the first grantee convey to the second grantee all his rights and interests he may have in them? And now, if they would come to the first grantee, they could collect from the medium lands only, and although at the time the medium and poor lands were conveyed the good ones were still free, he could say, "I do not want to avail myself of the enactment of the sages"; so also the second grantee can tell them: "Collect your claims from the medium and poor lands," for when the second grantee bought the estates he did so with the intention to acquire all the rights and interest the first grantee had at the time. R. Huna, however, said: (The above passages, one mentioning "money" and the other "the

best estates," do not contradict each other), it means either money or best estates.*

R. Assi, however, said: "Money is as good as land." For what purpose is this statement? If for the purpose that it is considered the "best" (*i.e.*, although he has good land he may pay in money), then it is the same that R. Huna stated, and it would be sufficient to say "and so also said R. Assi." Shall we assume that it is for the purpose of teaching as in the case of two brothers who have divided up land between themselves, and subsequently a creditor (of their father) comes and levies upon the share of one of them (that the other may pay his share of contribution either in land or in money)? Did not R. Assi already state this case? For it was taught: "Two brothers partitioned their estates and subsequently a creditor came and levied upon the share of one of them; Rabh said the partition is thereby annulled (and a new partition must take place of the lands which remained), because he holds that brothers in such a case are as heirs. Samuel, however, said that it is valid, because he holds it is as an ordinary sale and as one who buys without a responsibility. R. Assi says he (the other brother) must pay his share of one-fourth in land and one-fourth in money, for he was in doubt whether they are considered as heirs, and he must contribute his share in land and not in money, or as an ordinary sale with responsibility, and he must pay to him what he lost, but in money, and therefore he must pay one-fourth in money and one-fourth in land), therefore he must pay one-fourth in land and one-fourth in money. But what is meant by the statement "it is as good as land"? that it is considered "best"? then it is again the same statement made by R. Huna? Say: "And so also said R. Assi."

R. Zera in the name of R. Huna said: In case one does a meritorious thing he shall do it up to one-third. What does this mean? Shall we assume that it means up to one-third of his own property? If so, then if he has occasion to perform three meritorious things he must spend his whole property? Said R. Zera: It means up to one-third in endeavoring to adorn the meritorious thing (*e.g.*, if there are two scrolls of Law, and one is more expensive than the other, he shall spend one-third more to buy the more expensive one). R. Assi questioned;

* The reason why this was not stated till now is that there should be no interruption in the discussion of R. Ishmael and R. Aqiba.

Does it mean one-third of the cheaper one, or does it mean one-third should be added? This question remains unanswered. In the West it was said in the name of R. Zera: Up to one-third he shall spend from his own (without expectation to be rewarded in this world), thenceforward from the Holy One's, blessed be He (*i.e.*, that part will be repaid to him in this world).

MISHNA *II.*: (The following is the rule:) In all that which I am charged with taking care of I have prepared the damage (*i.e.*, if damage was done it is considered that I was instrumental in doing it). If I prepare only a part of the damage I am responsible nevertheless for the whole, as if I prepared the whole. And only as to property which cannot be desecrated (but for that which is desecrated there is no responsibility), or property of persons governed by laws adopted by their community,* or such that has an owner, and at any place (the damage was done), except if done on the ground exclusively belonging to the defendant, or on that belonging to both together, the defendant and the plaintiff. If damage was done, the defendant must complete the payment of the damages with the best of his estates.

GEMARA: The rabbis taught: "In all that which I am charged with taking care of," etc. How so? If one intrusts a deaf man, a fool, or a minor with the charge over a pit, or an ox, and they cause damage he must pay for such damage, which is not so in case of fire (explained further on). What case is treated of here? when the ox was kept on a rope, or the pit was covered, equivalent to which in case of fire is as if it were live coals; and if you should ask why there should be a difference (between the former and the latter), (it may be said) in the case of the ox he is likely to get loosened, and in the case of a pit the cover is likely to slip off (and therefore the owner should have that in mind and bestow better care), but in the case of coal it is the reverse, for it is likely to get more and more extinguished. But according to R. Johanan, who said (elsewhere) that if one intrusts even a flame (to those stated above) he is also free (and consequently the statement above, "which is not so in case of fire," must be explained as meaning a flame), and in such a case the equivalent thereof here would be a loosened ox and an uncovered pit. Why should there be a

* This seems to be the true meaning of the expression "Bene Brith," and not, as some thought, that it means Israelites. See our introduction to this edition in our "History of the Talmud."

difference? There (in case of fire) the deaf man has so closely connected himself with the fire (*i.e.*, if he would not move it, it would remain stationary), that it is considered that he himself has done the damage (this is according to Rashi's second explanation, and it is stated elsewhere that if a deaf man, etc., do damage there is no liability), but here it is not so (for the ox or the pit did the damage without the aid of those mentioned).

The rabbis taught: There is a more rigorous rule in the case of the ox than in the cases of the pit and the fire, and *vice versa*. (How so?) The rigorousness of the rule in case of the ox is that he (the owner) pays the atoning money (when the ox kills a free man, and 30 shekels if a slave) which is not so in the case of the pit and fire. The rigorousness of the rule in the cases of the pit and the fire is that the pit is originally made to do damage, and the fire is considered "noxious from the beginning," which is not so in case of the ox. There is a more rigorous rule in the case of fire than in the case of the pit, and *vice versa*. The rigorousness of the rule in case of the pit, which is made originally to do damage, lies in that one is responsible if he intrusted it to a deaf man, minor, or fool, which is not so in case of fire, and the more rigorousness is in the case of fire, which has in its nature to move and to do damage, and is considered noxious in that it consumes everything whether fit or unfit for it, which is not so in the case of the pit. Let him also teach that the case of the ox is more rigorous because he is liable for damages to vessels (by breaking them intentionally either with the horn or with the foot), which is not so with the pit. The Tana enumerates some and leaves out others. Is then anything else left out that also *this* is left out? Yea, the case of concealed articles (*e.g.*, if an ox has kicked upon a sack containing vessels, or an ox carrying a sack containing vessels fell into a pit and the vessels broke, the owner is responsible for the vessels, which is not so in case of fire).

"*If I have prepared a part of the damage,*" etc. The rabbis taught: "How so? If one dug a pit nine spans deep and another one came and completed it to be ten spans deep, the latter is responsible (whether the ox falling into it was killed or only injured). Shall we assume that this is not according to Rabbi (who said further on that for damages both are liable)? Said R. Papa: The case is that the ox that fell in was killed (in which case Rabbi also agrees that the one who dug the last span must pay). R. Zera opposed: Is this the only case—is it not

the same if one left his ox in charge of five persons, and one of them left intentionally and the ox caused damage—is the one who left responsible? And R. Shesheth also opposed, saying that there is another case when one added fuel to a burning fire, and the latter caused damage; the last one is responsible, and R. Papa himself opposed, saying there is also another case of the following Boraitha when five persons sit on a bench, and it does not break, and another one comes and sits down and it breaks, the last one is responsible (for the whole damage); and he himself explained it as it had been, Papa bar Abba (who was a heavy-weight man). Now, let us then see; in all those three cases how is it to be understood? If without the last one no damage would have been caused, then is it self-evident that he is responsible? And if even without him damage would have been caused, then what has he done that makes him liable? (and therefore these illustrations cannot be cited, because in the case of the pit the one who dug it nine spans can say to the other: If you had not dug the tenth span the animal would not have been killed (as there is a tradition that a pit less than ten spans deep cannot kill), but only injured, and I would have had to pay only for the injury, but not for the whole animal). But finally how is this Boraitha, after all, to be explained? (for the former two cases which are not Boraithas we do not care). It can be said that if he would not have sat down it would have not broken before the lapse of two hours, and he hastened it to break in one hour, in which case the first five can say to the last one: "If not for you, we would have remained sitting a little longer, and would have left (and the bench would not have broken)." But why should he not reverse the argument and say: "If you were not with me on the bench, it would not have broken at all?" The case is that it broke while he was leaning on them. What is the difference? Lest one should say that, as he caused the damage only by his strength (leaning) and not by sitting down, he should not be liable, he comes to teach us that one's strength is equivalent to one's weight of body.

"*I am responsible to pay the whole damage.*" It does not state "I am responsible for the damage," but "I am responsible to complete the compensation for the damage"; this is a support to what was taught by the rabbis: "The completion of the compensation for the damage." This is to teach that the plaintiff must trouble himself with the disposal of the carcass.

Whence do we deduce it? Said R. Ami: It is written [Lev. xxiv. 21]: "And he that killeth a beast shall make restitution for it" (yeshalmenah). Do not read "yeshalmenah," but read "yashlimenah," he shall complete her (*i.e.*, the plaintiff shall take the final trouble of disposing of it by sale and the defendant shall pay the balance of the damage). Hezkyah says, it can be deduced from the following passage [Ex. xxi. 34]: "And the dead beast shall be his," which signifies it shall be that of the plaintiff. So it was explained by the disciples of Hezkyah. "Thou sayest it belongs to the plaintiff"; perhaps the passage means that it belongs to the defendant? It was said: "It was not so." What does that mean? Said Abayi: If thou shouldst think that the carcass belongs to the defendant, it should have been written "an ox for an ox" [ibid., ibid.], and no more (and I would know that the defendant can have the carcass); why the addition of the above passage? Infer here from that the passage means that it shall remain the plaintiff's. Said R. Kahana to Rabh: Is that so, that without the addition of that passage it could be thought that it belongs to the defendant? Where is the common sense? Since if he (the defendant) has a number of carcasses he may give them to the other party (in payment of the damages), for the master said above: It is written [ibid.] "He shall 'return'; that includes equivalents of money, and even bran." The more so the carcass in question, which is his own? This statement (as to who has to trouble himself with the disposal of the carcass) was necessary as to the loss in value of the carcass (*i.e.*, that from the time the animal was killed its owner is charged with its disposal, and if through his negligence it was not disposed of, and there resulted a loss in value, that loss is charged to the plaintiff).

Shall we assume that the Tanaim of the following Boraitha differ as to this case? It is written [ibid. xxii. 12]: "If it be torn in pieces let him bring it in evidence that it happened so by accident, and he will not be liable" (for a bailee for hire is not responsible for accident). Abba Saul, however, says it means he shall bring the carcass into court (to be appraised). May we not suppose that they differ thus (for we cannot suppose that they differ in case it was done by accident, for even Abba Saul must concede that a bailee for hire is not responsible in such a case, but they probably differ in a case where the bailee *is* liable): One holds that the loss in value is chargeable to the plaintiff, and the other holds that it is chargeable to the defend-

ant? Nay, both agree that it is chargeable to the plaintiff, but they differ as to the trouble of transportation of the carcass.

As we have learned in the following Boraitha: The anonymous teachers say: Whence do we deduce that the owner of the pit has to bring up the killed ox from the pit (at his expense)? It is written [ibid. xxi. 34]: "He shall make restitution in money unto the owner thereof; and the dead" (*i.e.*, he must give also the carcass, which cannot be done unless brought up from the pit). Said Abayi to Rabha: "How is this case of transportation of the carcass? Shall we assume that when in the pit it is worth one Zuz and when on the brink thereof it is worth four? Then this trouble is for his own benefit? Why the passages?" He answered him: "The case is that it is in either case not worth more than one Zuz" (and even then he must bring it up). But can there ever happen such a case? Yea, as people usually say: "A beam in the forest is worth one Zuz, and the same, although in the city, is also only of same value."

Samuel said: " (It is the custom of the courts that) no appraisalment is made for a thief or robber (*i.e.*, if one stole an article, etc., and the same was broken, he does not return the broken parts and pay the difference in value, but must return good articles), but only in case of damages. And I, however, add also the borrower, and Aba (Rabh) agrees with me."

It was taught: Ula said in the name of R. Elazar: An appraisalment is made for a thief and a robber. R. Papi, however, said: No appraisalment is made. And the Halakha prevails that no appraisalment is made for a thief and robber; but for a borrower, however, it may be made, according to R. Kahana and R. Assi. Ula said again in the name of R. Elazar: "A first-born (of a man) which was killed by an animal within the thirty days need not be redeemed." So also has Rami bar Hama taught: Because it is written [Numb. xviii. 15] "thou shalt redeem" one might think that this were so even if it were killed within the thirty days; therefore it is written [ibid., ibid.] "nevertheless" * to distinguish (that in case it was killed it need not).

The same said again in the name of the same authority: "Of brothers who have divided up (their estates of inheritance), that wearing apparel which they have on is appraised, but that which their sons and daughters have on is not appraised, because

* According to Leeser's translation.

they have no case in court, and therefore we do not trouble them to come." Said R. Papa: "Sometimes, however, even what *they* have on is also not appraised; this may be the case if the eldest brother was the manager of the estates, and he was dressed in better clothes for business purposes."

The same said again in the name of the same authority: "The Halakha prevails that debts are collected from slaves (because they are considered as real property). Said R. Na'hman to Ula: Did R. Elazar say so even when the slaves fall inheritance to orphans? Nay, only from him. From him? Would you say even from the only garment he has on? The case here is that he has hypothecated the slave, as Rabha said: "If one hypothecates his slave and thereafter sells him, the creditors nevertheless replevy the slave. If he has, however, hypothecated his ox, and thereafter sold him, the creditor cannot replevy him. Why so? Because when a slave is hypothecated people talk about it, and therefore the vendee is charged with notice, which is not the case with an ox." After R. Na'hman left, Ula said to those present: "So said R. Elazar: 'Even from the orphans (for a slave is as real estate).'" Said R. Na'hman (when he heard of this): "Ula avoided me (to state that in my presence, for fear I would cut him off with numerous objections)." Such a case happened in Nahardea and her judges collected a debt (from the slaves which fell an inheritance to orphans). In Pumbeditha such a case happened, and R. Hana bar Bizna collected it. Said R. Na'hman to them: "Go and return it, and if not I will collect it from your property." Said Rabha to R. Na'hman: "Ula, R. Elazar, the Judges of Nahardea, and R. Hana bar Bizna are all your opponents; according to whom then is your decision?" He answered: "I know a Boraitha, which was taught by Abimi: "A premonition (*πρεοβολη*) is effective as to land, but not as to slaves; personal property passes with land (if personal property is sold with land, and only the land is taken possession of, the personal property also passes), but not with slaves." (Hence we see that slaves are considered personal property.) Shall we assume that the Tannaim of the following Boraithas differ as to this case: If one sold slaves and land, and the vendee took possession of the slaves, the land does not pass. The same is the case if *vice versa*. Land and personal property, if the vendee took possession of the land, the personal property passes, but not *vice versa*. Slaves and personal property do not pass, unless the vendee takes posses-

sion of both of them, as one does not pass with the other. In another Boraitha it was taught that if one takes possession of the slaves the personal property sold therewith passes. Shall we not assume that they differ in this: One holds that slaves are considered real, and the other holds that they are personal property? Said R. Ika, the son of R. Ami: "Nay, all agree that a slave is personal property, and that Boraitha which states that it does not pass is correct, and that Boraitha that states that it does pass, treats of a case where the clothes which are on the body of the slave were sold." [And even when so, what of it? Is this then not considered a moving court, and with a moving court (personal property) does not pass? And if you should say that he was then not moving, did not Rabha say (Baba Metzia, Chap. I.) that if it does not pass when moving, it does not do so also when standing or sitting?] The Halakha prevails that it passes only when the slave is tied and cannot move.

But have we not learned in another Boraitha that if he takes possession of the land the slaves also pass? There is the case that the slaves are standing upon it. Would you say that the Boraitha which states that they do not pass means that they do not stand upon it? This would be correct according to the one who says that slaves are considered personal property, and therefore if they stand upon it they do, and if not they do not pass; but according to the one who says that slaves are as real property, why is it necessary that they should stand upon it? Did not Samuel say that if one convey to another ten different parcels of land located in as many different states, the taking possession of one of them acquires title to all? (Says the Gemara: What a question is this?) Even according to the opinion of him who says that slaves are considered personal estates, why is it needed that they should stand upon it? Have we not the tradition that if personal property be sold with real property, the former need not be upon the latter when possession is taken of the latter? What answer can you give to this, that there is a difference between personal estates that *are* movable and those that *are not*? Say the same thing here: There is a difference between movable and immovable real estate. Slaves are considered movable real estate, the body of the earth is one wherever it is (consequently all his lands are attached to each other).

"*Property which cannot be desecrated*," etc. R. Abba said: "An ox intended to be sacrificed as a peace-offering, which has

done damage, the (half) damage is paid out of his meat, but not out of those pieces prepared for the altar." Is that not self-evident, for those pieces are for the Lord? It means to teach that the value of the half of these pieces is not collected from the other half of the flesh (*e.g.*, a non-vicious ox consecrated for a peace-offering, of the value of two hundred Zuz when slaughtered, that has killed another ox of the same value when alive, in which case according to law he must pay the damage out of half of his body. Now the pieces being burnt the value of the half body is diminished, nevertheless the amount diminished cannot be collected from the other half of the body). According to whom is this? According to the rabbis, (who hold in case one ox has pushed another ox into a pit) that only the owner of the ox has to pay, but not the owner of the pit (although it is not sufficient); then this is self-evident. If it is according to R. Nathan, who in the above case holds that the owner of the pit must complete it, why should in this case the parts sacrificed be exempt? This can be according to both R. Nathan and the rabbis; according to the rabbis, because we might say that the rabbis held so only where there are two distinct elements (the ox and the pit), but in this case where there is only one body, the plaintiff may say: I will collect my damage from any part I wish. And according to R. Nathan: In that case the owner of the ox may say to the owner of the pit: I found the ox in thy pit; whatever I cannot collect from that party, I will collect from thee. But in the case herein can he then say the flesh has done the damage, but not those pieces in question? (Hence the statement.)

"*And that property that has owners.*" What does this mean to exclude? We have learned in a Boraitha, this means to exclude ownerless property. How is the case? If our ox gore an ownerless ox, who claims damages? If the reverse is the case, let him go and take the ox? The case is that (after he has done the damage) he was appropriated by some one. Rabhina said: "This means to exclude the case where he first did the damage, and then was consecrated by his owner, or declared ownerless (by driving him out)." So also we have learned in a Boraitha: "Further than that said R. Jehudah: Even if he damaged and then was consecrated, or his owner declared him ownerless he is exempt, as it is written [Ex. xxi. 29], 'and warning have been given to his owner, and he killeth a man or a woman,' etc., which signifies that during the killing, the bring-

ing of the suit and the making of the award there shall be one and the same owner."

"*Except on the property of the defendant.*" For he can say to him: "What has your ox to do on my premises?"

"*And on the property of both the defendant and the plaintiff.*"

Said R. Hisda in the name of Abimi: In a partnership court one partner is liable to the other partner for damages done by the tooth and foot, and our Mishna is to be explained thus: "Except on property exclusively belonging to the defendant, where he is free, but on premises belonging to both the defendant and the plaintiff, if damage is done, the one doing it is liable." R. Elazar, however, makes them free and explains the Mishna that there is no liability for foot and tooth when it belongs to the plaintiff or to both the defendant and the plaintiff, and what is stated further on of one's liability refers to damage done by the horn, because partnership property is for that purpose considered a public ground. It is right according to Samuel (*ante*, p. 5), but according to Rabh, who says that the expression "ox" in the Mishna includes everything in relation thereto, what does this mean to include? It means to include that which the rabbis taught: "If damage is done the defendant is responsible." This means to include the depositary, the loan for use, the loan for hire, and the bailor for hire; if an animal has done damage on their ground, a non-vicious ox pays half and a vicious ox pays the full amount of damages. If the enclosure wall in good condition broke in in the night time, or it was broken in by burglars and (the animal) went out and has done damage, there is no liability." How was the case? Shall we assume that the ox of the bailor for hire has injured the ox of the bailee, let the bailor say to the bailee: If he should damage some stranger's property you would have to pay (because you are charged with taking care of him); why should I pay you when he has injured your ox? And if the reverse were the case (and still it is said that only one-half is paid), let the owner say to the bailee: If he were injured by an ox of a third person would you not have to pay me the full amount of damage? (because in the case of a loan for use he is liable for damages occurring by accident), now when *your own* ox has caused the injury you want to pay me only one-half? The case is that the ox of the bailor has injured the ox of the bailee, and the objection just stated can be explained that the bailee has agreed to take care that the ox shall not *be injured*, but not that he shall *do no injury to others*.

If so, how will be explained the later part which states that if the wall was broken in in the night-time, or the same was broken in by burglars, and the animal went out and did damage, he is free, from which is to be inferred that if in the daytime there is liability. Why should it be so? Did he then warrant against his injury to others? The Boraitha meant thus: If he has warranted against his injury to others he is liable only in the daytime, but not if in the night-time or by accident. Is that so? Has not R. Joseph taught: "In a partnership court and an inn, one is liable for damages done by the tooth and the foot?" Is this not contrary to the statement of R. Elazar? R. Elazar might answer: Do not the Boraithas themselves contradict each other? Have we not learned in another Boraitha: R. Simeon b. Elazar laid down four rules in regard to damages: "If done on ground exclusively belonging to the plaintiff and not to the defendant, the liability is for the whole (even if done by the horn and in case of a non-vicious animal); if *vice versa* there is no liability at all; if on ground belonging to both, as *e.g.* a partnership courtyard or valley, there is no liability for the foot and tooth, but for goring, pushing, biting, lying upon, and kicking, a non-vicious pays one-half and a vicious pays the whole. If on ground belonging to neither of them, as, for instance, a courtyard belonging to neither of them, there is a liability for the tooth and foot; for goring and biting, pushing and lying upon and kicking, a non-vicious ox pays one-half and a vicious pays the whole damage." Hence, we see that it is stated that in a partnership courtyard or a valley there is no liability for the tooth and the foot, and hence do the two Boraithas contradict each other. That one (which says there is no liability) treats of a courtyard which is held in partnership for both storing fruit and keeping oxen (in which case it is considered a partnership courtyard as to both the foot and the horn), and therefore in case of the tooth he is free, and in case of the horn he pays half, as it is equal to public ground; and that Boraitha taught by R. Joseph treats of a court held in partnership only as to fruit, but not as to oxen, in which case as to the tooth it is considered the exclusive ground of the plaintiff. It seems to be so also from the difference used in the wording of the Boraithas. In one case things similar to an inn (which is not used for oxen), and in the other—those similar to a valley (where generally oxen are pastured) are stated. Infer herefrom. R. Zera opposed: If there was a partnership for fruit, can it be called *another man's* field,

as required by Ex. xxii. 4? Said Abayi to him: "So long as it is not partnership as to oxen *it is* considered *another man's* field."

’ MISHNA III.: Damages are assessed in money, and are collected from what has a value of money; and it must be done before the court, and only on testimony of witnesses who are freemen, and they must be members of a community who have adopted a set of laws for their government; and women are on the same footing with men as to damages; both the defendant and the plaintiff must contribute (sometimes) toward the payment of the damages. (The whole Mishna will be explained further on in the Gemara.)

GEMARA: What is the meaning of "assessing in money"? Said R. Jehudah: It means the assessment shall be made by the Beth Din in money only, and this is explained in the following Tosephtha which the rabbis taught: "If a cow has damaged a garment (on the ground belonging to the owner thereof), and subsequently the garment of same owner lying on public ground was trod upon by the cow, and was damaged, it is not said, because each party is entitled to damage from the other, that both shall be relieved from paying each other at all, but the damages in each case are separately assessed, and the excess paid to the party due."

"*They are collected only from what is valued in money.*" The rabbis taught: The expression in the Mishna "what is valued in money" teaches that the Beth Din is not obliged to collect damages unless from real estates, but if the party entitled to be paid, however, has anticipated and has seized upon personal property the Beth Din may collect his claim from that property. How is it so inferred from the Mishna? Said R. Ashi: The expression "which is valued in money" means to say but real money itself, and all those things (personal property, slaves, evidences of debt, etc.) are considered money itself. R. Jehudah bar Hinna propounded the following contradiction to R. Huna, the son of R. Jehoshua: It states "what is valued in money"; this teaches that the Beth Din is not obliged to collect unless from real estates; and another Boraitha states: It is written [Ex. xxi. 34]: "(he shall give) unto the owner," which includes even equivalents of money, and even bran? (Hence a contradiction?) The case treated of here is that if they are to be collected from orphans' estates, for damages due from their deceased father, in which case they are to be collected from realty

only. If it is from orphans, what does the last part state—that if the party has seized personal property the Beth Din may collect therefrom? The case is as Rabha said in the name of R. Na'hman elsewhere, that he made the seizure during the lifetime of the father, so also is the case here.

"On testimony of witnesses." This is to exclude the case when one admits his guilt, and thereafter witnesses appear, so that he is no more liable to pay a fine. This is correct according to the one who holds that if one admits his guilt and thereafter witnesses appear that he is no more liable to fine, but according to the one who says that in such a case he *is*, what does the statement in the Mishna mean to exclude? It is needed in regard to the latter part, which states that the witnesses must be freemen, to exclude slaves.

"And the women are on the same footing," etc. Wherefrom is this deduced? In the schools of Hezekiah and R. Jose the Galilean it was taught: It is written [ibid. xxi. 28]: "If an ox gore a man *or a woman*"; this signifies that the Scripture made equal a woman and a man in respect to all crimes which are mentioned in the Scripture.

It was taught: The one-half damage paid (in case of a non-vicious ox); R. Papa said damages, because he is of the opinion that usually oxen require particular care and according to the law he would have to pay the whole damage, but as that happened only once the Scripture had pity with him and remitted one-half, and R. Huna the son of R. Jehoshua holds that it is a fine, because he is of the opinion that oxen usually are considered guarded and according to the law he would have to pay nothing at all, but the Scripture nevertheless fined him in order that he should take particular care. An objection was raised, based upon the Mishna. Both the plaintiff and the defendant sometimes contribute toward the payment of the damage. It is right according to the one who says that the half damages paid is considered damage; therefore sometimes the plaintiff must also contribute (*i.e.*, he takes less than he suffered), but if according to the one who holds that it is a fine, then he takes what he is not entitled to, how can you say that he is contributing? This statement is only in regard to loss in value of the carcass. But this was already stated in the first Mishna, as explained above, "to complete the damage." Infer that the owners are charged with the disposal of the corpse? This need be stated twice, once in case of a vicious and once in case of a

non-vicious animal; and it would not suffice to state it only once; for if it should be stated only in case of a non-vicious animal it would be argued that it is so because of that fact that he was not vicious, but in case of a vicious animal I would say it is not so; and if it would be stated only in case of a vicious animal, it could be said that it is so because the full amount of damage is paid, but in the case of a non-vicious animal it is not so, hence the necessity of stating it twice.

(An objection was made.) Come and hear: "The following is the rule: All those who pay more than actual (punitive) damage (*e.g.*, in case of killing a slave where thirty shekels are to be paid) do not pay so on their own admission (but it must be proved by other evidence). Is it not to be inferred herefrom that in case of paying less (than actual damages), one does pay so on his own admission? Nay, this means in case where the whole damage is paid. But how is it in case of paying less—is the same the case? Then why should it state, "the rule is that all those who pay *more*," etc.; why not state, "the rule is that all those who pay damages not according to the actual amount of damage done," which would make it clear as to those who pay more as well as to those who pay less? This objection remains, and the Halakha, however, prevails that the half damage is a fine. Can there be a settled Halakha in spite of an objection? Yea, for what is the reason of raising the objection, because it does not teach, "as much as they have damaged"? It could not state so because there is the half damage in case of raking up gravel, which is Mosaic that it is damage and not fine. Now, when the conclusion arrived at is that the half damage is a fine, when a dog consumes a sheep or a cat consumes a hen, it is unusual (and therefore considered the derivative of the horn and pays only one-half damage); such a damage is not collected in Babylon, where fines are not collected. But this is so only where those killed were big ones, but in case they were small ones it is usual, and it is to be collected in Babylon also; but if the plaintiff has seized upon the property belonging to the defendant (even in the former case), we do not compel him to surrender it, and also if he says: "Fix me a time to go to Palestine," his request may be granted. And if he does not go he is put under the ban. In either case we place him under the ban until the tort-feasors are removed, as stated further on (end Chapter IV.), in the name of R. Nathan.

MISHNA IV.: There are five cases which are considered

non-vicious and five which are considered vicious. A domestic animal is considered non-vicious to gore, to push, to bite, to lie upon, or to kick; the tooth (of an animal) is considered vicious to consume that which is fit for it; the foot is considered vicious to break everything on its way while walking; the vicious ox; the ox doing damage on the estates belonging to the plaintiff exclusively; and a man. The wolf, the lion, the bear, the leopard, and the *bardalis* and the serpent are considered vicious. R. Elazar says: When they are domesticated they are not, with the exception of the serpent, which is under all circumstances vicious.

GEMARA: From the teaching of the Mishna that "the tooth is considered vicious to consume," it must be inferred that the case is when the damage was done on the ground belonging to the plaintiff, and it is nevertheless taught "the animal is not vicious," which means not to pay the whole, but to pay half, and this is according to the rabbis, who say that the horn doing damage on the estate of the plaintiff is considered unusual, and pays only one-half of the damage; then according to whom would be the latter part? "The vicious ox and the ox doing damage on the estate of the plaintiff and the man," which means that they pay the whole damage, according to R. Tarphon, who says that the horn, although it is unusual for it to do damage on the premises of the plaintiff, still pays the whole. Then the first part of the Mishna will be according to the rabbis, and the latter part according to R. Tarphon? Yea, so it is, as Samuel said to R. Jehudah: Genius, do not trouble yourself about the explanation of our Mishna, and follow my theory that the first part is in accordance with the rabbis and the latter part is in accordance with R. Tarphon. R. Elazar in the name of Rabh, however, said that both parts are according to R. Tarphon, but the first part treats of a court that was separated for fruit only to one of the parties, and for oxen for both of them, and in such a case concerning "tooth" it is considered the premises of the plaintiff only, and concerning "horn" it is considered public ground.

Said R. Kahana: I have explained this Halakha to R. Zbid of Nahardea, and he rejoined: How can both parts of the Mishna be in accordance with R. Tarphon? Did not the Mishna state, "the tooth is vicious to consume what is *fit* for it," which signifies that it is vicious only as to what is fit for it, but not as to what is *unfit* (as then it is like the horn and pays only half), and R. Tarphon says plainly that even the horn pays the whole on the premises of the plaintiff?

Therefore said Rabbina: "The Mishna is not completed, and ought to read as follows: There are five cases which are considered non-vicious until they are declared to be vicious; the tooth, the foot, however, are considered vicious from the very beginning, and this is called the vicious ox; as to the ox doing damage on the estate of the plaintiff, the rabbis and R. Tarphon differ; and there are other vicious animals similar to those: the wolf, the lion, the bear, the bardalis, the leopard, and the serpent." So also we have learned plainly in a Boraitha.

"*And not to lie upon.*" Said R. Eliezer: "It is so only when it lies on large vessels, but if on small ones it is usual, and it comes under the law applying to the foot."

"*The wolf, the lion, etc., and the bardalis.*" What is a bardalis? Said R. Jehudah: It is a Nephresa. What is a Nephresa? Said R. Joseph: It is an Apa (Hyena).* Samuel said if a lion on public ground had caught an animal and ate it up alive there is no liability, for it is his usual way to do so, and therefore it is as if an ox had consumed fruit or herbs in public ground; but if he had first killed it and then ate it up he is liable, for it is not usual, and it comes under the law applying to the horn.

MISHNA V.: There is no difference between a vicious and a non-vicious animal, only that a non-vicious pays one-half of the damage, and only from the (money realized from the sale of the) body of the animal having done the damage; and a vicious animal pays the whole damage and from the best estates.

GEMARA: What is meant by "best estates"? said R. Elazar: It means, the highest of his own estates; and so it is said [II Chron. xxxii. 33]: "And Hezekiah slept with his fathers, and they buried him in the *best place* of the sepulchres," etc., and R. Elazar said, "best" means among the "highest of his own family"—that is, David and Solomon."

It is written [ibid. xvi. 14]: "And they buried him in his sepulchres, which he had dug for himself in the city of David, and they laid him in the couch which was filled with sweet odors and divers kinds of spices," etc. "And all Jehudah and the inhabitants of Jerusalem showed him honor at his death" [ibid. xxxii. 33]. Infer from this that his disciples were placed on his

* There is a long discussion in the Talmudical dictionaries as to the correct meaning of *bardalis*, which is mentioned in several places in the Talmud and seems to have different meanings; we translate it "hyena" according to Mr. Shein-hack in his "Hamashbir."

grave to study the law. R. Nathan and the sages differ as to how long it continued; one says it lasted three, the others say seven, and still others say it lasted thirty days.

The rabbis taught (referring to the passage just quoted) that it means the thirty-six thousand people who preceded the coffin of Hezekiah, the king of Judah, all their shoulders bared. So said R. Jehudah. Said R. Ne'hemiah to him: "Was not the same thing done upon the death of Ahab?" The great honor consisted in that the Holy Scrolls were placed on his coffin, and it was announced, "*That* one resting in the coffin has performed all that is written in *these* Scrolls." But do we not do the same thing at present? At present we only take the Scrolls out, but we do not place them on the bier, and if you wish you may say that at present we even place them on the bier, but do not say "that he performed," etc. Said Rabba bar bar Hana: I was once walking along with R. Johanan, and he said that at present we say even "he performed," etc., but we do not say "he taught" (that which is written in the Scrolls, which was said at the funeral of Hezekiah). But did not the master say: "The study of the Law is great because it causes action"? Hence we see that action has preference over study, and why was it said of Hezekiah that he "taught"? This presents no difficulty. Over learning, action has a preference; teaching, however, has preference over action.

R. Johanan in the name of R. Simeon b. Johai said: "It is written [Isa. xxxii. 20]: 'Happy are ye that sow beside all waters, freely sending forth the feet of the ox and the ass.' " It means that those who occupy themselves with the study of the Law and those bestowing favors on others will be rewarded with the inheritance of two tribes, as it is written [ibid., ibid.]: "Happy are ye that sow," and "sowing" means nothing else than charity, as it is written [Hosea x. 12]: "Sow then for yourselves after righteousness, that you may reap (the fruit) of kindness"; and by "water" is meant the Law, as it is written [Isa. lv. 1]: "Ho, every one of ye that thirsteth, come ye to the water" (*i.e.*, the Torah); "is rewarded with the inheritance," etc., means he overcomes his enemies as the tribe of Joseph, as it is written [Deut. xxxiii. 17]: "With them shall he push nations together to the ends of the earth," and he acquires understanding as the tribe of Issachar, as it is written [I Chron. xii. 32]: "And of the children of Issachar, those who had *understanding* of the times to know what Israel ought to do."

CHAPTER II.

RULES REGULATING THE PRINCIPLE OF VICIOUSNESS AND NON-VICIOUSNESS IN THE FOUR PRINCIPAL TORT-FEASORS ENUMERATED IN THE FIRST MISHNA.

MISHNA I.: What tendency makes the foot to be considered vicious? * That of breaking (everything in its way) while walking. An animal has a tendency to cause breakage while walking in her † usual way. If, however, she were kicking (which is not her habit to do, and therefore considered a derivative of the horn), or there were gravel being kicked up from under her feet (which is sometimes her habit to do) and vessels were broken, one-half of the damage is paid. (In the case of gravel it is so by tradition; and the case is that it was done on the premises of the plaintiff.) If she stepped on a vessel and broke it, and the fragments thereof fell on another vessel and broke it, for the first vessel the full amount of the damage is paid (for it is the damage of the foot), but for the second vessel only one-half is paid (for it is the same as that of "gravel"). Cocks have a tendency to walk in their usual way and cause breakage. If, however, something was attached to their feet, or they were

* See Gemara.

† We are compelled to use in our translation of this section for male and female animals the same terms used when speaking of human beings, for the following reasons: (a) The Bible translators use the same terms when speaking of animals, either of common or distinct gender, *e.g.*, see Leeser's translation (which we follow in the translation of the Talmud), Numb. xxii. 25, Exod. xxii. 5, as regards "ass," which is of common gender, also *ibid.*, Exod. xxi. 29, Numb. xix. 3, as regards a distinct gender; and so in many, many other places. Now, as the Mishna and the Gemara following use the word "animal" here in the feminine (probably for the reason that in those times of domestic animals the female was usually permitted to walk the highway without one directing her, which was not so with an ox, which was usually hitched to a wagon and in charge of a driver whose duty it was to take care that the ox did not step on articles lying in the way), and as "it" is usually used for the neutre gender, we could not very well use this term. (We follow strictly this rule as regards gender in all other places, to correspond with the original.)

(b) If we used "it" and "its" instead of the above terms, it would be very hard for the reader to comprehend the true sense of the discussions.

hopping and they broke vessels, only one-half is paid (the reason is explained further on in the Gemara).

GEMARA: Said Rabhina to Rabha: (Let us see.) Does not the term "foot" in the Mishna mean the foot of the animal; and does not the term "animal" mean its foot? Why, then, the change of the terms in the Mishna? He answered: Our Mishna begins with "foot," because the same term was used in a previous Mishna (page 27), (but the proper term is "animal").

The rabbis taught: An animal has a tendency to walk in her usual way and cause breakage. How so? An animal that entered upon the premises of the plaintiff and caused damage with her body, or with her hair while walking, or with the saddle which she had on, or with the freight she was loaded with, or with the halter placed in her mouth, or with the bell suspended from her neck; and an ass with his load the whole must be paid. Summachus says: In the case of gravel and in that of a swine raking in rubbish, if damage was done the whole must be paid. "Damage was done?" Is this not self-evident? Read therefore: If he *hurled it* and thereby did damage, the whole must be paid. "Gravel?" Where is this here mentioned? The Boraitha is not complete, and ought to read thus: In case of gravel, although it is in their nature to kick up, still half only is paid; and the same is the case if damage was done by a swine that was raking in rubbish and *hurled* some of it. Summachus, however, says: Gravel and swine pay the whole damage.

The rabbis taught: Cocks that were flying from one place to another, and broke vessels with their wings, pay the whole; if, however, the damage was caused by the wind produced by the wings, only half is paid (for whatever is not done directly by the body, but only by the force produced by the body, is considered to be on the same level with "gravel," and pays half). Summachus, however, holds that the whole must be paid.

Another Boraitha states: Cocks that were hopping on dough, or on fruit, and made the same dirty or punctured them, the whole damage must be paid. If they throw on them dust or gravel, half is paid. Summachus, however, holds that the whole must be paid.

Still another Boraitha teaches: If a cock were flying from one place to another, and the wind produced by the wings damaged vessels, only half must be paid. So we see that the above anonymous Boraitha is according to the Rabbis. Said Rabha: On the contrary, the last Boraitha is correct according to Sum-

machus (who opposes that it was a tradition that "gravel" pays only half) and says that the whole must be paid, because he holds that one's force is on the same level with one's body (and therefore damage done by the *wind*, caused by the wings, is equivalent to damages done by the wings themselves), but according to the rabbis, if it is considered as done by the body, then the whole must be paid; if it is not considered as done by the body, nothing is to be paid. Subsequently Rabha himself explained: It is undisputed that one's force is equivalent to one's body, but the force (wind) being unusual, it is considered as "gravel," for which there is a tradition that only half is paid.

Rabha said again: All that which in case of one having a running issue is considered a sufficient contact to make the article unclean, in case of damages pays the whole; and all that which in case of one having a running issue is not sufficient contact to make unclean, pays in case of damages half; and he means to teach us the case of the wagon carrying one having a running issue (*i.e.*, as in case of a wagon carrying one having a running issue which passes over vessels the latter become unclean, but if only "gravel" is kicked up from under the wagon and falls upon vessels the latter do not become unclean; so also in case of damages, in the first instance the whole, and in the latter instance only half is paid). There is a Boraitha supporting Rabha: "An animal has a tendency," etc. (as stated above, page 31), with the addition that a wagon carrying a person pays the whole damage.

The rabbis taught: "Cocks that were nibbling at a rope from which a water-pail was suspended, and severing the rope broke the water-pail, pay the whole." Rabha propounded a question: If an animal stepped on a vessel which did not break at once, but only rolled away for some distance and then broke, what is the law? Do we follow the origin and consider it to have been broken by the body (and the whole is paid), or do we follow the place where the breakage took place, and it is the same as in the case of "gravel" (and only half should be paid)? Come and hear: Hopping is not to be considered vicious; according to others, however, it may. Is it possible that damage done by hopping shall not be considered vicious (is it not in the nature of the cocks to do so)? Must it not be assumed that while hopping the vessel rolled away and then broke, and they differ on the following: One holds we trace the damage to the origin, and one holds that we consider only the place where the

damage occurred? (Hence we see that in this case there exists a difference of opinion.) Perhaps (all agree that we consider only the place where the damage occurred, but) this is in accordance with Summachus, who holds that even "gravel" pays the whole. If so, how would you explain the latter part: "If a fragment flew off and fell on another vessel and the latter broke, for the first vessel the whole, but for the second only half must be paid?" Now if it be according to Summachus, does he then hold to the theory of half damage? And if you should say that he distinguishes between primary and secondary force (in case of the rolling of the water-pail it was primary force, but in that of the vessel damaged by the fragments of the pail it was secondary force), let the question of R. Ashi as to whether or not Summachus distinguishes between primary and secondary force be solved from this, that it is not on the same level with primary force? We must, therefore, say that the above Boraitha is according to the rabbis. Infer from this that we trace the damage to its origin.

R. Bibi bar Abayi, however, said: In the case of the above water-pail the latter was rolling by the continuous original action of the cock (even in the moment of breaking).

Rabha questioned: The one-half damage paid in case of "gravel," is it paid out of the body of the tort-feasor, for we do not find anywhere that half damage is paid from the best estate; or is it paid from the best estate, for we find nowhere that damage done by usual means shall be paid out of the body of the tort-feasor? Come and hear: "A dog that snatched and carried off a cake from the burning coals on which it was being baked to a barn, and there consumed the cake, and with the burning coal that stuck in the cake set fire to the barn, must pay for the cake the whole, and for the barn only one-half." Is the reason for that not because the damage of consuming the cake is that (directly) of the tooth, and the damage to the barn is only indirectly (remote), as in "gravel," and we have (nevertheless) learned in a Tosephtha in regard to this latter that the half damage is paid out of the body? (Hence that it is paid out of the body?) But, on the other hand, can it enter the mind that the reason for the liability in this case is because it is the usual case of "gravel," according to R. Elazar of the Boraitha, even if he concurs with Summachus that "gravel" pays the whole damage? Do we find anywhere that such is paid out of the body? We must, therefore, say that in the usual case of

"gravel" the damage is paid out of the body, but the case in the above Mishna is that the coal was handled not in the usual way, and R. Elazar holds in this respect with R. Tarphon, who said (page 50) that where damage was done by the horn in an unusual way on the premises of the plaintiff, the whole damage must be paid. In reality, however, it is not so. For what is the reason of the assertion that it is, according to R. Tarphon, because of the whole damage? We can say that R. Elazar holds, according to Summachus, that "gravel" pays the whole, and he agrees also with R. Jehudah, who says further on that the non-vicious element (even in case of viciousness) remains intact, and therefore when it is stated here that it is to be paid out of the body, it refers to that element (and in case of non-viciousness it is always paid out of the body).

Said R. Sama, the son of R. Ashi, to Rabhina*: (Even according to this theory) you can explain R. Jehudah's statement only in case of a non-vicious animal that became vicious, but how can you explain his statement when the animal is considered vicious from the beginning, as in the case of "gravel in the unusual way"?

We must, therefore, say (if you wish to explain that it is "gravel in the usual way") that R. Elazar held that the whole damage must be paid, according to him, only when it became vicious by doing so thrice, and they differ in the following: One holds that the theory of viciousness does not apply to gravel, and one holds that it does. If it should be so, then why did Rabha question whether there can be viciousness in case of "gravel in the usual way" (*i.e.*, as when we say that the first time one-half damage is paid, as in the case of the horn, so also it becomes vicious by being done thrice, as the horn), or viciousness cannot apply here, (for as it is a derivative of the foot (because it is natural) it is considered vicious from the beginning, and still pays only one-half damages); according to the rabbis it certainly is not, and according to R. Elazar it is? Rabha might answer: My doubt whether the theory of viciousness applies to gravel is according to the rabbis, who differ with Summachus; in our case, however, both the rabbis and R. Elazar

*The Rabhina mentioned here is Rabhina Zuta, a nephew of the first Rabhina, who is mentioned in Kethuboth 100b; for Rabhina, who was a disciple of Rabha and colleague of R. Ashi, died long before in the time of R. Sama, the son of R. Ashi. See Doroth Harishonim, Presburg, 1897.

agree with Summachus, and the reason why the rabbis hold that only half is paid, is because the cause was in the unusual way (in which case it is a derivative of the horn), and it does not become vicious, and the point of their difference is the same as that of the rabbis and R. Tarphon. We have heard R. Tarphon say only as to the whole damage, but have we ever heard him say that it must be paid out of the body? Yea, it is sufficient that the result derived from an inference be equivalent to the law from which it is drawn, and as this is a derivative of the horn, it cannot pay more than the principal or in another manner. But we know that R. Tarphon does not hold to the rule just stated? (There is no difficulty.) He does not hold to that rule only in cases where the rule of *a fortiori* is applicable (as explained further on, page 51), but where this rule is not applicable he *does* hold to the former rule.

R. Ashi questioned: According to the rabbis, who differ from Summachus and hold that in "gravel in the usual way" only one-half is paid, does the "unusual way" in gravel (as, for instance, if done by kicking up gravel) change it to the payment of one-fourth of the damage (*i.e.*, as the "usual way" is considered vicious, does the "unusual" way make it non-vicious to pay one-half of the amount paid in case of viciousness)? Can this not be solved from Rabha's question, whether there is or there is not viciousness in the case of gravel, from which it is to be inferred that it does *not* change it (for if it *does* change it to one-fourth, then in case of viciousness it would pay only half, how can Rabha doubt whether viciousness in this case pays the whole—does viciousness, then, pay more than double the amount of non-viciousness)? We can explain that Rabha was doubtful in both rules (both as to change and viciousness). If you will assert that in case of gravel the rule of change does not apply, can we apply to this case the rule of viciousness? This question remains unanswered.

"*If she were kicking,*" etc. R. Abba bar Mamal questioned R. Ami, and according to others R. Hyya bar Abba: If she (the animal) were walking in a place where it was impossible for her not to kick up gravel, and she kicked, and by so doing kicked up gravel and caused damage, what is the law? Shall we say that because it was impossible for her not to do it, it is, although done by kicking, considered the usual way (and pays half), or we do not consider it so, because still it was done by kicking? This question remains unanswered.

R. Jeremiah questioned R. Zera: If she were walking on public ground and gravel being kicked up from under her feet caused damage, what is the law? Is this a derivative of "horn" (because gravel pays half), and she must pay even if it was on public ground, or gravel is the derivative of "foot" (because it is done with the foot), and there is no liability if done on public ground? He answered him: Common-sense dictates that it is a derivative of the "foot." (He asked again:) If she were walking on public ground and kicked up gravel which fell on private ground causing damage, what is the law? He answered: If there is no starting, shall there be a resting (*i.e.*, the starting being on public ground, where there is no liability, shall the resting-place of the gravel be taken into consideration)? The questioner objected: Have we not learned elsewhere: If she were walking on the road and kicked up gravel, whether on public or on private ground, there is a liability. Shall we not assume that it means that both the kicking up of the gravel and the damage were done on public ground? (Now if kicking up gravel is compared with the "horn," therefore there is a liability, as in the latter case; but if it is a derivative of the "foot," why should there be a liability?) (He answered:) Nay, it means that the kicking was on public, but the damage was done on private ground. But did you not argue, "If there is no starting, shall there be a resting?" He answered: I retract my argument.

R. Jehudah the second and R. Oshiyah were sitting on the porch of R. Jehudah's house, and a question was asked: If she has done damage by shaking her tail, what is the law? (Is it considered to be in her habit to do so, and there is no liability, or not?) Said the other: Is there any duty on the owner to hold her by the tail when leading her? If so, why not apply the same argument to the horn, shall the owner hold him (the ox) by the horn when leading him? What comparison is this? In the latter it is not in his nature to do so, but in the former it is (and therefore it is a derivative of the "foot"). If it is in her nature to do so, then what is the question for? The question was only in case it was extraordinary shaking. (This question remains.)

"*Cocks have a tendency*," etc. Said R. Huna: The statement that he pays only half and no more relates only to a case where the article got attached of itself; but if a human being attached it, the one who did so is liable to the whole damage

(for it is considered a "pit"). "If it got attached of itself," who is liable? If we assume that the owner of the *article* attached is liable, how was the case? If he kept the article with good care, then it was only an accident; if he did not, then it was wilful, and the full damage must be paid. We must, therefore, say that the owner of the *cock* is liable.

Why does he not pay the whole damage? Because it is written [Ex. xxi. 33]: "If a *man* dig a pit," which means to limit it to a human being only, and exclude the case of an *ox* digging a pit (in this case the article attached is considered "a pit" which the cock created), let the same argument apply even to the half damage, and let us say: "If a *man* dig a pit, but not if an *ox* dig a pit" (and let there be no liability at all). We must, therefore, say that our Mishna treats of a case where the cock has done the damage by hurling the article for some distance (in which case it is "kicking up gravel," and only half damage is paid), and the statement of R. Huna applies to the following case: "Of an ownerless article, R. Huna says if it got attached of itself there is no liability at all; but if it was attached by a human being, the one who attached it is liable." On what principle is he liable (for, after all, it does not resemble a "pit" in all respects, because a "pit" is stationary, while here it was removed from the place where it was tied on)? Said R. Huna bar Munoa'h: He is liable on the principle of a "movable pit," which is made so either by human beings or by animals (*e.g.*, if one places a stone in the public highway which, while lying in that place, did not cause any damage; and another person or an animal removed it from that to another place and damage was caused there, the latter is liable).

MISHNA II.: What tendency makes the tooth to be considered vicious? That of eating what is fit for it. An animal has a tendency to consume fruit and vegetables; if she, however, chewed up a garment or vessels, only half damage is paid. This is said only if on the premises of the plaintiff, but on public ground there is no liability. But if she derived any benefit therefrom, the value of such benefit is paid. How so? If she consumed from the middle of the public highway, the value of the benefit is paid; if from the sideways of the highway only, the amount of the damage is paid; if from the *front* of a store, the value of the benefit; if from *within* the store, only the value of damage is paid. (This Mishna is explained further on.)

GEMARA: The rabbis taught: The tooth has a tendency

to consume what is fit for it. How so? For an animal that entered the court of the plaintiff and consumed food that is fit for her or drank liquids that are fit for her, the whole damage must be paid. The same is when a beast entered the court of the plaintiff and killed an animal, or consumed meat, the whole damage must be paid.

For a cow, however, that consumed barley and an ass that consumed beets, or a dog that was licking oil or a swine that devoured meat, the whole damage must be paid (although it is not their usual food). Said R. Papa: Now that you lay down the rule that an article consumed which constitutes the food of the consumer only in case of unusual necessity is considered food; for a cat that devoured dates and an ass that consumed fish, the whole must be paid. It happened that an ass consumed a loaf of bread contained in a basket and chewed up the basket, and R. Jehudah decreed that the whole be paid for the bread and half for the basket (because the former is in his habit to eat and the latter not). Why so? Is it not in his habit to chew also the basket while eating the bread? The case was that he first consumed the bread and then chewed up the basket. Is then bread the usual food of cattle? Have we not learned: "If she consumed bread, meat, or cooked food, half is paid"? Shall we not assume that it treats of cattle? Nay, it means a beast. If so, then it is in its habit to eat meat? The case is that the meat was roasted. It can be explained also that the meat was raw, but that the animal was a deer. And if you wish to explain it that it treats of cattle, then the case was that the food was placed on the table (which is unusual for cattle to eat from). It happened that a goat, noticing beets on the top of a barrel, climbed up and consumed the beets and broke the barrel, and Rabha ordered to pay the whole for both. Why so? Because as it is in her habit to consume beets, so it is also her habit to climb up the barrel. Ilpha said: An animal being on public ground, that extended her neck and consumed some article from the back of another animal, is liable. Why so? Because the back of the other animal is considered as the plaintiff's premises. Shall we assume that he shall be supported by the following Boraitha: "When his basket was placed on his back and an animal extending her neck reached the food therein and consumed it, it is to be paid for"? Nay, the case is as Rabha said, that it was reached by the animal jumping at it, so also was the case here, viz., by jumping. Where was Rabha's explanation taught?

On the following statement of R. Oshiyah: An animal on public ground, if she has consumed while walking there is no liability, but if she has done so while standing in one place there is a liability. (And it was questioned): Why is this so? Is it not usual for an animal also to stand in the public highway? Said Rabha: R. Oshiyah meant to say if the animal jumped. R. Zera propounded a question: If it was rolling, what is the law? To what case has R. Zera reference? If the animal was standing on private ground and the article was rolling toward the private ground.* (Do we follow the place where it was consumed, and there is no liability, or do we follow the place wherefrom it was removed, and there is a liability?)

Come and hear: "R. Hyya taught: A bundle of food being placed partly within and partly without (private premises), if the animal consumed that portion placed within, there is, and if that portion placed without, there is no liability." Shall we not assume that it was rolled in (*i.e.*, that the whole was consumed, and it was rolled wholly in or wholly out, respectively; hence, that we follow the place of consumption)? Nay, R. Hyya taught so only in long-leaved grass (in which case every leaf is partly within and partly without the premises, and as soon as one end is touched the other goes after it, and therefore we follow the place of consumption, but not so in case of grain).

"*If she chewed up a garment,*" etc. To what part in the Mishna has this reference? Said Rabh: To all parts. Why so? If one does an unusual thing (as in this case the placing of a garment in public ground), and another does an unusual act to that thing (as in this case the chewing up of the garment by the animal), there is no liability. Samuel, however, says this was taught only of fruit and vegetables, but for garments and vessels there is a liability. Resh Lakish, however, concurs with Rabh (because he adheres to his theory further on, Chap. III., Mishna 6.)

"*If she derived benefit,*" etc. How much? Rabba said the value of hay. Rabha said the value of cheap barley. There is a Boraitha in accordance with Rabba, namely: "R. Simeon b. Jo'hi says: Only the value of hay or straw is paid, and no more." There is another Boraitha in accordance with Rabha, namely: "If she derived benefit, she pays as much as the value of the benefit. How so? If she consumed a kabh or two, not the

* According to Maimonides and others.

full value is paid, but only so much as one requires to feed his animal on food fit for her, although he is not in the habit of using such food. Therefore (as the fitness of the food is taken into consideration) if she consumed wheat or other food injurious to her, there is no liability (if on public ground)."

R. Hisda said to Rami bar Hama: I regret that you were not in our neighborhood the other evening when very acute questions were asked of us. What were they? Thus: One who takes up his dwelling in the court of his neighbor without the latter's knowledge, must he, or must he not, pay rent? How was the case? If the court was not to be let, and the dweller was such that he did not need to rent any (*e.g.*, if he had a dwelling of his own, or could get one without paying rent), then the one derives no benefit and the other suffers no loss? And if the court was to be let and the dweller needed a dwelling-place, then one does derive benefit and the other suffers loss (and why should no rent be paid)? The case was where the court was not to be let, but the dweller needed one. How is it? Can the dweller say to the court-owner: "What loss have I caused you?" Or can the court-owner say to the dweller: "It does not matter, for you derived benefit at any rate"? And he answered him: For this there is a Mishna. Where is that Mishna? He said to him: If you will render me some services, I will tell you where it is. He took off his coat and rolled it together for him. He then said: It is the above Mishna which states that if any benefit was derived the value thereof must be paid. Said Rabha: How secure and careless does the man feel that knows that the Lord helps him. (See Yomah, page 31, a similar saying in the name of R. Huna.) He accepted the Mishna as a case similar to the one above, when in reality the facts of the Mishna are different from those of the case above, as in the case stated in the Mishna one derives benefit and the other suffers damage, while in his case one derives benefit and the other does not suffer any loss.

[What could Rami bar Hama say to that? Generally, one who places fruit on public ground renounces ownership of it (and therefore there is no loss).]

Come and hear: R. Jehudah said also that one who occupies his neighbor's court without the latter's knowledge must pay rent. Infer from this that in case one derives benefit, although the other suffers no loss, there is a liability? Nay, there it is different; it treats of a new house, the walls of which become soiled

from use (and this is considered a loss to the owner). (Finally) this question was sent to the school of R. Ami, and he answered: What has he done, what loss has he suffered, or what damage has he caused? Said R. Hyya bar Abba: Nay, we have still to consider this matter (as the soiling may be considered a damage). Afterward they sent to him (to R. Hyya b. Abba) for his decision in this matter, and he said: They continue sending me this question; if I could find any reason to decide this, would I not have answered?

(In reference to above question) it was taught: R. Kahana said in the name of R. Johanan: He need not pay any rent. R. Abbuhu said in the name of the said authority that he need pay rent.

R. Abba bar Zabda sent a message to Mari bar Mar to ask R. Huna for his decision in the above matter. In the meantime R. Huna departed life. Said Rabba, his son: So said my father and teacher in the name of Rabh: He need not pay. (He also said): One who rents a house from Reuben must pay the rent to Simeon. How does Simeon come in here? He meant thus: If the house, in which he was living there at the time, was sold to Simeon, the rent must be paid to Simeon (although Simeon had no knowledge that he was occupying the house). Could, then, R. Huna say two things which contradict each other? There is no contradiction, because in the latter case the occupant intended to pay for its use. The very same case was taught by R. Hyya bar Abin in the name of Rabh, and according to others in the name of R. Huna. R. S'horah said in the name of R. Huna, quoting Rabh: One who dwells in the house of his neighbor (which was unoccupied and located in an unsettled district) without the owner's knowledge need not pay any rent, because the non-occupation causes damage, as it is written [Is. xxiv. 12]: "And in ruins is beaten the gate" (*i.e.*, if unoccupied the gate becomes ruined, and therefore the owner of the house derives benefit from the occupation). Said Mar bar R. Ashi: I once saw such a house which was damaged and looked as if gored by an ox. R. Joseph assigned another reason, viz., a house which is inhabited lasts longer (for the inhabitants make all the repairs necessary). What is the difference between these two reasons? There is a difference when the house is used for storing wood and straw.*

* Rashi explains this that the owner of the house used it for storing wood and straw, and the tenant lived in the same place used for such storage; and then as to "ruin," there is none, for it is being used; but as to repairs, the owner would not see

A certain person erected a palace on the ruins belonging to orphans, and R. Na'hman collected the rent (for the use of the ruins) from the palace. Should we assume that R. Na'hman holds that one who dwells in the house of his neighbor without the knowledge of the owner must pay rent? In this case the ruins were previously occupied by ancients who used to pay a nominal rent to the orphans, and R. Na'hman ordered Carmines to go and compensate the orphans, which order was disregarded by him, and therefore R. Na'hman collected it from the palace.

"How does she pay for the benefit," etc. Said Rabh: This was taught only when she turned around her head (from the public highway to the sideway), but in a case where one leaves a portion of his own ground open to the public highway (and an animal enters upon it while walking on the public ground and consumes fruit stored there) there is no liability. Samuel, however, says: Even in the latter case there is a liability. Shall we assume that they differ as (to the liability of a) pit located on one's own ground (where the owner renounced his ownership of the ground, but not of the pit)? Rabh holds that (the owner of the pit) is liable (and in this case in question the fruit is considered a "pit," and the ground being ownerless, it is considered public ground, and therefore he ought not to have done so, and for that reason there is no responsibility for consuming it). Samuel holds that for the pit in question there is no liability (consequently he was allowed to place his fruit there, and therefore the consumer is liable). Nay, Rabh may answer, I hold in case of a "pit on one's own ground" that there is no liability; but why is here the consumer liable? Because the owner of the animal can say: You cannot have so much privilege as to place your fruit in the immediate neighborhood of public ground and hold my ox to liability. And the same is the case with Samuel, who may say: In case of a "pit on one's own ground," I hold that there is a liability, but here, if even it would be right (for the owner of the animal) to say that the ox could not be aware of the pit (and therefore if he should be damaged the owner of the pit would be liable), the case is different, because

what repairs are necessary, as he does not live there; consequently, in such a case, according to R. Joseph, he need not pay, and according to R. S'horah he need pay. We, however, would say, that the Gemara means that it was used for storing wood and straw by the stranger, and, on the contrary, according to Rabh, he need not pay, for the house is no more vacant; and according to R. Joseph he need pay, because he will not care to make repairs. We leave the choice to the reader.

the fruit was exposed to view and the ox could not escape noticing it (and therefore if the ox should be injured the owner of the fruit would not be liable ; the owner of the ox, however, is liable for the fruit consumed by his ox, because he derived benefit from another's property). Shall we assume that in the above case (turning the head) the Tanaim of the following Boraitha differ: " If an animal consumed from the middle of the highway, the value of the benefit derived is to be paid ; if from the sideways, the value of the damage is to be paid. Such is the dictum of R. Meir and R. Jehudah ; R. Jose and R. Elazar, however, hold that it is not her usual habit to consume, but only to walk (on the sideway, and therefore there is a liability). Now, shall we assume that R. Jose concurs with the first Tana, but they differ only as to " turning the head," viz.: The first Tana holds that in that case she also pays only the value of the benefit, and R. Jose holds that she pays the value of the damage done (and hence that the Tanaim differ)? Nay, it may be said that all agree, that in case of " turning the head " it is either according to Rabh or according to Samuel, but they differ here as to feeding in *another* man's field [Ex. xxii. 4]: " And he lets his beasts enter, and they feed in *another* man's field."

One holds that it means to exclude *public* ground (and therefore if she consumed from the middle of the street there is no liability), and one holds it means to exclude the ground of the defendant. " The ground of the defendant ? " (Why should there be any liability ?) Let the defendant say to the plaintiff: What right had you to place your fruit upon my ground ? We must therefore say that they differ in cases stated by Ilpha and R. Oshiyah (see *supra*, page 38). (R. Meir holds, if in the middle of the highway only the value of the benefit is to be paid in both the case stated by Ilpha and that stated by R. Oshiyah. And R. Joseph maintains that it is not her usual habit, etc., and holds to Ilpha and R. Oshiyah.)

MISHNA III.: A dog or a goat that jump down from the top of a roof and break vessels pay the whole damage ; for they are vicious (as to jumping, and it speaks of a case on the premises of the plaintiff). A dog that snatched a cake (from the coal on which it was baked) and carried it to a barn and there consumed the cake and (with the burning coal stuck in the cake) set fire to ~~the barn~~, the whole for the cake, but only one-half damage for the barn is to be paid (as explained further on in the Gemara).

GEMARA: The Mishna states a case of jumping, because in case of *falling* down there is no liability; we see then that the Tana holds that where the beginning of an act is wilful (in this case, allowing the goat or dog to be on the top of the roof), but the end is only by accident (the falling down, which he could not anticipate), there is no liability. We have so also learned in a Boraitha: "A dog or goat that jump down from a roof and break vessels pay the whole damage; if, however, they *fell* down there is no liability." The rabbis taught: "A dog or a goat that jump up from below, there is no liability; if, however, they jump down from above there is. A human being or a cock, however, that jump are liable in either case."

"*A dog that snatched,*" etc. It was taught: R. Johanan said: One's fire is considered one's arrow (*i.e.*, one who allows a fire started by him to spread and do damage is liable on the same principle as one who shoots from a bow when the arrow does damage). Resh Lakish, however, said: The liability is because the fire is considered one's property. There is a contradiction from our Mishna: "A dog that snatched a cake," etc. It would be right according to the one who holds that one's fire is considered one's arrow, for in this case it is the dog's arrow (and the dog is the person's property); but according to the one who holds that it is because the fire is considered one's property, in this case it is the property of the owner of the dog. Resh Lakish may say: The case was that he flung it, in which case he is liable for the cake to the full amount; for the place on which the coal fell to one-half (for it is unusual); and for the barn he is not liable at all (for the liability for one's fire is because it is his property, and in this case it is not). And R. Johanan may explain that he placed (the cake and the burning coal) in the usual way, and therefore for the cake and the place where the coal lay he is liable to the full amount, but for the barn he is liable only to one-half. Said Rabha: There are both a biblical passage and a Boraitha in support of R. Johanan, viz., a biblical passage, for it is written [Ex. xxii. 5]: "If a fire *break* out"; "break" means if it does so of itself, and still "he that kindled the fire shall surely make restitution" [ibid.]. Hence we see that one's fire is considered one's arrow. A Boraitha: As we have learned: "The passage starts out with damages done by one's *property* (the above-quoted passage, which means 'break' out of *itself*) without the aid of some person, and ends with the damages done by one's *own person*: 'He that kindled,' etc. [ibid.,

ibid.], to teach that the liability for one's fire is because it is considered his arrow."

Rabha said again: It was first a difficulty to Abayi: It is known that there is no liability for damages done by fire to concealed articles; how can such a case be found in the biblical law, according to those who hold that fire is considered one's arrow? Afterward he himself tried to explain it thus, that the case is where a fire started in one court and the fence of the court fell in, not by reason of the fire (but by some other reason), and on account of this the fire spread to another court and caused damage, in which case the "arrow" ceased to be such at the boundary of the first court (for at the time the fire was started it was unable to spread outside of the court, before the falling in of the fence).

If so, then the same thing may be said also in case of unconcealed articles? We must, therefore, say that the one who holds that the liability is because it is his arrow, holds that it is so because the same is also his property, and that in this case he had sufficient time to repair the fence (before the fire spread) but did not do so; and although not liable for starting the fire, he is liable for allowing it to spread, in which case it is the same as if he had kept his ox in a stall without locking the door. If it should be so, that the one who holds that the liability for one's fire is because it is his arrow holds also of the other theory, that it is considered his property (and if not liable for one reason is liable for the other reason), then what is the difference between R. Johanan and Resh Lakish? The difference is as to the liability for the four things (see above, page 6). (According to the one who holds that it is because it is his arrow also, there is a liability; and according to the one who holds that it is because it is his property, there is none.)

"*For the cake,*" etc., "*pays,*" etc. Who is liable—the owner of the dog? Why should also the owner of the coal not be liable? (For according to both R. Johanan and Resh Lakish the liability is because it is his property, and according to R. Johanan, who holds that half must be paid for the barn, the owner of the coal pays the other half; and according to Resh Lakish, who holds that there is no liability at all for the barn, let the owner of the coal be liable for the whole?) The case is that the owner of the coal took good care of it. If so, how could the dog get hold of it? The case is that the dog dug under the door and in such a way gained access. Said Mari, the son of

R. Kahana: From the fact that the owner of the dog must pay the whole damages is to be inferred that ordinary doors are considered unsecured in regard to dogs (and it must not be considered unusual so as to pay only half).

Let us see: The Mishna states that the dog has consumed the cake, etc. Consumed where? If not on the premises of the owner of the cake, why must it be paid? This is not "in *another* man's field" [Ex. xxii. 4] (which means on the premises of the plaintiff). We must, therefore, say that it was at the barn of the cake-owner. (From the fact that he must pay for the cake) then infer that the mouth of an animal (consuming something on the premises of the plaintiff) is considered as it is yet in the court of the plaintiff. (As the case stated in the Mishna was that the dog kept it in his mouth from the time he picked it up until he reached the barn, and it was not considered that it was on the premises of the defendant, although the dog was his property,) for if it would be considered as the premises of the defendant, he could say to the plaintiff: Your bread was all the time in the mouth of my dog, which is my property, and there it was consumed; why, then, shall I pay? We say infer, because a question was actually raised as to this. And there could no such question arise if it were certain that the mouth of the animal is considered the premises of the defendant; and besides, there could arise no case in which there would be a liability for damage by the tooth, as in order to consume it it must necessarily be taken into the mouth. Said Mari, the son of R. Kahana: If there could be no direct case of "tooth," there could arise a case which is its derivative, as, for instance, when the animal was rubbing against the wall for her own benefit and thereby did damage, or she rolled over fruits for her own benefit, and made them dirty (which cases are derivatives of the "tooth"). Mar Zutra opposed: But is it then not written in the Bible that there must be complete destruction [I Kings xiv. 10]: "Sweeps away the dung till there be *nothing* left"? Which is not the case here (as the wall or the fruit is still in existence). Said Rabhina: It can be explained that by rubbing against the wall she obliterated *completely* the engravings thereon; (and in case of the fruit), said R. Ashi, that by rolling over the fruits she sank them into the mud (so that they could not be removed).

There were certain goats belonging to the family of Tarbu that were doing damage to the property of R. Joseph, and he said to

Abayi: Go and tell their owners to keep them in safety. The latter answered him: If I do so they will tell me that you should put up a fence on your ground. [If one must put up a fence upon his premises in order to prevent consumption of, or otherwise damaging, his fruit, how can there be a case of liability for damage by the "tooth," for which the Scripture makes it plainly liable? That may be in case she dug under the fence or the fence fell in in the night-time (if there was no opportunity of repairing it).] Announced R. Joseph, and according to others Rabba: It shall be known to all those who are ascending to Palestine and to all those who are descending to Babylon that if those goats that are kept for slaughter during the market days do damage, their owners shall be warned twice or three times. If they listen well and good, if not the goats are to be brought to the slaughter-house, even before the arrival of the market days, and the owners are to be paid their market value of that day.

MISHNA IV.: What is considered a non-vicious and what is considered a vicious one? A vicious ox is one that has been warned three days. A non-vicious one is one that abstains (from goring) for three days. Such is the dictum of R. Jehudah. R. Meir, however, said a vicious ox is one that had been warned thrice, and a non-vicious one is one that, when children pat him on the back, does not gore them.

GEMARA: What is R. Jehudah's reason? Said Abayi: It is written [Ex. xxi. 36]: "In time past" (in the original: "*Mi-tmol*, *Shilshom*"). It could have been written "*tmol*" (yesterday), and then would have counted only once, but it is written "*Mi-tmol*" (since yesterday), therefore it signifies twice; when "*shilshom*" is added it signifies thrice, and then follows, "and his owner hath not kept him in" [ibid.], which means that viciousness begins upon goring the *fourth* time (for the third time, however, only half is paid). Rabha, however, is not so particular about the addition of "*mi*" to "*tmol*," and therefore this word signifies only once, and the word "*shilshom*" signifies twice, hence "and his owner," etc., means the *third* time, when the ox becomes vicious, and he pays the whole damage.

And what is the reason of R. Meir's theory? This is explained in the following Boraitha: R. Meir said: (Draw an *a fortiori* conclusion): If he gored at long intervals (only once a day), he is considered vicious on the third time; so much the more if he had gored thrice in one day he must be considered

vicious. They rejoined : There is no conclusion *a fortiori* to be drawn here, as there is a similarity in the case of a woman who has a running issue, who is unclean for seven days only when she notices the disease three days in succession once a day, but if she notices it three times or more in *one* day she has to wait only one day. He said again: (From this nothing can be inferred) as the verse made this case an exceptional one by the words "*And this*," etc. [Lev. xv. 3], which signify that it is so only in this case, and no others can be compared to it, for we see that in this case the verse made it, in case of a man, depend upon the number of times of noticing of the issue, while in the case of a woman, it made it dependent upon the number of days.

The rabbis taught: What ox is considered vicious? One that has been warned for three days; and a non-vicious one is one that is patted by children and does not gore; such is the dictum of R. Jose. R. Simeon, however, holds that a vicious ox is such as has been warned thrice (even in one day), and the statement as to the three days is only as to abstaining (that is, if after having been warned three times he abstains for three days from goring, then he is again considered non-vicious). Said R. Na'hman in the name of R. Ada bar Ahba: The Halakha prevails as stated by R. Jehudah in regard to a vicious ox, and according to R. Meir in regard to a non-vicious ox, for the reason that R. Jose agrees with them. Said Rabha to R. Na'hman: Let the master say that the Halakha prevails according to R. Meir in regard to a vicious ox, and according to R. Jehudah in regard to a non-vicious ox, for the reason that R. Simeon agrees with them in both. He rejoined: I concur with R. Jose, for he has always his valid reasons.

The schoolmen propounded a question: The three days in question, are they as to make the ox vicious; but the owner may be liable for a vicious one in one day; or are those three days also as to the owner? In what case can there be a difference? If there appear three different sets of witnesses in one day (and testify as to three gorings in three days), if those three days are as to the ox, then he becomes vicious; but if they are as to the liability of the owner, then the latter can say all the three sets appear only now (and the Scripture requires that they shall appear in three days).

Come and hear: "An ox does not become vicious until testimony is given in the presence of both his owner and the court. If in the presence of only one of them, he does not become

vicious until it is in the presence of both. If two witnesses testified as to the first goring, two as to the second goring, and two as to the third (each goring being at a different place, time, and man), we have then three sets of witnesses, but still all the three sets are considered one as to be proved in collusion. If one set is found collusive there is still the testimony of the other two sets, and neither the owner is liable to pay for a vicious one nor are his witnesses liable (to pay the other half for viciousness). The same is if also the second set proved collusive. If, however, all the three sets prove collusive, they are all considered as one set, and all of them are to pay the one-half for viciousness, and that is meant by the passage [Deut. xix. 19]: Then shall ye do unto him, as he had purposed to do unto his brother," etc. Now let us see. If the three days are as to the ox (but the owner may become liable if testimony be given to him thrice in one day), it is correct that the witnesses are liable only when all the three sets proved collusive (for it may be that the one who was injured brought all the witnesses to testify to the three gorings, and each set knew of the other and to what they were to testify, and therefore they cannot say that they intended to make him pay only one-half); but if you should say that the three days are as to the owner also, why should the first set of witnesses (if proved collusive) be liable? Let them say that they did not know that others would come in two or three days later to testify as to make him vicious. Said R. Ashi: When I read this Halakha before R. Kahana, he said to me: Even if the three days are explained to be in regard to the ox only, would it then be correct, for (if even the first set cannot argue that they had no knowledge of the testimony to be given by the others, for they knew that on their own testimony he could not be made vicious) the last set can say: How should we have known that all these witnesses before the court were going to testify as to this case; we intended to testify so as to make him pay only one-half? We must, therefore, say (that if the three days refer to the ox) one set of witnesses gave the other a hint as to what they were going to testify. R. Ashi said: The case is that they all come together and therefore are supposed to know of the testimony of one another. Rabhina said: It may be that the witnesses knew the owner, but did not know the ox (and therefore by coming to testify they meant to make the ox vicious and must have known that there was already testimony given). If they do not know the ox,

how can they make him vicious? They testify and warn the owner that there is a "goring" ox among his cattle, and therefore that he should take care of *all* his cattle.

The schoolmen propounded the following question: For one who sets his neighbor's dog on a third person, what is the law? The first one is surely not liable (for he was only instrumental in the injury), but the owner of the dog, is he or is he not liable? Can he say: What did I do in this matter? Or can we tell him: Having known that your dog is capable of being set on, you should not keep him? Said R. Zera: Come and hear. It is stated in our Mishna: What is considered a non-vicious ox? One who when patted by children does not gore them, but if he does gore he is liable (although it was caused by the patting of the children). Said Abayi: Is this, then, so stated in the Mishna? Perhaps the Mishna meant that if he did gore he is no more considered entirely non-vicious, but that he is not liable for *that* goring. This question remains undecided. Rabha said: If you should say that one who sets on his neighbor's dog is liable, it would follow that, if in such a case the dog turned on the one who sets him on and bit him, the owner is not liable. Why so? As stated above, page 39, that one who does an unusual thing, etc., which is the same in this case. The man was wrong in setting on the dog, and the dog should not bite him. Said R. Papa to Rabha: It was taught in the name of Resh Lakish in accordance with your theory in the case of two cows (see *post*, page 70). Rejoined Rabha: I in such a case hold him to liability, for the reason that we can say to him: You had permission to step upon me, but had you then also permission to kick me?

MISHNA V.: "An ox that did damage on the premises belonging to the plaintiff," stated in Chapter I., Mishna IV.; how so? If he gored, pushed, bit, lay down on, or kicked while on public ground, he pays half; if while on the premises of the plaintiff, R. Tarphon holds the whole; the rabbis, however, say one-half. Said R. Tarphon to them: (Are we then not to draw an *a fortiori* conclusion?) In a case in which the law is lenient with the "tooth" and "foot" on public ground, making them not liable, it decrees rigorously if the same happened on the premises of the plaintiff, namely, that the whole must be paid; in a case where it decrees rigorously that the "horn" on public ground must pay half, is it not a logical inference that we ought to strictly adjudge the same, if on the premises of the plaintiff,

liable for the whole? They said to him: It is sufficient that the result derived from the inference be equivalent to the law from which it is drawn, viz., as if on public ground only half, so also if on the premises of the plaintiff. He rejoined: "I also do not infer "horn" from "horn," but I infer "horn" from "foot," and I reason thus: if in cases in which the "tooth" and "foot" were dealt with leniently if on public ground, the "horn" was dealt with rigorously, is it not a logical conclusion that the latter shall be rigorously dealt with in cases where the former were also so dealt with? They rejoined again: It is nevertheless sufficient that the result derived from the inference be equivalent to the law from which it is drawn.

GEMARA: Did R. Tarphon ignore the theory of "It is sufficient," etc.? Is, then, this rule not a biblical one? As we have learned in the following Boraitha: "An *a fortiori* conclusion must be considered biblical. Where is it to be found in the Bible? It is written [Numb. xii. 14]: 'And the Lord said unto Moses, if her father had spit in her face would she not be ashamed seven days?' So much the more if it is toward the Shekhina, it must be fourteen days? But there is a rule that it is sufficient that the result derived from the inference be equivalent to the law from which it is drawn." (Hence we see that the rule of "It is sufficient" is also biblical.) R. Tarphon does not hold to that rule only where an *a fortiori* argument can refute that inference, but where there is no such refutation he does, viz., in the Bible the seven days of the Shekhina are NOT written; only by an *a fortiori* argument we set it to be fourteen days, and therefore, by the rule above stated, we equal it to the father's case, but in our case the half damage *is* written in the Bible and applies also to the premises of the plaintiff, and by an *a fortiori* argument we only add another half to it. Now if you should apply the rule above stated, then the *a fortiori* argument would be refuted entirely by it. The rabbis, however, maintain that the seven days in case of the Shekhina ARE written in the Bible, viz. [ibid., ibid.]: "Let her be shut up seven days." R. Tarphon, however, may say that that is the very verse which indicates the application of the rule of "It is sufficient," etc. And whence do the rabbis deduce the application of this rule? There is another passage for that, viz. [ibid. 15]: "And Miriam was shut up." R. Tarphon, however, may say that that other verse is necessary to indicate that the rule of "It is sufficient," etc., is applicable in ordinary cases

also, as one might say that it is applicable to this case only because of the honor of Moses; hence the passage.

Let the "tooth" and "foot" be liable (if they do damage) on public ground by the following *a fortiori* argument: The horn (doing damage) on the premises of the plaintiff pays only half, still the same is the case even on public ground; the "tooth" and "foot," which pay the whole if on the premises of the plaintiff, is it not logical that they should be liable on public ground? Therefore the Scripture reads plainly [Ex. xxii. 4]: "And they feed in *another* man's field," which signifies private, but not public ground. Do we then say that the whole must be paid (as the tooth, to which this passage has reference), we say that one-half should be paid? There is another passage [Ex. xxi. 35]: "And divide *his* money," which signifies *his* money (of the horn), but not the money in other cases (*i.e.*, in other cases the whole must be paid).

Let the "tooth" and "foot" be liable only to one-half if on the premises of the plaintiff by the following *a fortiori* argument: The horn which is liable on public ground pays only half on the premises of the plaintiff; the "tooth" and "foot," which have no liability at all on public ground, should they not so much the more pay only half on the premises of the plaintiff? To this the Scripture reads [ibid. xxii. 4], "make restitution," which means a *satisfactory* payment (the whole).

Now let the horn on public ground not be liable at all by the following *a fortiori* argument: The "tooth" and "foot," which pay the whole on the premises of the plaintiff are not liable on public ground; the horn, which pays only half on the premises of the plaintiff, should it not so much the more be entirely free on public ground? Said R. Johanan: The Scripture added [ibid. xxi. 35]: "They shall divide" (which is superfluous, as it was already stated before that his money shall be divided), to signify that it is also liable on public ground.

Let a man (that kills another wilfully, but without warning, in which case he is neither to suffer the death penalty nor to be banished) pay a sum of money in atonement by the following *a fortiori* argument: An ox which is not liable to the payment of the four certain things (mentioned above, page 6) must nevertheless pay a sum of money in atonement; for a man who *is* liable to the payment of the above four things, is it not logical that he should be liable to the payment of a sum of money in atonement? To this the Scripture reads [ibid. 30], "whatever

may be laid upon *him*," which means upon *him only* (the ox), but not upon a man.

Now let the ox be liable to the payment of the four things by the following *a fortiori* argument: A man who is not liable to the payment of money in atonement is nevertheless liable to the payment of the four things; for an ox, which *is* liable to the payment of atonement money, is it not logical that he should pay the four things? To this the Scripture reads [Lev. xxiv. 19]: "And if a *man*, etc., in his neighbor," which does not mean an *ox*, etc.

The schoolmen propounded the following question: An ox that steps with his foot on a child lying on the premises of the plaintiff, what is the law in regard to the payment of the atonement money? Shall we say that it should be equal to the case of the horn, as when the horn gores twice or thrice it is considered its habit and pays atonement money, the same shall be applied to the foot, as it is always its habit to step? On the other hand, can it be said that there is no similarity to the horn because the horn gores with the intention to do damage, which cannot be said of a foot which steps without such intention? Come and hear: One who leads his ox into one's court without the owner's permission and the ox gore the owner to death, the ox is to be stoned and his owner, whether in case of viciousness or non-viciousness, must pay the full sum of atonement. Such is the dictum of R. Tarphon. Now let us see: Whence does R. Tarphon infer that in case of non-viciousness the full sum of atonement money must be paid? Is it not because he holds with R. Jose the Galilean, who says (Text, 486) that a non-vicious ox pays half atonement money on public ground, and he (R. Tarphon) draws an *a fortiori* conclusion from the "foot" (viz., the tooth and foot, which are not liable at all on public ground, pay the full amount of atonement money on premises belonging to the plaintiff, and the horn, which pays, according to R. Jose the Galilean, half atonement money on public ground, so much the more should be paid the full atonement money on premises belonging to the plaintiff). Hence we see that the case of atonement money applies also to the foot. Said R. A'ha of Diphthi to Rabhina: Common-sense also dictates so. For if one should think that it does not apply to the foot, and the Tana (R. Tarphon) deduces it only from the *injuries* caused by the foot (but not from the killing) (viz., if the foot, which on public ground is not liable for damages, pays the

full damage if on premises of the plaintiff, the horn, which pays on public ground half atonement money, according to R. Jose the Galilean, is it not logical that on premises belonging to the plaintiff it should pay the full sum of atonement money?) It could be refuted and said: As far as the damage of the foot is concerned, it is its habit (to damage all things lying in its way when walking), but it is not so as to killing. Infer from this that the case of atonement money applies to the case of the foot also, and R. Tarphon has drawn his *a fortiori* conclusion from this case. And so it is.

MISHNA VI.: A human being is considered always vicious, whether he acts intentionally or unintentionally, when awake and also when asleep. If one blind the eye of his neighbor, or break his vessels, he pays the whole damage.

GEMARA: The Mishna teaches if one blind the eye of his neighbor that, as in the case of breaking one's vessels, only damage is paid for, but not the four things; so also in the former case only for the damage, but not the four things, is to be paid (when done unintentionally). Whence is that deduced (that the damage is paid for even when unintentionally)? Said Hyzkiah, and so also was it taught by his disciples: The passage says [Ex. xxi. 25] "wound for wound" (which is superfluous, for it is stated [Lev. xxiv. 19]: "And if a man cause a bodily defect"), to make one liable for unintentional as for intentional damage, and for an accidental as for a deliberate act. But do we not need this passage to make one liable for the pain (which is one of the four things explained above) where damages are paid? If so, let the passage say "wound for wound," why then "wound *instead** of a wound"? Infer from this both.

Rabba said: One who carries a stone in his lap without being aware of it, and while getting up from his seat drops it, as regards damages he is liable (for there is no difference whether it was intentional or not), but as regards the four things he is not; regarding the Sabbath the Scripture prohibits only intentional work; as to banishment (if a human being was killed thereby), he is not liable; as to his liability to a slave (if it fell on a slave and blinded him), R. Simeon b. Gamaliel and the rabbis differ (as to whether he must manumit him or not [Ex. xxi. 26]). If in the above case he was at first aware of the presence of the stone,

* The literal translation of the text reads "a wound *instead* (ta'hath) a wound."

but subsequently forgot it, as to damages he is liable, as to the four things he is not (for the fact that he forgot it cannot be considered wilfulness); as to banishment he is liable, as regards Sabbath he is not; as regards a slave, R. Simeon b. Gamaliel and the rabbis differ. If he intended to throw the stone two (ells) distant and threw it four, as to damages he is liable; as to the four things he is not; as regards Sabbath, intention is necessary; as to banishment, the Scripture said [ibid. xxi. 13]: "And if he *did not lie in wait*," excepting this case under discussion; as regards a slave, R. Simeon b. Gamaliel and the rabbis differ. If he intended to throw four (ells) and threw it eight (ells) distant, as to damages he is, as to the four things he is not liable; as regards Sabbath he is free unless he said: Let it fall wherever it may; as regards banishment the above-quoted passage means to except such a case as to his liability to a slave. R. Simeon b. Gamaliel and the rabbis also differ.*

Rabba said again of one who drops his own vessel from the top of a roof, and before it reaches the ground another person strikes it with his cane and breaks it, the latter person is not liable, for it is considered that he broke a broken vessel.

The same said again: One who drops a vessel from the top of a roof upon the ground which has been covered with pillows, and another person removes them before the dropping of the vessel (without the knowledge of the person who drops it) and the vessel was broken, there is no liability on the part of the person who drops it, for at the time he dropped it he thought it could not break, nor was the person who removed the pillows liable, because he was only the remote and not the proximate cause of the damage.

The same said again: If one drop a child from the top of a roof, and before it reaches the ground another person cut it with his sword, this is similar to the case of the following Boraitha, in which R. Jehudah b. Bathyra and the rabbis differ: If one was assaulted by ten different persons, no matter whether at once or at different times, and was killed, none of them has to suffer capital punishment, as according to the Scripture it must be known who was the cause of the death. R. Jehudah b.

* In the last two cases there is only a difference as regards Sabbath. In the first case, even if he said, "Let it fall wherever it may," there is also no liability, for the Scripture requires that it should be intentional *work*, and in the first case the distance is so small that there can be no question as to his intention to do work.—Rashi.

Bathyra, however, holds, in case the assault was made by one after the other, that the last one is guilty, for he hastened his death (and this rule can be applied to the above case of the child).

If (in the case of the child) a vicious ox killed it with his horns before it reached the ground, this is similar to the case of the Boraitha (*post*, pages 90 and 91) in which R. Ishmael, the son of R. Johanan b. Broka, and the rabbis differ.

The same also said: One who falls from the top of a roof by an extraordinary wind and does damage, or falls on a woman and causes her shame, is liable for the damage, but not to the four things. If, however, it happen by an ordinary wind and causes damage or disgrace to a woman by falling on her, he is liable for all the four things except for the disgrace.

Lastly Rabba said: One who causes the death of another by placing live coals upon his (bare) breast has no liability (for the deceased could remove them); if he placed the coals upon another one's clothes and they were burned he is liable (because the moment the live coal was placed on the clothes the latter were at once damaged).

[Said Rabba: Both these cases are explained in Mishnayoth. The first one in Tract Sanhedrim, Mishna II., and the second in this tract, Chapter VIII., Mishna 5.] He, however, propounded the following question: If one placed a live coal upon the breast of his neighbor's slave, is the slave considered in such case as his own body (and there is no liability, for the slave should remove it), or is he considered only his property (and he is liable)? And if one should say that a slave is considered the body of his master, what is an ox under such circumstances considered? He subsequently solved it himself. A slave is considered one's body, and an ox is considered one's property (and there is liability in the latter case, for the ox cannot remove it).

CHAPTER III.

RULES CONCERNING PLACING VESSELS ON PUBLIC GROUND. INJURIES
CAUSED BY PEDESTRIANS TO EACH OTHER WITH THEIR LOADS.
THE VICIOUS AND NON-VICIOUS OXEN—IF THEY HAVE DONE
INJURY TO EACH OTHER OR TO HUMAN BEINGS, ETC.

MISHNA I.: If one places a jug on a public ground and another person stumbles over it and breaks it, the latter is not liable; if he is injured, the owner of the barrel is liable for the damage.

GEMARA: The Mishna starts out with "jug" and ends with "barrel," and it is the same way in several subsequent Mishnas. Said R. Papa: Jug and barrel are one and the same thing (as to the cases cited). (If so) for what purpose did the Mishna change the terms? For business transactions (*e.g.*, if one sells barrels he may deliver jugs, and *vice versa*). How is the case? Shall we assume in the case of a certain locality where these terms are decidedly distinct, then jug is one thing and barrel another? It is only in the case where most of the people use those terms distinctly and separately, but there is also a small portion who use them interchangeably, in which case I would say that the majority is to be followed; hence the statement that in money matters the majority is not to be followed (but the burden of proof is on the plaintiff).

"*And another person,*" etc. Why is he not liable—must he then not look out? Said the disciples of Rabh in his name: The Mishna speaks of a case where he filled up the whole thoroughfare with barrels. Samuel said: When it is done in darkness. R. Johanan, however, said: The Mishna may be explained in that he placed the jug in a corner (where it could not be noticed). Said R. Papi: Our Mishna cannot be explained unless according to Samuel's or R. Johanan's interpretation, but not according to Rabh, because if it should be according to Rabh's interpretation he would not be liable if even he should break the barrel intentionally, as he had no passage way. (The Gemara, however, says that it can be explained also according

to Rabb's interpretation, as R. Zbid in the name of Rabha explains it further on.) Said R. Aba to R. Ashi: In the West it was said in the name of Ula that the reason for the statement of the Mishna is that pedestrians are not in the habit of looking around.

Such a case happened in Nahardea, and Samuel held him liable. In Pumbeditha—and Rabba held him liable. It is correct of Samuel, for he follows his theory; but Rabba, shall we assume that he concurs with Samuel? Said R. Papa: It was in a corner of an oil-mill (and it was customary with those who came to the mill to place their vessels outside when waiting for their turn to enter the mill), and because it was customary to place there the vessels the pedestrian had to take care not to break them. R. Hisda sent the following message to R. Na'hman: "It was said (it is the custom of the judges to fine) one who kicks the other with his knees three (selas); one who kicks the other with the foot, five; one who strikes the other with his fist, thirteen—what is the fine if one strikes his neighbor with the handle of a hoe or with the iron of the hoe?" He returned the following answer: "Hisda, Hisda, you are collecting fines in Babylon; state to me the facts in the case." He then sent him the following facts: There was a partnership water-basin out of which each of the partners irrigated his land every second day. Once one was irrigating his land from the basin when it was not his turn, and when the other one asked him why he did so and the former did not heed him, he struck him with the handle of the hoe. Said he (R. Na'hman) to him (R. Hisda): He would have been justified if he had even struck him a hundred blows, for even according to the one who holds that a man ought not to take the law into his own hands, in cases of loss one may do so, for when one is in the right he need not trouble himself (to go to court). And R. Na'hman says this, according to his theory which was taught elsewhere, that a man may take the law into his own hands even not in case of loss. According to R. Jehudah, however, this is permitted only in case of loss. R. Kahana objected: There is a Tosephtha: "Ben Bag Bag says: Do not enter the courtyard of thy neighbor secretly to take what belongs to you, for fear that he may look upon you as upon a thief, but do so publicly, and tell him that you take your own (in contradiction to R. Jehudah, who holds that one must not take the law into his own hands)." R. Jehudah rejoined: Your support, Ben Bag Bag, is an individual,

and the majority differ with him. R. Janai, however, explained that "take it publicly" means to do so with the *aid of the law*.

Come and hear: If an ox mount another to kill him, and the owner of the latter come along and pull out his own ox, and the former drop on the ground and is killed, he is not liable. Shall we not assume that this is in the case of a vicious ox, in which case there is no loss (for if he had not acted thus, and his ox should have been killed, he would have been paid in full; hence even where there is no loss one may take the law into his own hands)? Nay, it is in case of a non-vicious ox where there is loss (for if he should have waited to be paid by law, he would have received only one half). If so, how is the latter part of the Boraitha: "If, however, he pushed down the ox that mounted, and the ox was killed, he is liable." Now, if it is in case of a non-vicious ox, why should he be liable (there is loss, and he acted according to law)? Because he should have pulled out his own ox and not pushed the other so as to kill him.

Come and hear: "For one who obstructs the court of another by placing there jugs of wine and oil, the owner of the court may break the jugs while going in and out of the court." (Hence we see that one may do so although there is no loss?) Said R. Na'hman bar Itzhak: It means that he may break them while going out to go to court and also when coming in to get his documentary evidence (in case such is necessary; e.g., when there is a dispute as to the ownership of the courtyard).

Come and hear the statement of our Mishna: "One who places a jug," etc., "he is not liable." The reason being that he stumbled over it, but if he broke it without stumbling over he *is* liable. (Hence we see that even when there is loss [for Rabh explained, above, this to be when the whole thoroughfare has been filled with jugs] no person is allowed to take the law into his own hand.) Said R. Zbid, in the name of Rabha: Nay, the same is the case even if he broke it intentionally, but the reason why he mentioned stumbling is because he had to state in the latter part that if he was injured the owner of the barrel is liable, in which case stumbling is essential, for if otherwise he himself caused his own injury; he mentioned that also in the first part.

Come and hear: "It is written [Deut. xxv. 12]: 'Then shalt thou cut off her hand'; this means that a fine of money shall be imposed upon her." May we not assume that this is only when she could not save herself otherwise? (Hence one may

take the law into his own hands?) Nay, that means when she could do otherwise. Then how is the case when she could not—is she free? If so, instead of the Boraitha stating in the latter part: It is written [ibid. 11]: “If she putteth forth *her* hand,” this signifies to exclude the messenger of the court, if he has done a similar thing he is free (from paying for disgrace), let the Boraitha teach that there is a difference also in *her* own act; viz., the case is when she could save herself otherwise, but if she could not she is free? The Boraitha maintains thus: The case is when she could save herself otherwise, but if she could not, her hand is to be considered as a messenger of the court and she is free.

Come and hear: “One who set aside the due corner-tithe at one corner of his field and the poor came and took their due share at another corner, both are considered corner-tithe.” Now if you should say that one may take the law into his own hands, let the owner prevent them from taking at another corner by force? Said Rabha: The expression that “both are corner-tithe” means only that both are free from tithe (given to the Levites), as we have learned in the following Boraitha: “One who renounced his ownership to his vineyard and then hastened in the morning and plucked the fruit himself, he must observe *peret* [Lev. xix. 10], *gleanings* [Deut. xxiv. 21], *peah* [Lev. xix. 9], and *forgotten heaves* [Deut. xxiv. 19], but he is free, however, from the Levites’ tithe.

MISHNA II.: A jug (filled with water) that broke on public ground and its contents cause a person to slip and fall, or one is injured by its fragments, he (the carrier of the jug) is liable. R. Jehudah, however, says, if he break it intentionally he is, otherwise he is not.

GEMARA: Said R. Jehudah in the name of Rabh: It was taught only if he soil his clothes with the contents of the jug, but if he damage his person there is no liability, for the public ground (which has no particular owner) causes his damage. When I stated this before Samuel he said to me: Let us see; as to the liability for damage caused by one’s stone, knife, or load (placed on public ground), we deduced it from the “pit” on public ground, as explained *post*, page 111 (in which the Scripture reads “ox” and “ass”), and in all of them I read “an *ox*, but not a human being”; “an *ass*, but not vessels,” and only as far as death is concerned (as the Scripture in this case speaks of death); as to damage, however, if to person there is, but if to

property there is no liability on the part of the one who placed them there. (Hence Samuel's theory is the reverse of that of Rabh.) What has Rabh to say to this? This (that we deduce all that from "pit") is only where he had renounced his ownership from them (as such is the case with the pit on public ground), but if he had not it is still his property (and we deduce his liability from the "ox"). R. Oshyiah objected: (There is a Boraitha:) It is written [Ex. xxi. 33]: "And an ox or an ass fall therein," and we say an *ox*, but not a human being; an *ass*, but not vessels; and from this it was said that if an ox or an ass laden with vessels fell into the pit and they were broken, he is liable only for the injuries to the animal, but not for the damage to the vessels. Similar to this is his stone, knife, and load placed on public ground that cause damage. Therefore if one break his glass vessels by striking them against the stone so placed, he is liable. Now the first part of the Boraitha would be in contradiction to Rabh, who holds him liable for the vessels also, and the latter part (which treats of breaking glass vessels by striking them against the stone) would contradict Samuel? [Why would this be a contradiction only to those two? Do, then, those two parts of the Boraitha itself not contradict each other? Say, then, that Rabh would explain the Boraitha in accordance with his theory that he renounce ownership, and Samuel according to his theory stated above.]

Now, when we come to the conclusion that one's stone, knife, or load is equal to one's "pit," according to R. Jehudah, who holds that there is a liability for damages done to vessels by falling into a pit, if one strike his bottle against a stone he is liable. Said R. Elazar: Thou shouldst not think that he is liable only when both the stumbling and the breaking were caused by the stone, and not if only the breaking was caused by the stone, as in reality he is liable even in such case, as we concur with R. Nathan's theory (which is explained on page 120).

"*If intentionally*," etc. What means intentionally? Said Rabba, when he intended to lower them down from his shoulders (and while doing so they struck against the wall, he is liable, for his carelessness is considered a deliberate act). Said Abayi to him: Should we infer from this that R. Meir (who is very rigorous) holds that one is liable even if the jug dissolve of itself (although it is an accident)? He answered: Yea, R. Meir holds one liable if even only the handle remained in his hand. Why so? Is this not an accident, and being such, the Scripture frees

him from liability, as it is written [Deut. xxii. 26]: "But unto the damsel shalt thou not do anything"? And if you should say that this is only as regards capital punishment, but as regards damages one is liable, have we not learned in a Boraitha: "If his jug break and he fail to remove the fragments, or if his camel fall and he fail to raise it, R. Meir holds him liable for the damage they cause; the sages, however, hold that he is free from human justice and is liable only to heavenly justice; and the sages concede to R. Meir, where one places his stone, knife, or load on the top of a roof, and they are blown down by an ordinary wind and do damage, that he is liable; on the other hand, R. Meir concedes to the rabbis that, where one places jugs on the roof in order that they should dry, and they are blown down by an extraordinary wind and do damage, he is free" (because it is an accident; hence even according to R. Meir damages by an accidental act are excusable)? Therefore said Abayi: They differ (in our Mishna) in two cases: during the falling and after the vessels rested upon the ground; one holds that for stumbling while falling he is liable for carelessness, and the other one holds that it is an accident. And they also differ after the resting of the vessels, in case he renounce his ownership to the articles which caused the damage; one holds him liable even in such a case, and the other one holds him free. And wherefrom is such a theory? From the fact that the Mishna mentions two cases, viz.: "If he slipped on account of the water, *or* he was injured by the fragments," which is practically one and the same thing, we must say then that it means either when he slipped on account of the water while falling or that he stumbled over the fragments after they rested. But how is it with the above Boraitha, can you apply also to it the same interpretation? This would be correct regarding the jug containing water, but how can we find the above two cases in regard to the camel, as you cannot hold one liable for the stumbling of his animal, even in a case where one is held liable for his own stumbling; and if there should be a liability it should be only in one case, namely, if he renounced his ownership to the carcass? Said R. A'ha: It can be explained that the camel stumbled by reason of the overflow of a river. How is the case? If there was another way, then he is surely liable; if there was no other way, is it not accident? Therefore it must be explained thus: that he himself stumble first and the camel stumble over him, in which case his stumbling is considered

carelessness. But (according to R. Jehudah, who requires intention in our Mishna in case one renounce ownership from his articles which caused damage) what intention can there be so that he should be held liable? Said R. Joseph, and so also said R. Ashi: If his intention was that he should regain ownership of the fragments. R. Elazar also holds that they differ even during the falling and concurs with Abayi's theory stated above.

R. Johanan, however, said that they differ only as to after they rested, and he comes to teach us that only in this particular case the rabbis freed him from liability if he renounced his ownership to the articles which caused the damage because it was accidental (but where there is no accident he is liable for renouncing his ownership).

It was taught: "One who renounces ownership to his articles that cause damage, R. Johanan and R. Elazar: one holds him liable and the other holds him free." Shall we assume that the one who holds him liable is in accordance with R. Meir and the other one is in accordance with the rabbis? Nay, as to R. Meir, all agree (that he is liable); they only differ as to the rabbis: the one who holds him free concurs with the rabbis, while the one who holds him liable may say: I say that even the rabbis who held him free do so only in the case of an accident, as stated above, but in other cases they also held him liable. There is ground for the supposition that it is R. Elazar who holds one liable. (See *Pesachim*, page 8, line 22, "Two things," etc.) Have we not heard from him concerning the following Mishna (above, page 30, end): "One who stirs up manure," etc., that it is so only in case he had an intention to claim it as his own, but otherwise he is not; hence we see that Elazar holds that if one renounce ownership to his articles which caused damage he is exempt. Said R. Adda bar Ahba: The case here is that he restored it to its original position. Said Rabbina: The case as explained by R. Adda bar Ahba is similar to one who finds an uncovered pit and he covers it and then again removes the cover (in which case he is not liable, for it is considered as if he never had anything to do with it). Said Mar Zutra, the son of R. Mari, to Rabbina: I fail to see any similarity. In the case of the pit the former act (the uncovered pit) is still as it was, while in the case of manure the act of the first one is no more in existence (because the place it first occupied is now vacant). If it has any similarity to a pit it is in case one find

an uncovered pit and stuff it up, and then again dig it out, in which case the former act disappears entirely and is wholly his work (and therefore he is liable). Therefore said R. Ashi that the case of manure was that he stirred it up less than three spans (and therefore it is considered no stirring up at all [because of *Lavud*; see Sabbath, page 12], and whereas he had no intention of exercising any act of ownership, it cannot be considered his property, and if we cannot hold him liable as being his property, we can also not hold him liable for digging a pit). And why does R. Elazar force himself to explain it where he stirred it up below three, and the reason is only because he intended it as an act of claiming ownership, but not otherwise; let him explain it that it was above three, and although there was no intention of claiming ownership he is nevertheless liable? (Because he holds that one who renounces ownership to the articles which cause damage is liable.) Said Rabha: He did so because of the phraseology of the Mishna, viz.; Why "stirred" up—why not "lifted" up? Hence that "stirring" means below three spans.

Now when we come to the conclusion that it is R. Elazar who holds him liable, then it is R. Johanan who holds him free. Does then R. Johanan really hold so? Did he not say elsewhere that the Halakha prevails as an anonymous Mishna, and there is such a Mishna: "One who digs a pit on public ground and an ox or an ass falls into it and is killed, he is liable"? We must, therefore, say that R. Johanan holds that he is liable. Now, on the other hand, if R. Johanan holds that he is liable; then R. Elazar holds that he is not; but has not R. Elazar said in the name of R. Ishmael (Pesachim, page 8, "Two Things," etc., hence, that he holds that he is liable? These present no difficulty. What is stated here is his own, and that in Pesachim is his teacher's opinion.

MISHNA III.: One who empties water into public ground and causes injuries thereby, he is liable for the injuries. One who hides away a thorn or glass, or one who builds his fence of thorns, or a fence that falls in into public ground and some persons were injured thereby, he is liable for the damage.

GEMARA: Said Rabh: It was taught only if his vessels were soiled, etc. (see page 60). Said R. Huna to Rabh: If this should be considered even his mud (he ought to be liable)? Rejoined Rabh: Do you understand that the water was not absorbed? I mean when it *was* absorbed, and yet he injured him-

self by the collected earth, and therefore there is no liability, for he should have been careful.

[Why did Rabh repeat his statement here? He said that already in connection with the preceding Mishna.] This was necessary: Once as to the sunny season and once as to the rainy season, and it is in accordance with the following Boraitha: "Although it is permitted during the rainy season to empty refuse-pipes and clean excavations, still it is not permitted to do so during the sunny season; and even in the rainy season, although they do it with permission, they are liable for the damage they cause."

"*One who hides away,*" etc. Said R. Johanan: It was taught only in case it is jutting out, but if it is pressed in he is free. Why is he not liable even when it is pressed in? Said R. A'ha, the son of R. Ika: For the reason that it is not the custom of man to rub against the wall. The rabbis taught: One who hides away his thorns or glass in the wall of his neighbor, and the owner of the wall comes along and pulls down the wall and the thorns or glass falls into the public ground and does damage, the one who hid them away is responsible. Said R. Johanan: This is the case where the wall was in bad condition, but where the wall was in good condition the owner of the wall only is liable. Said Rabhina: It is to be inferred from this that if one covers his well with the pail of another, and the owner of the latter comes along and carries away his pail, the former is liable (if some accident occurs). Is this not self-evident? Lest one say that because the owner of the wall did not know who hid the thorns and could not inform him to remove them, therefore he is free; but in case of the well, as the owner of the pail knows him, he should have informed him that he took away the pail, and therefore the owner of the well should be free—he comes to teach us that there is no difference.

The rabbis taught: The former pious men used to bury their thorns and broken glass in their fields three spans below the surface in order that they should not interfere with the plough. R. Shesheth used to burn them. Rabha used to throw them into the (river) Chiddekel. Said R. Jehudah: One who wishes to be pious should observe the laws of damages. Rabhina said: He should observe the teachings of the fathers (which were enumerated in the first tract of this section).

MISHNA IV.: One who places straw or hay on public ground in order to convert them into manure, and some pedes-

trian sustains injury through them, he is liable; and the one who takes possession of them first is entitled to them. R. Simeon b. Gamaliel says: All those who obstruct a public thoroughfare by placing chattels therein and cause damage are liable; and the one who takes possession of them first is entitled to them. One who stirs up manure on public ground and a pedestrian sustains injury thereby is liable.

GEMARA: Shall we assume that our Mishna is not according to R. Jehudah of the following Boraitha: "R. Jehudah says: During the season of conveying manure one may remove his manure to the public highway and collect it there for thirty days in order that it should be trodden by man and animal, for on this condition did Joshua distribute the land"? It can be explained that R. Jehudah concedes that nevertheless he is liable for the damage.

(There is an objection.) Come and hear: "All those of whom it was said that they may obstruct the public highway, if they do damage they are liable; according to R. Jehudah, however, they are not." Said R. Na'hman: Our Mishna treats of the season when the manure is not conveyed, and it is according to R. Jehudah. R. Ashi, however, says: Our Mishna states "straw" and "hay" (which means before they were converted into manure, and the reason is) because they are slippery.

"*The one who takes possession of them,*" etc. Rabh said: This applies to both the original substance as well as to its improvement. Zëira, however, holds that it applies to the improvement only. What is the point of their difference? Rabh holds that the original substance is also to be confiscated (as a fine) because of the improvement, and Zëira holds that only the improvement is to be confiscated. There is an objection from the clause of our Mishna: "One who stirs up manure," etc., and does not mention that the one who takes possession of it first is entitled to it. (Hence it contradicts Rabh.) Said R. Na'hman bar Itzhak: You quote a contradiction (to Rabh) from the subject of manure. In cases where there can be an improvement (*e.g.*, straw) the original substance was also subjected to the rule as a fine, but where there can be no improvement (*e.g.*, manure) there is no fine at all.

The Schoolmen propounded a question: According to the one who holds that the original substance is to be fined because of the improvement, is it to be fined at once or only after the improvement has taken place? This can be inferred from the fact

that it was attempted to contradict Rabh from "manure" (which does not improve; hence that he is to be fined at once). What answer is this? Did not the Schoolmen propound their question after they heard of R. Na'hman's answer, and nevertheless they were doubtful? Shall we assume that in this case the Tana'im of the following Boraitha differ? "One who removes his straw and hay to a public highway to convert it into manure, and a pedestrian sustains injuries, he is liable, and the one who takes possession of them first acquires title to them, and if one takes them it is considered robbery. Rabban Simeon b. Gamaliel, however, holds that all those who obstruct a public highway and cause damage thereby are liable to pay the damage, and the one who lays his hand upon the articles of obstruction first acquires title to them, and it is not considered robbery." Let us see. How is this Boraitha to be understood? It reads that the one who lays his hand on the articles of obstruction first acquires title to them, and immediately thereafter it states that the one who takes them is guilty of robbery. It must, therefore, be explained thus: "One who lays," etc., acquires title to the improvement, but the original substance is prohibited as robbery, and R. Simeon b. Gamaliel, however, says the same is the case also with the original substance. According to Zēira surely the Tana'im differ in this case, but according to Rabh do they also differ? Rabh may say that all agree that the fine applies to the original substance on account of the improvement, but in what they differ here is, whether this Halakha should be put into practice or not. As it was taught: "R. Huna said in the name of Rabh: The Halakha is so, but it is not applied in actual practice. R. Adda bar Ahbah, however, holds that it is applied in practice." But this is not so, for R. Huna once declared peeled baley (placed by one on public ground to dry it) ownerless, R. Adda bar Ahbah did the same with date-husk. It was correct for R. Adda bar Ahbah, as he followed his theory (stated above), but shall we assume that R. Huna retracted from his statement above? Nay, in this case the owners were warned (several times).

MISHNA V.: Two potters (each carrying pottery) that walked, one following the other, and the first stumbled and fell, and the second stumbled over the first and also fell, the first one is liable for the damages of the second.

GEMARA: Said R. Johanan: It is not to be said that our Mishna is only according to R. Meir, who holds that stumbling

is considered wilful and therefore he is liable, but even according to the Rabbis who hold that it is an accident and he is free. Here, however, the case is different, for he had to get up (at once) and he had not done so. R. Na'hman bar Itzhak, however, holds that if he even could not get up he is liable, because he had at least to give warning to the other, which he had not done. R. Johanan, however, denies this theory, for if he could not get up he could also not give warning (because of his excitement).

There is an objection from the following Mishna: "If one carrying a barrel followed one carrying a beam, and the barrel was broken by the beam, he is free, but if it broke because the carriers of the beam stopped, he *is* liable." Is it not to be assumed that he stopped in order to place the beam on the other shoulder, which is usually done, and still it is said that he is liable, because he should give warning? Nay, he stopped to rest. But how is it in the former case, is he free? Then the Boraitha should state that it is only when he stopped to rest, but if to place it on the other shoulder he is free. Why then does it state in the latter part that he is free only if he told him to stop with the barrel? With this he comes to teach us that, although he stopped to rest, if he called to him to stop he is free.

Come and hear: "Potters and glaziers that walked, one following the other, and the first one stumbled and fell, and the second one stumbled over him and the third over the second one, then the first is liable for the damage of the second and the second is responsible to the third. If, however, they all fell on account of the first one, he is responsible for the damage of all; but if they warned each other they are not responsible." Is this not so even if they could not get up? Nay, they could get up, and it comes to teach us that even in such a case when they warned each other they are free.

Said Rabha (in explanation of the above Boraitha): "The first one is liable to the second one for both injuries to the person and to property. The second, however, is liable to the third one for personal injuries only." [How is this to be understood?] If stumbling is considered a wilful act, let the second one also be liable; if, on the other hand, stumbling is considered an accident, then let the first one also be free. The first one is considered wilful as it is equal to a "pit on public ground," in which case the digger is liable for both injuries to the person

and to property; the second, however, who is considered as if he himself has fallen into the pit (because of the stumbling of the first) can be liable only for personal injuries because he did not get up in time, but not for damages to property, as he can say that he did not dig the pit.

The Master said: If they all fell because of the first one, the first is liable for the damage of all of them. How was the case? R. Papa said: He obstructed the way (crosswise) like a carcass (which obstructs the whole way). R. Zbid, however, said: If such should be the case the first one would not be liable for the damages of the third, who should be careful, seeing that the second one stumbled over the obstruction of the whole thoroughfare; therefore he maintains that the first one fell diagonally and did not obstruct the whole thoroughfare, and the third one in his intention to walk on the unobstructed portion of the thoroughfare did not see the stumbling of the second and stumbled over him.*

MISHNA VII.: If one was coming from one side of the street carrying a barrel, and the other one was coming from the other side carrying a beam, and the barrel was broken by the beam, there is no liability, as both had the right to go each his way (and the carrier of the barrel should be careful not to collide with the beam). The same is the case when the carrier of the barrel followed the carrier of the beam. If, however, the carrier of the beam stopped (without any reason), and the carrier of the barrel while walking broke it by striking against the beam, he is liable; if the carrier of the barrel was told to stop by the carrier of the beam he is free. If the carrier of the barrel was preceding, and the carrier of the beam was behind him and broke his barrel by colliding with the beam (although unintentionally), he is liable (because of carelessness); if the barrel carrier stopped, he is free; but if he told him to stop and the beam carrier did not heed him, he is liable. The same is the case with one carrying fire and the other hemp.

GEMARA: Rabba bar Nathan questioned R. Huna: When one injures his wife by having intercourse with her, how is the law: is he free because he has done it with permission, or is he

* The text reads, "as the cane of a blind one," and Rashi explains it, that when feeling the way with his cane, the blind man places it wherever it happens, longwise or crosswise. The above explanation, however, which is more lucid, is according to Tosphath.

nevertheless liable because he had to look out for her health? And he answered: This we have learned in our Mishna: "He is free, as both had the right to go each his way." Said Rabha to the latter: Is there not to be drawn an *a fortiori* conclusion from a wood [Deut. xix. 5] in which case both had permission to enter, and nevertheless when one was injured or killed, it is considered that the defendant entered the plaintiff's premises, and he is responsible or guilty; so much the more here it must be considered that he entered upon her premises and injured her? [But did not the Mishna state that each of them had permission to go his way? There is no similarity. In the case of the Mishna both had equal permission, and each of them did the same thing the other did, but here only he acted but she did nothing. Is that so? Did not the Scripture say plainly [Lev. xviii. 29]: "Even the souls that *commit* them shall be cut off"? Hence we see that the Scripture considers the female also as acting. There both of them derive pleasure and therefore are punished, but here the act is only his.] Resh Lakish said: If there were two cows on public ground, one of which was lying and the other one walking, and the latter kicked the former, she is not liable; if, however, the reverse was the case she is liable. (This was explained above, page 50.)

MISHNA VII.: Two that were on public ground, one running and the other one walking (ordinarily), or both of them running, and they injured each other, both are free.

GEMARA: Our Mishna is not according to Issi b. Jehudah of the following Boraitha: "Issi b. Jehudah says: The one who was running is liable, for it is uncommon. He, however, concedes that if it was on the eve of Sabbath in twilight, that he is *not* liable, for he is permitted at that time to run (and therefore it is considered common)." Said R. Johanan: So the Halakha prevails. But has not R. Johanan said elsewhere that the Halakha prevails according to an anonymous Mishna, and our Mishna (which is anonymous) states not so? The case in our Mishna is to be explained in that it speaks of the twilight on the eve of Sabbath, from the fact that it states, "or they were both running they are free." Then without the above explanation it would be superfluous after the statement that if even only one was running, etc., for it is self-evident that if both were running that so much the more they ought to be free; therefore the Mishna must be considered as incomplete, and should read thus: If one was running and the other one was walking, there is no

liability, when the case was in the twilight of the eve of Sabbath ; on a week day, however, the one running is liable ; if both were running they are free, even on a week day.

The Master said: " And Issi concedes that if it was in the twilight of the eve of Sabbath he is free, for he did so with permission." What is the permission ? It is according to R. Hanina, who used to say: Come with us to meet the bridal queen. And according to others, " to meet the Sabbath bridal queen." R. Janai used to get up, enwrap himself and say: Come bride, come bride! (Hence it is a merit to run at twilight on the eve of Sabbath to meet the Sabbath.)

MISHNA VIII.: One who chopped wood on public ground and caused damage on private ground, or *vice versa* ; or on his own private ground, and has done damage on another's private ground, he is in either of those cases liable.

GEMARA: And all the three cases were necessary to be mentioned, for if the Mishna should state the case of one who chopped wood on his own private ground, and did damage on public ground only, one might say that the liability is because on a public thoroughfare there are usually many passers-by ; but if *vice versa* there is no liability because on private premises there are not many people. And if it should state the case of public to private ground only, one might say that the liability is because he had no right to chop wood there, and as he did that without permission he is liable, but from private to public ground, where he had a right to do so, there is no liability even if it caused damage on public ground. And if it should state these two cases only, still one might say that in one case he is liable, for he has done it without permission, and in the other case because there are many persons, but from one private ground to another, where usually not many people are, and each owner is permitted to do such a thing on his own premises, there is no liability, therefore it was necessary to mention all. The rabbis taught: " One who enters a carpenter's shop without permission, and was struck on his face by a flying splinter and died, there is no liability. But if he entered with permission the carpenter is guilty." Guilty of what ? Said R. Jose b. Hanina: It means the liability to pay the four certain things, but he is free from banishment, for it is not equal to the case of a forest, which is considered the ground of every one who enters it, but in this case he entered his neighbor's estate. Said Rabha: Is not the following *a fortiori* conclusion to be drawn here: A

forest, where each one enters by his own will (without the permission of the other), still it is considered as if he entered by the request of the other, and he is to be banished (in case he kills one unintentionally); in the case at bar, where he decidedly enters by the request of the other, shall he not so much the more be banished? Therefore we must explain the Boraitha thus: He is free from banishment means that this alone would not be sufficient, and the reason of R. Jose b. Hanina is that it is such an act of negligence that almost amounts to an intentional act (for he should look out).

An objection was raised from the following: "One who throws a stone into a public ground and kills some one, he is to be banished." Is *this* not such a negligent act as almost amounts to an intentional act, for he had to have in mind that on public ground people come and go, and still it says that he must be banished. Said R. Samuel bar Itzhak. The case is that he was tearing down his wall and threw the material into rubbish in the daytime. What was the nature of this rubbish? Was it such rubbish as people are likely to be about, then it is intentional? If not, then is it an accident? Said R. Papa: The case is that it was rubbish that people do their necessities thereon in the night-time, but not in the daytime, but still it may happen that some might do so in the daytime; it cannot be considered an intentional act, for it is uncommon to do so in the daytime, and, on the other hand, it is also not an accident, for it may happen.

R. Papa in the name of Rabha explained that R. Jose b. Hanina's statement has reference to the first part only, viz.: "One who enters a carpenter's shop without permission, and was struck in the face by a flying splinter and died, the carpenter is free." Said R. Jose b. Hanina: He is liable to pay the four things, but he is free from banishment (and the difference is thus): That he who explains that it refers to the latter part of the above Boraitha, so much the more as to the first part; but according to R. Papa, he who explains that it refers only to the first part, in the latter part where he entered by request he is to be banished. Is that so? Have we not learned in the following Boraitha: "One who enters a blacksmith's shop and was struck by an escaping spark and died, there is no liability, even if he entered with permission"? The case here is that it was the blacksmith's apprentice. Assuming that it is so, may he be killed? It was that his employer insisted that he

should leave the shop, and he did not do so. Supposing it so, may he be killed? The employer thought that he did leave. If so, then any person would come under the same rule. In the former case the apprentice usually obeys his employer (and therefore the blacksmith assumed that he left when being told to do so), but in the case of a stranger the blacksmith should look around and see whether the stranger did leave or not.

R. Zbid in the name of Rabha supported the above statement by the expression of the verse, viz. [Deut. xix. 5]: "It (the iron) found,"* but not when he *makes* himself found to the iron. From this R. Eliezer b. Jacob said: One who drops out of his hand a stone, and another one puts out his head and is injured by it, he is free. Said R. Jose b. Hanina: He is not to be banished, but he must pay the four things.

He who applies the explanation of R. Jose to the last case self-evidently holds that it also applies to the former case, and he who applies the explanation to the former case, in the last case may say that he is wholly free.

The Rabbis taught: Employees who came to demand their wages from their employer, and were gored by his ox or bitten by his dog, to death, he is free. Anonymous teachers, however, hold that employees have the right to demand their wages from their employer (and therefore he is guilty). How is the case? If the employer usually comes to town, what reason have the anonymous teachers for their assertion? If, on the other hand, he can be found only in the house, what is the reason of the first Tana? It is in a case where he is not certain, and the employe when knocking on the door or gate is told "In"; one holds that "in" means "come in" (and therefore they had the right to enter), and the other one holds that "in" means "stay where you are (and I will come out to you)." There is a support to the latter construction of "in" from the following Boraitha: "An employee that entered to demand his wages from his employer, and he was gored by his ox or was bitten by his dog, he is not guilty although he entered with permission." Why so? We must say that it means that when knocking on the door or gate he was told "in," and he meant that he had permission to enter, but in reality "in" meant only "stay where you are (and I will come out to you)."

MISHNA IX.: Two non-vicious oxen that wounded each

* The Hebrew term [Deutr. xix. 5] being נמצא, literally "it found."

other: the one who is hurt the most is to be paid one-half of the amount of the value of difference of the injuries. If both are vicious the *full* amount of difference of the injuries is to be paid. If one is non-vicious and the other vicious: if the vicious one injured the non-vicious more than he himself was injured he pays the full amount of the difference, if the reverse is the case only one-half is paid. So also if two men wound each other, the one who hurt the most must pay the full amount of the difference.

A man who hurt a vicious ox and was also hurt by the ox, or when the reverse was the case, the full amount of difference is to be paid. If the case was with a non-vicious ox the man pays the full amount and the ox pays the half. R. Aqiba, however, says: Even if the ox was non-vicious, the full amount is to be paid.

GEMARA: The rabbis taught: It is written [Ex. xxi. 31]: "According to this judgment shall be done unto him." That means that as the judgment when two oxen gore each other, so also shall it be when an ox gores a man. As in the former case a non-vicious ox pays one-half and a vicious one the full amount; the same is the case if it gores a human being. R. Aqiba, however, says: "According to *this* judgment" means that the judgment just mentioned applies to man, but not to the preceding case. Shall we assume that it must be paid from the best estates? Therefore it is written [ibid., ibid.]: "Shall be done unto *him*," which means that he pays only from the body of the ox, but not from the best estates.

MISHNA X.: An ox of the value of one hundred selas that gored another one of the value of two hundred, and the carcass was worthless, the plaintiff takes the ox (*i.e.*, one-half of the damage).

GEMARA: Our Mishna is in accordance with R. Aqiba of the following Boraitha (which treats of the same case, and teaches): "The ox shall be appraised in court, and if he is worth one-half of the killed one the plaintiff may take him." Such is the dictum of R. Ishmael; R. Aqiba, however, holds that the plaintiff takes the ox without any appraisalment. On what point do they differ? R. Ishmael holds that the plaintiff becomes a creditor, and his demand is money, and it must be assessed by the court, and R. Aqiba holds that the plaintiff becomes a partner to the defendant, and they differ as to the explanation of the following passage [Ex. xxi. 35]: "Then they shall sell the live ox and divide his money, and the dead ox also

they shall divide." R. Ishmael explains that it means that this shall be done by the court, and R. Aqiba maintains that the passage makes the parties partners, if both oxen were of equal value; if, however, the goring ox was worth half he belongs at once to the plaintiff. What is still the difference? When the plaintiff has consecrated him (according to R. Aqiba he is sacred, and according to R. Ishmael he is not until awarded to the plaintiff by the court). Rabha questioned R. Na'hman: If the defendant sold the ox, how is it, according to R. Ishmael, who holds him to be a creditor, is the sale valid? Or perhaps because the ox becomes subject to the appraisement of the court it is not valid? He answered: The sale is not valid. But have we not learned in a Boraitha that it *is* valid? He may recover him. If it is so, what is the validity of the sale? In case the vendee used him in the meantime in ploughing he need not pay for it. Then infer from this that if a borrower sells his personal property the Beth Din can recover it for the benefit of the lender. Nay, from this case in which the Scripture made the ox hypothecary nothing can be inferred.

R. Ta'hlipa, of Palestine, taught in the presence of R. Abuhu: If he sold him it is invalid, but if he consecrated him it is valid. Who sold him? The defendant, and all agree that the sale is not valid, because even according to R. Ishmael he is still subject to the appraisement in court, and if he consecrated him all agree that he is sacred, because even according to R. Aqiba, who holds that he belongs to the plaintiff without any appraisement, a sacred thing is different by reason of the statement of R. Abuhu, who said that it was so decreed for fear that it might be said that consecrated things become ordinary without being redeemed.

The rabbis taught: "A non-vicious ox that has done damage, if he was sold, consecrated, slaughtered, or presented to somebody, the act is valid if it was done before the rendition of judgment; if, however, either of these things were done after rendition of judgment, it is null and void. If the creditors levied upon the ox, whether the damage was done before or after the recognition of the court of the debt the levy is void, for the damages in case of a non-vicious *ox* are paid from his body only. In case of a vicious ox all the above acts of his owner are valid without regard whether it was done before or after rendition of judgment, and even the levy of creditors is valid regardless of whether the damage was done before or after

recognition, for the reason that damages in case of a vicious ox are paid from the best estates only.

The Master said: "If sold it is valid, as far as the non-payment for the ploughing he has done; if it was consecrated it is valid for the reason stated by R. Abuhu; and if slaughtered or presented to somebody the act is valid." It would be correct as to presenting, because it means as far as the value of ploughing is concerned, but in case he was slaughtered, why should not the damage be collected from the value of his meat? Have we not learned in a Boraitha: "It is written: 'The *live*.'" Whence do we know that if even it was slaughtered? Therefore it is written: "And they shall sell the ox," which means in whatever state he is? Said R. Shizbi: This (that the act is valid) was necessary only as to the reduction in value on account of being slaughtered (*i.e.*, the owner of the ox need not pay the amount of such reduction).

The rabbis taught: "An ox of the value of two hundred zuz that gored another ox of the same value, and injured him to the extent of fifty, and the injured ox then improved and became of the value of four hundred, although it is possible that if not for the injury he would have improved still more, and would have become of the value of eight hundred, still he pays him only as at the time of the injury (one-half of fifty zuz); if, however, the injured ox became lean and decreased in value, he pays him according to the value at the time of the trial. If the ox who caused the injury improved, he pays him as at the time of the injury; if he decreased in value, as at the time of the trial. On account of what was that leanness of the plaintiff's ox? If it was on account of work done with him by the plaintiff, let the defendant say, Why should I suffer for the decrease in value caused by you? Said R. Ashi: The case is that the leanness was caused by the blow, in which case the plaintiff can say the horn of your ox is still impressed (in my ox) and this caused leanness.

MISHNA XI.: An ox of the value of two hundred that gored another ox of equal value and the carcass was of no value whatever. R. Meir holds that of such a case it is written [Ex. xxi. 35]: "Then shall they sell the live ox and divide his money." Said R. Jehudah to him: So the Halakha prevails in reference to the passage cited by you, but how is the last part of this passage [*ibid.*, *ibid.*]: "And the dead one shall they also divide"? This can apply to a case where the carcass of the ox

(which ox was of the same value as the goring ox) is still worth fifty Zuz, in which case each takes one-half of the live and one-half of the dead ox.

GEMARA: The rabbis taught: "An ox of the value of two hundred zuz that gored an ox of equal value and the carcass was worth fifty, each one takes one-half of the live and one-half of the dead ox, and this is the case of the ox intended by the Scripture." Such is the dictum of R. Jehudah. R. Meir, however, holds this is not the ox intended by the Scripture, but it is where it is as stated in the beginning of the Mishna, and the provision of the passage that "also the dead ox shall they divide" is carried out by appraising how much the carcass is worth less than when the ox was alive, and one-half of that difference (seventy-five zuz) is paid to the plaintiff from the live ox together with the carcass. If it is so, then, according to both, if the carcass is worth fifty each of them gets one hundred and twenty-five, as even according to R. Jehudah, who divides both oxen between them, the share is only one hundred and twenty-five, what is the difference between them? Said R. Johanan: The difference is as to the increase in value of the carcass (since the time of the injury). R. Meir holds that it belongs wholly to the plaintiff, and R. Jehudah holds that they are considered partners, and each takes one-half. And this was because there presented itself a difficulty to R. Jehudah: If you say that the Scripture sympathized with the defendant and meant that he should share in the improvement (of the carcass), would you say in case of an ox worth five selas (twenty zuz) that gored an ox worth one hundred and the carcass is worth fifty zuz, that they also must divide equally the live and the dead ox (and so the defendant will still profit in that, because the one-half carcass is worth twenty-five zuz, and half of the live is worth ten zuz, which makes thirty-five zuz, while the value of the defendant's ox was only twenty zuz), and where do we find such a case wherein the defendant should still profit? And furthermore, is it not written plainly [ibid. 36]: "He shall surely pay," which signifies that the defendant *pays*, but should not profit. [For what purpose is this additional passage adduced? Lest one say that he pays only where the plaintiff does actually suffer damages, but where he does not, as, for instance, an ox worth five selas that gored an ox of equal value, and the carcass was worth six selas (by increase in price, in which case the plaintiff profits), in such a case the defendant may profit, therefore this

passage is adduced to show that the defendant should always pay but never profit.] Said R. A'ha bar Ta'hlipa to Rabh: If it is so, then according to R. Jehudah, who insists upon the division of both, we find instances according to him that a non-vicious ox pays more than one-half, and the Scripture provides expressly [ibid. 35]: "Then shall they sell the live ox and divide his money" (*e.g.*, when an ox worth fifty gored one worth forty, and the carcass was worth twenty, then the damage amounts to twenty, and if the plaintiff take one-half of the live ox which is twenty-five, and one-half of the carcass which is ten, he would receive altogether thirty-five, which is more than one-half of the damage). Nay, R. Jehudah also holds of the rule that the difference should be divided and deducted from the live one. Whence does he deduce it? From [ibid., ibid.]: "And the dead ox also they shall divide." But does not R. Jehudah deduce from this passage that each takes one-half of the dead and one-half of the live one? The passage could read: "And the dead ox they shall divide." Why "and the dead ox *also*"? To infer both.

MISHNA *XII*.: There are cases when one is liable for the acts of his ox and is free if they are his own acts, and *vice versa*. How so? If one's ox cause disgrace the owner is free,* but if he himself did so he is liable. If his ox blinded the eye of his slave or knocked out his teeth the owner is not liable (*i.e.*, the slave is not to be manumitted), but if he himself did it he is. If his ox wounded one of his parents he is liable, but if he himself had done so he is free; and the same is the case when his ox set fire to a barn on Sabbath he is liable, while if he himself did so he is free, for in both last cases he is guilty of a capital crime.

GEMARA: R. Abbuhu taught in the presence of R. Johanan: All those whose acts are of a destructive nature are not liable (as regards the observation of the Sabbath), except those who wound and set fire. Said R. Johanan to him: Go and teach this outside of the college (*i.e.*, such a statement is not to be respected by the college), as those two mentioned are no exceptions (and are also of destructive nature); they can only constitute exceptions in case of the wounding (of an animal when he needed the blood) for his dog,† and in case of fire when he needed

* As explained above, p. 53, from the verse Levit. xxiv. 19.

† According to the commentary of R. Hananel.

the ashes (*i.e.*, when the act was done with an intention to derive benefit from the things acted upon).

There is an objection from our Mishna: "An ox that set fire to a barn," etc. And as the Mishna equals the owner to his ox, is it not to assume that as the ox had no need of the fire so also had the owner none, and still it is stated that he is free (civilly) because he is guilty of a capital crime (hence we see that setting fire on Sabbath is an exception)? Nay, the equality is in the reverse; that is, as the owner did it with some purpose, so also did the ox. How is this possible of an ox? Said R. Avia: It may be explained that it was an intelligent ox that had an itch on his back, and he started the fire in order to roll in the ashes. But whence do we know that this was his intention? From the fact that he really did roll in the ashes. Are there such intelligent oxen? Yea, there are, as there was an ox that belonged to R. Papa, who when he once suffered from toothache removed the cover from the beer barrel and drank from the beer to be cured.

Said the rabbis to R. Papa: How can you say that the equality is that the ox imitated the owner? Does not the Mishna state that if his ox cause disgrace he is free, but not if he himself: now can an ox have such intelligence as to intend to disgrace? Yea, for instance, when he intended to do damage (but caused only disgrace), in which case the Master said elsewhere, if he intended to do damage but caused only disgrace, he is liable.

MISHNA XIII.: An ox that ran after another ox, and the latter was injured, the plaintiff claims that the ox injured him while the defendant claims that it was not so, but that the injury was caused by rubbing against a stone: the rule is that the burden of proof is upon the plaintiff. If two oxen having different owners were running after a third, each of the defendants claiming that the other one's ox caused the injury, both of them are free; if the two oxen belonged to one person both are liable (as explained further on); if one ox was a big one and the other a small one, the plaintiff claims that the big one caused the injury while the defendant claims that the small one caused it (the difference being that the big one is of sufficient value to pay the half damage while the small one is not); or if one was non-vicious and the other vicious, the plaintiff claiming that the vicious one did the injury, and the defendant claiming that the non-vicious did it, the burden of proof is upon the

plaintiff. If the defendant's oxen were two, one a big one and the other a small one, and so also were the plaintiff's oxen, the plaintiff claims that the big one injured his big ox and the small one injured the small ox, and the defendant claims that the reverse was the case (so as to reduce his payments); or when one was a non-vicious and the other one a vicious one, the plaintiff claims that the vicious one injured the big one and the non-vicious the small one, while the defendant claims that it was not so, but that the non-vicious injured the big one and the vicious the small one, the burden of proof is upon the plaintiff.

GEMARA: Said R. Hyya bar Abba: This statement (in the Mishna, that the plaintiff has the burden of proof) shows that Summachus' companions differ with him, for Summachus holds (*post*, page 106) that money, the ownership of which is doubtful, must be divided among its claimants. Said R. Abba bar Mamel to R. Hyya bar Abba: Does then Summachus hold so even if both of them claim to be positive in their statements? He answered: Yea. And whence do we know that our Mishna also speaks that both claim to be positive in their statements? Because it teaches plainly: One party says: *Your* ox; and the other party says (positively): *Not so*. R. Papa opposed: According to your explanation that both claim to be positive in their statements, the last part must naturally also treat of such a case; then how is it to be understood: If one was a big one and one was a small one, etc., the plaintiff has the burden of proof; how would be the law if he does not prove: he takes according to the statement of the defendant? Would this not be in contradiction to Rabba bar Nathan, who says that where one party claims to have sold another party wheat, and the other party admits to have bought of him barley, that the latter is free (and according to the above rule the seller would be entitled to recover for barley)? We must, therefore, say that the case is when one claims that he is positive, while the other one is not positive. Let us see who claims that he is positive. Shall we assume that the plaintiff claims that he is positive and the defendant does not, then there will still be a contradiction to Rabba bar Nathan. We must, therefore, say that the plaintiff does not claim that he is positive while the defendant does so (and therefore he claims his damages from both, and if he does not prove his assertion he recovers only according to the defendant's statement). Now as the latter part speaks of a case where the plaintiff was uncertain and the defendant was certain, the

same must be the case in the first part of the Mishna, and even Summachus holds to his theory, because if not it was not necessary for the Mishna to teach this case. Nay, in the latter part of the Mishna the plaintiff is not positive and the defendant is positive, and in the first part the reverse is the case.

But after this explanation the first part and last part treat of different cases; then could you not explain that the first part speaks where both were positive (and only then Summachus says that the money should be divided), and the last part treats where one is positive and the other is not (in which case Summachus does not oppose). It can be said: Certainty and uncertainty in the first part, and uncertainty and certainty in the other part is still one and the same case, but if both assert certainty in one case and certainty and uncertainty in the other case, there are two different things, and if the Mishna should mean so it would state so plainly.

"*Both are liable.*" Said Rabha, of Pharsika, to R. Ashi: Infer from this that if non-vicious oxen cause damage the plaintiff may collect his damages from any one of them. Nay, the case in the Mishna is that both oxen were vicious. Said R. A'ha the elder to R. Ashi: If the case were that they were vicious, why is it stated that *both* are liable? It ought to be "*he*" (the man) is liable, meaning the owner (as the damage is paid from the best estates). We must, therefore, say that the case is that they were non-vicious, and it is according to R. Aqiba, who holds that they (the parties) are considered partners, and the reason here is that both oxen are on hand, in which case he cannot shift the responsibility upon the missing ox, but where one of them is missing the defendant may say to the plaintiff: Prove that *this* ox has done the injury, and I will pay you.

CHAPTER IV.

RULES IN REGARD TO OXEN REPEATEDLY GORING OTHER OXEN
AND HUMAN BEINGS. OXEN OF ORPHANS AND GUARDIANS AND
WHAT IS CONSIDERED "GUARDED."

MISHNA I: An ox that gores four or five oxen one after another, the last of them must be paid from the body of the goring ox (if he was yet considered non-vicious., *e.g.*, when the goring was not in succession*), and from the balance of the half body the last but one must be paid, and if there was still a balance left the last but two must be paid, so that the later the more privileged. Such is the dictum of R. Meir. R. Simeon, however, says that if an ox of the value of two hundred zuz gores an ox of the same value, and the carcass is worth nothing, each one takes one hundred; if he again gores another of the value of two hundred, the last one takes one hundred zuz, and the former takes fifty, and fifty zuz remain for the owner of the goring ox; if he again gores a third one of the same value, the last one takes one hundred, the last but one takes fifty zuz, and the first as well as the owner takes each a golden dinar (twenty-five silver dinars).

GEMARA: According to whom is our Mishna? It is certainly not according to R. Ishmael, who holds that the plaintiffs are considered creditors, for if it be so, then not the last, but the first would be more privileged, for he was prior to the last one in point of time. Neither can it be in accordance with R. Aqiba, who holds that in case of a non-vicious ox the plaintiff and the defendant are considered copartners, for then if there is a balance left from the body of the ox after the goring of the last one, the same would have to be divided equally among *all* the plaintiffs previous to the last one, and the decree of the Mishna is that the last but one must be paid, etc. Said Rabha:

* Rashi explains this as follows: After the first goring he saw another ox and did not gore and after the second goring he saw two or three other oxen and did not gore them, and so after the third and fourth gorings in which case he is not considered vicious even in alternate order, as explained further on in the text.

The Mishna can be explained in accordance with R. Ishmael, and the difficulty that it is stated that *the later*, the more privileged, which ought to be *the first* (according to R. Ishmael), is to be explained thus: that the plaintiff levied upon the ox, and in such a case the plaintiff becomes responsible for the damage done by the ox while under his control, as he is then considered a bailee for hire as regards damages (and so was the case with all others). But if such was the case, then why is it stated that if there is a balance left it goes to the last but one? It ought to go to the owner of the ox (for all the gorings subsequent to the first one were made while the ox was not under his control). Said Rabhina: The statement in question means that if after the last one was paid from the body of the ox, there still remained a balance, the same must be paid over to the preceding one.* And so when Rabhin came from Palestine he said in the name of R. Johanan that the Mishna is to be explained in the same sense that Rabha did; that is, that the Mishna treats only about the negligence of the plaintiffs who took the ox under their control and neglected to sufficiently guard him as was their duty to do.

Now, when the Mishna is explained to be in accordance with R. Ishmael, how is it about the last part: "R. Simeon said, etc., . . . the first as well as the owner take each a golden dinar"? This is certainly in accordance with R. Aqiba's opinion that the goring ox becomes the common property of a copartnership. Then the Mishna would be in accordance with

* This is very complicated, and the commentaries differ as to the explanation and illustration thereof. Rashi maintains that if the value of the fifth one was only fifty zuz, the carcass being of no value, he collects from the body of the goring ox his full half of twenty-five zuz, and turns over the balance to the fourth one, whose ox was of the value of one hundred zuz, who collects nevertheless only twenty-five zuz, for the reason that the twenty-five zuz collected by the fifth one are deducted from his half damage, because the ox was then under his control, and the balance is turned over to the third one, applying the same rule; one full half value of the ox, however, belongs to the owner, as the ox was not under his control since the first goring. Hananel's illustration of this rule, however, is in reverse order: The first one whose ox was of the same value of the goring ox, who had to collect one hundred zuz out of the body of the goring ox, loses fifty if the goring ox gores another of the value of one hundred while under his control, and so the second pays to the third the one half of the damage done to him, so that only the last one takes his full half damage, as the ox was not under his control. Tosphath remarks that in such cases it can happen that the third and fourth should collect nothing, and even the fifth one may not be able to collect his full half. See the objection of Samuel Eidlis (Marsha) to these remarks of Tosphath and the answer of Sabbati Kohen in his commentary on the Schulchan Aruch, §401, and their illustrations.

two different opinions, viz., the first part according to R. Ishmael and the last part in accordance with R. Aqiba. The Schoolmen said: Yea, so it is, for Samuel said to R. Jehudah (concerning this Mishna): "Genius, leave alone the explanation of the Mishna and agree with me that the first part is according to R. Ishmael and the last part according to R. Aqiba." *

MISHNA II.: An ox that is vicious towards his own species, but not towards other species, or towards human beings but not towards animals, or towards young cattle, but not towards full-grown cattle, the whole damage is to be paid to those towards which he is vicious and half to those towards which he is not vicious. The disciples asked R. Jehudah what the law was when an ox was vicious on Sabbath days, but was non-vicious on week days. He answered: The same is the case also here. He pays the whole for damage done on the Sabbath days, and half for that done on week days. When is such an ox restored to non-viciousness? If he refrained from doing damage for three Sabbath days in succession.

GEMARA: It was taught: R. Zbid said: The Mishna teaches "*and not vicious*," which means that as to other species it was certain that he was not vicious, but if it is not certain he is to be considered vicious towards all. R. Papa, however, said: The Mishna teaches "*he is not vicious*," which means that an ox that is vicious towards his species is not considered vicious towards others. The reason for their difference of opinion is the following: The former lays more stress on the last part of the Mishna, which teaches that when he is vicious towards young cattle he is not considered vicious towards full-grown cattle, and this could be correct only in accordance with his interpretation that it is *certain* that he was not vicious, but according to the explanation that he is considered non-vicious this statement is entirely superfluous, as it was already stated that he is not considered vicious even to young cattle if it is not certain, and it is self-evident that so much the less towards full-grown cattle. The latter attaches more importance to the first part of the Mishna, which teaches that if vicious towards human beings he is not considered so towards cattle, and this could be correct only if it is explained that if it is uncertain that he is vicious to cattle he is also considered non-vicious; then the

* Here is an omission which will be supplied in the eighth chapter of this tract, as there is the proper place for it.

statement of the Mishna is necessary to teach us that, although he is vicious towards human beings, he is still not considered so towards cattle, but if you should explain that he is considered vicious, even when it is uncertain, then this statement is entirely superfluous, as it was already stated that he is considered vicious even from cattle to cattle, and it is self-evident that so much the more so when he is vicious toward human beings.

Said R. Ashi: The last part of the Mishna could support R. Zbid only. Come and hear: "The disciples questioned R. Jehudah what the law was, etc., . . . and he answered, etc. . . ." Now, if the Mishna is to be explained according to R. Zbid, that when not certain he is considered vicious, both the question and the answer are correct (*i.e.*, they questioned him, when he was certain for Sabbath days and not certain for week days, how was the law); but if you will explain the Mishna otherwise (*i.e.*, as R. Papa) what was their question? The Mishna states plainly that he is not vicious. Did they intend to teach R. Jehudah and not to question him? And, secondly, was it then an answer of the latter? He only repeated what they said? Said R. Janai: R. Zbid's opinion is supported even from the first part of the Mishna, which states: "The whole is paid to those toward whom he is vicious, and half is paid to those toward whom he is not." This statement can be correct only when he is certain to be non-vicious; then it is correct that the Mishna explains its former statement: To those toward whom he is vicious he must pay so much, and to those, etc., but if the Mishna means to state that one vicious toward human beings *is not* vicious toward cattle, to what purpose is the latter statement? Is it, then, not known how much a vicious ox and how much a non-vicious pays? If, however, an ox gored another ox, an ass, and a camel, he must be considered vicious toward all species of cattle even according to the theory of R. Papa (as these three species make it certain that he is vicious).

The Rabbis taught: There is a case where an ox may become vicious "in alternate order," namely, if he meets an ox and gores him, and subsequently he meets another ox and does not, the third however he meets he again gores, when meeting the fourth one, though, he does not, but when meeting the fifth one he does; and again the sixth he does not. There is another case where an ox may become vicious "in alternate order" towards all species, namely, if he meets an ox and gores him, and subse-

quently an ass and does not, a horse and does, a camel and does not, a mule and does, a wild-ass and does not gore him.

The Schoolmen propounded a question: How is it if he gores three oxen in succession and subsequently one ass and one camel: shall we count the third ox together with the former two, and should he be considered vicious toward oxen only but not toward other species of cattle, or shall we count the last ox with the ass and camel, so that he gores three times in succession three different species of cattle, and he is then considered vicious toward all species of cattle? This question remains unanswered.*

Rabha said: "If an ox gores three times, each time upon hearing the blowing of a horn, he is considered vicious when hearing the sound of a horn." Is this not self-evident? Lest one assume that the first time is not to be counted because he became frightened, he comes to teach us that it is counted.

MISHNA III.: An ox belonging to an Israelite that gores an ox belonging to the sanctuary, or of the sanctuary that gores one of a commoner, there is no liability, for it is written [Ex. xxi. 31]: "The ox of *another*" (man), but not of sanctuary.†

GEMARA: This Mishna is not in accordance with R. Simeon b. Menassia of the following Boraitha: "An ox of a commoner that gores an ox of the sanctuary, or *vice versa*, is free, for it is written: 'The ox of *another*,' but not of the sanctuary. R. Simeon b. Menassia, however, says that an ox of the sanctuary that gores an ox of a commoner is free, but an ox of a commoner that gores an ox of the sanctuary, whether vicious or not, the whole damage must be paid." Let us see what the reason is of R. Simeon's opinion. If R. Simeon interpreted the word "*another man*" literally, why, then, should the commoner's ox be liable when he gores an ox of the sanctuary (the sanctuary cannot be called another man)? And if he interpreted the word not literally, why should an ox of the sanctuary be free when he gores a commoner's ox? And if one might say that although he interpreted the word literally, he nevertheless makes the

* Here follow several similar questions, all remaining unanswered, and they are of no importance.

† For the first time in our translation we omit here a statement of the Mishna regarding the goring of an ox belonging to an idolater, for it seems to us that it was inserted here not by the editors of the Mishna; the evidence for this we have set forth in a long article in Hebrew in the monthly "Ner Hamarabi." We will probably explain this to our English readers in an appendix to the "third gate" of this section.

commoner pay on the ground of the following *a fortiori* conclusion: When one commoner's ox gores a similar ox he must pay; so much the more if a commoner's ox gores one belonging to the sanctuary, and then his statement that even if he was non-vicious the whole damage must be paid would not be correct, as there is a rule that it is sufficient that an inference should be equal to the law from which it is derived (and under no circumstances more rigorous); why then must he pay the whole damage if it is based only on this *a fortiori* conclusion? Said Resh Lakish: In reality in all cases the whole damage must be paid; the verse, however, making an exception of goring and stating that half only is to be paid, added at the same time the word רעהו (which means, literally, "his comrade"), with the intention to exclude all those cases where it cannot be considered of his comrade, *e.g.*, of the sanctuary; and the correctness of this statement may be proved from the fact that when the verse speaks of a vicious ox the above word "Re-ehu" is not mentioned.

When the daughter of R. Samuel bar Jehudah died, one of the Rabbis said to Ula: Let us go and console him. He said to them: What have I to do with the consolation of a Babylonian, for it may turn into a blasphemy, as they are in the habit of saying in such cases, "What can be done?" (against the will of God), which means that if something could be done against His will they would, and this is certainly a blasphemy. He then went alone, and his consolation was as follows: It is written [Deut. ii. 9]: "And the Lord said unto me, Do not attack the Moabites, nor contend with them in battle." Could it, then, ever enter Moses' mind to engage in war without the consent of the Lord? But Moses drew an *a fortiori* conclusion for himself, thus: If of the Midianites who only came to help the Moabites the Scripture reads [Numb. xxv. 17]: "Attack the Midianites, and smite them," the Moabites themselves so much the more? The Holy One, blessed be He, then said: "Thy conclusion was so because thou couldst not imagine what I bear in my mind. Two good doves I have to bring forth from them; namely, Ruth the Moabite and Naomi the Amonite." Now is there not an *a fortiori* conclusion to be drawn? If for two good doves the Holy One, blessed be He, has saved two great nations and has not destroyed them, so much the more would He have saved the life of the master's daughter if she would be righteous and something good would have to come forth from her.

MISHNA IV.: An ox of a sound person that gored an ox belonging to a deaf mute, idiot, or minor, there is a liability. If the reverse was the case, there is none. An ox of the three last-named persons that gores, the court should appoint a guardian and the witnesses should testify in the presence of the guardian. If in the meantime the deaf mute is cured, the idiot becomes of sound mind, or the minor becomes of age, the ox is restored to his non-viciousness. Such is the dictum of R. Meir. R. Jose, however, says that he remains in the same position. An ox of the stadium (*i.e.*, the place where oxen are trained for fighting) is not liable to be killed when killing even a human being, for it is written: "If an ox *gore*," which means of his own inclination, but not when he is trained to do so.

GEMARA: Does, then, the Mishna not contradict itself? First it states that if an ox of the three named persons that gores an ox of a sound person, there is no liability, from which it may be inferred that no guardian is to be appointed when the ox is non-vicious to enable the plaintiffs to collect from his body, and immediately after it states that an ox of those three persons that gores, the court should appoint a guardian and witnesses should testify before him, from which it may be inferred that a guardian is appointed for the purpose of enabling to collect from his body? Says Rabha: This is to be interpreted thus: If they were known to be goring oxen the court appoints a guardian, and the witnesses are examined in the presence of the guardian and the ox is declared vicious, so that if he subsequently gores again the damage is collected from the best estates. From whose best estates? R. Johanan said: From those of the orphans.* R. Jose b. Hanina said: From those of the guardian.

Did R. Johanan, indeed, say so? Did not R. Jehudah say in the name of R. Assi that the estate of orphans must not be touched (until the orphans reach majority, even when there is a written obligation of their deceased father to be paid), unless interest would grow on the obligation (*e.g.*, when the deceased borrowed money from a Gentile). R. Johanan, however, says also when the widow's marriage contract is to be paid, because she must be paid out of the estate a sum of money for her subsistence so long as her marriage contract remains uncollected. Hence we see that only for the purpose of supporting the widow, or where there is interest growing, R. Johanan permits to collect

* *I.e.*, those three named in the Mishna.

from orphans' estates, but not otherwise. Reverse the statement in our case, that R. Johanan holds from the estate of the guardian, and R. Jose b. Hanina said from those of the orphans. Said Rabha: Because there is a contradiction between the statements in the name of R. Johanan, you make R. Jose err. R. Jose b. Hanina was a judge, and he always dived to the bottom of the law. Therefore the statement in our case is not to be reversed, but the reason why R. Johanan states in our case that it shall be collected from the estates of the orphans, is because there is no other way, as if it should be collected from the estates of the guardian nobody would consent to become one. And the reason for Jose b. Hanina's statement that it shall be collected from the guardian's estates is because the guardian will be able to collect what he has paid from the orphans' estates when they reach majority.

There is a difference of opinion of the Tanaim as to whether a guardian is appointed in order to collect from the body of the ox in the following Boraitha: "An ox who has gored and his owner subsequently became a deaf mute, an idiot, or went to the sea countries, Jehudah b. Nekussa in the name of Summachus holds that he must be considered non-vicious until the evidence of viciousness was given in the presence of his owner; the sages, however, hold that a guardian is appointed and the evidence is given in his presence. Should it happen that the deaf mute became cured, the idiot of sound mind, or the owner has returned home, Jehudah b. Nekussa in the name of Summachus says that the ox is restored to his non-viciousness, and remains so until the evidence is given in presence of the owner, and R. Jose says that he remains in the same position he was in." Now let us see what Summachus does mean by his first statement that he must be considered non-vicious, etc. Shall we assume that the ox was still non-vicious; *i.e.*, he had not gored thrice? Then how shall his second statement be explained, that he is *restored* to his non-viciousness, which means that he was already vicious? We must then say that the statement that he is considered non-vicious means that it is considered that he had not gored at all, hence no guardian is to be appointed to collect from his body, and the sages say that there is one appointed. This is the explanation of the first part of the above Boraitha. In the last part of the Boraitha they differ on another point; that is, if the change of control also changes his state (*i.e.*, whether the change from the control of the guardian to

that of the owners changes also his viciousness to non-viciousness)? Summachus holds that it does, and R. Jose holds that it does not.

The rabbis taught: "An ox of a deaf mute, idiot, or minor that gored, according to R. Jacob, the half damages must be paid." How was the case? If it was a non-vicious ox it is self-evident that only half is to be paid, as the same is the case with an ox of a sound man, and if R. Jacob means that only half is paid even if he was vicious, let us see under what circumstances it may be said so. If the necessary care was taken of him then even the half should not be paid (for it is plainly written [Ex. xxi. 29], "and he hath *not* kept him in," but here in this case he had kept him in), and if the necessary care was not taken of him why should not the whole damage be paid (as according to R. Jacob there is no difference who owns the ox)? Said Rabha: This can be explained that it was a vicious ox, and care was taken of him, but not so much as was necessary to prevent him from coming into contact with other oxen; and the reason of R. Jacob's opinion is because he holds in accordance with R. Jehudah, who says that the state of non-viciousness continues until he is declared vicious, and he also agrees with him in that imperfect care is sufficient also for a vicious one, and he agrees also with the Rabbis that a guardian is to be appointed to collect from the body of the ox. Said Abayi to Rabha: But do not R. Jacob and R. Jehudah differ from each other in their opinions? Have we not learned in the following Boraitha that the ox in question R. Jehudah holds him liable, and R. Jacob holds that he must pay half? Said Rabbah b. Ula: R. Jacob only explains the liability to which R. Jehudah holds him, but does not differ with him. Rabhina, however, says that they do differ, but the case was that there was a change of control; that is, that the deaf mute was cured, etc. R. Jehudah holds that he remains in the same position he was in (and therefore he pays the whole), and R. Jacob says that the change of control changes also his status.

The rabbis taught: "Guardians pay from the best estates, but do not pay the atonement money" (see Ex. xxi. 30). Who is the Tana who holds that the money (which is to be paid according to the verse mentioned) is in atonement, and orphans need not have atonement, for they are not of age? Said R. Hisda: It is R. Ishmael, the son of R. Johanan b. Broka, of the following Boraitha: "It is written [ibid., ibid., ibid.]: 'And he

shall give the ransom of his life'; that is, the value of the deceased. R. Ishmael, the son of R. Johanan b. Broka, however, says it means the value of the defendant." Shall we not assume that the point of difference is, that the Rabbis hold that the beginning of that verse means the value of the deceased in money as damages, but not in atonement, and R. Ishmael holds that it is in atonement? Said R. Papa: Nay, all agree that it is in atonement, but their point of difference is: The Rabbis hold that the appraisement must be of the person who was killed (because his value is to be paid), and R. Ishmael holds that the appraisement must be of the person of the defendant, because it is written [ibid.]: "And he shall pay the ransom of *his* life." And the Rabbis? Yea, it is true that it states "*his* life," which means that his life is atoned for, but the amount to be paid for such atonement is the value of the deceased.

Rabha once declared before R. Na'hman that R. A'ha b. Jacob was a great man, and R. Na'hman said to him: When he comes to visit you bring him to me. When he had done so, said R. Na'hman to R. A'ha: Question something of me; and he put him the following question: "An ox belonging to two copartners (who has killed a man), how shall the atonement money be paid? If each copartner should pay the full amount then there would be two atonements, and the verse reads one; and if we should say that each of them shall give only half, then each pays only *half*, while the verse states that 'there shall be laid on *him* a sum of money,' which means the whole sum, and not the half." While R. Na'hman was sitting and deliberating over the case, he put to him another question, as to whether the property of the one who has to pay atonement is levied upon, as such is the case with one who owes sin and trespass-offerings (this will be explained in Tract Eruchin). And R. Na'hman said to him: Leave alone this question. I am still sorrowful that I could not answer the first question at once.

The rabbis taught: "One who borrows an ox with the understanding that he was non-vicious, and it was found out that he was vicious (and while being under the control of the borrower he gored again), the owner pays one-half and the borrower the other half. When, however, he became vicious while being under the control of the borrower, and he has returned him to the owner (and he gored once more), the owner must pay half and the borrower is free." Let us see: The Master said that in case he was borrowed with the understanding of

being non-vicious, and was found vicious, each pays one-half. Why shall the borrower pay anything? Let him say to the owner, I have borrowed an ox, but not a lion. Said Rabh: The case was that it was known to the borrower that he was a goring ox. But still, he can say that he was understood to be non-vicious, and he turned out to be vicious, why shall I pay half? Because the owner may answer him: What difference does it make to you in this case, if even he would be non-vicious? As soon as he has gored while being under your control you would have to pay half; the same is now, you pay only half. But still there is a difference, for a non-vicious ox pays from his body, while a vicious one from the best estates. The owner may say: Even in this case there is no difference to you, for you would have to pay for the other half of the ox to me in money. Now let us see (the second part of the Boraitha): "When he became vicious while under the control of the borrower, etc., the borrower is free;" hence we see that the change of control changes his status, and from the first part it is to be inferred that it does not change the status, as the whole damage is to be paid if he gored while under the control of the borrower. Said R. Johanan: Break* this Boraitha: the Tana who taught the first part did not teach the last one. Rabba, however, says: The Boraitha cannot be broken, as in the first part it is declared that change of control does not change the status, the same must be the case with the second part. The reason, however, for its decision is because the owner can say as regards the viciousness of the ox, which occurred while under the control of the borrower: The latter did not take care of him as he was not his, and therefore I do not consider him vicious at all. R. Papa, however, says: As in the last part of the Boraitha the control does change the status, so also is it in the first part, but the reason why there the whole amount is to be paid is because the ox always bears the name of his owner, even while under the control of the borrower, and therefore the change of control is not to be considered.

"*The ox of the stadium*," etc. The Schoolmen propounded a question: Is the ox in question fit for the altar or not? Rabh said he is, for he was goring by compulsion, and Samuel said he is not, for at any rate a transgression was committed with him. There is a Boraitha supporting Rabh, which states

* This form of expression is often used in the Talmud.

plainly that the ox of a stadium is not guilty of death, and is fit for the altar.

MISHNA V.: An ox that killed a man by goring him, if it was a vicious one, the atonement money is to be paid, but not when he was a non-vicious one. Both of them, however, must be killed. The same is the case when he gored a minor male or female. If he gored a male or a female slave he must pay thirty selas, without regard whether their value was one thousand zuz or only one dinar.

GEMARA: If a non-vicious ox killing a man must be killed, how can there be found a vicious ox in regard to man? Said Rabba: The case was that he was running after three men, two of whom escaped, and the court determined from the circumstances that if he would have caught those two he would have killed them. R. Ashi, however, holds that such determination is of no value, but the case was that he gored two, injuring but not killing them at once, and then gored a third one to death, when the first two also died, and therefore he is considered vicious as to the third to pay the atonement money. R. Zbid, however, says: By "vicious one" is meant simply that he has killed three animals, and an ox that is considered vicious as to animals is considered so also as to human beings.*

"Both of them," etc. The rabbis taught: "From [Ex. xxi. 28]: 'Then shall the ox be surely stoned'; is it not self-evident that he became a carcass, and a carcass must not be eaten, why then does the verse add 'and his flesh shall not be eaten'?" The verse comes to teach that if he was slaughtered after judgment was rendered the flesh must not be eaten. This is the prohibition of eating it, but whence is it deduced that no benefit must be derived from it? Therefore it is written [ibid., ibid.]: "But the owner of the ox shall be quit," which means he shall be quit from any benefit. Such is the explanation of Simeon b. Zoma. But whence do we know that the words, "his flesh shall not be eaten," mean when he was slaughtered after judgment was rendered; perhaps it means after he was stoned, and the words "shall not be eaten" are to be explained that he shall not derive any benefit, but if he was slaughtered the flesh may be eaten also? The prohibition to eat it is inferred from

* In the Gemara this last sentence is put as a question, and there are many answers to it which we deem of no importance to be translated. The law, however, prevails as we have translated in our text.

"surely stoned," and if the verse "his flesh shall not be eaten" would mean to prohibit any benefit, it should have stated "shall not be derived any benefit," or "he shall not be eaten." Why the addition "his flesh" to indicate that if he was turned by slaughtering into food, as other meat, it is also prohibited?

The rabbis taught: It is written [ibid. 28]: "But the owner of the ox shall be quit." Said R. Eliezer: He is quit from paying the half of atonement money. (One might say as a non-vicious pays half damage in case of goring an animal, the same is the case when he first gores a man.) Said R. Aqiba to him: Is this not self-evident? The half payment is collected from his body, and here when the ox is stoned its owner may certainly say: "Bring it into court and collect from it." Said R. Eliezer to him: Do you consider me as common as not to know such a case? I speak of an ox that is not guilty of death; for instance, if he killed a man in the presence of one witness, or in the presence of his owner only (in which case the ox cannot be killed, but one might say that nevertheless the half atonement money must be paid). [You say in the presence of his owner, which means that the owner admits that it was so, then it would be equal to one who confesses of being liable to pay a fine, and the law is that he who confesses of being liable to fine is free? R. Eliezer holds that this money is in atonement and not a fine.]

In another Boraitha we have learned: Said R. Eliezer: "Aqiba, do you consider me so common as to speak of an ox which is to be killed? I speak about an ox who intended to kill an animal but killed a human being, or who intended to kill a non-viable child and killed a viable one." Which of these two statements has R. Eliezer made to R. Aqiba first? R. Kahana in the name of Rabba said the one just mentioned was made first. R. Tibiumi in the name of the same authority said that the first statement was made first. The statement of the former is to be compared to a fisher who catches fishes in the sea; if he finds big fish he takes them, and if afterward he finds small ones he takes them also (although the second statement is much straighter evidence than the first one, he nevertheless made also the other statement), and R. Tibiumi's statement is to be compared to a fisher who keeps the small fish if he catch them first, but catching afterward big fish he abandons the small ones and keeps the big ones. (So was the case with R. Eliezer. He tried to give him evidence from the first statement, but as this

was easily objectionable he tried to find stronger evidence and gave it to him.)

We have learned in another Boraitha: "But the owner of the ox shall be quit." R. Jose the Galilean said that means that he is quit from paying the value of *children* (if she was pregnant). Said R. Aqiba to him (Is it necessary to have a separate verse for this)? Is it not written [Ex. xxi. 22]: "If men strike, and hurt a woman with child," etc., from which is to be inferred that only in case of human beings there is a liability for hurting children, but not in case of oxen? (Says the Gemara): Is not R. Aqiba correct? Said R. Ula, the son of R. Idi: Another verse is necessary for the following reason: From the verse just mentioned one might say men, but not oxen that are equal to men. That means, as men are considered always vicious, so vicious oxen are free from liability for hurting children, but non-vicious oxen should be liable. Therefore comes the other verse, "The owner of the ox shall be quit," to teach that even in such a case there is no liability. Said Rabha: Shall the native remain on earth and the stranger be lifted up to the highest heaven? * (*i.e.*, how can it enter the mind that a vicious ox shall be free and a non-vicious shall be liable?) Therefore said R. Ada b. A'hba: (This verse alone would not be sufficient, for) in case of men they are liable for the children only when they intended to strike each other and struck the woman, but if they intended to strike the woman herself there is no money liability because they are guilty of a capital crime; but in case of oxen one might say that even when they intended to strike the woman herself their owner shall be punished also to pay for the children, therefore the expression "shall be quit" indicates that it is not so. And so was it taught plainly in a Boraitha which R. Hagi brought when he came from the south, as R. Ada b. A'hba explained it.

We learned in still another Boraitha: R. Aqiba said: "But the owner of the ox shall be quit," means from the payment for a slave (in case he was killed by the ox). But why should not R. Aqiba say to himself, as he said above to R. Eliezer, page 143: "Bring it into court and collect from it," as the ox must be stoned? Said Rabha: The verse is nevertheless needed for the following reason: One might say: Because there is more rigorousness about a bondman than about a freeman, as for a bondman thirty shekels are paid even if he was worth only one

* See explanation of this expression in Tract Erubin, p. 16, footnote.

shekel, and in case of a freeman his actual value only is paid, therefore it might be said that the payment for the bondman must be from the best estates; hence the verse to make him quit.

There is a Boraitha in support of Rabha, as follows: "The owner of the ox shall be quit." Said R. Aqiba: Quit from payment for the bondman: but why is a verse needed for that, is it not common sense? He is liable for a bondman and is liable for a freeman: as in the liability for a freeman you made a distinction between a non-vicious ox and a vicious one, is it not common sense that there shall also be made the same distinction in the liability for a bondman. And in addition to that we may draw the following *a fortiori* conclusion: A freeman for whom there is a liability for his full value, and nevertheless there is a distinction between a vicious and non-vicious ox, a bondman for whom only thirty selas are paid (although he may have been worth one hundred or more), so much the more that there ought to be a distinction between a vicious and non-vicious one (why, then, is the verse needed)? There is more rigorousness about a bondman than about a freeman, for in case of the latter, if he was worth one sela he pays that much—that is, only the actual value—but in case of a bondman thirty selas are paid if even he was worth one sela, and therefore one might say that whether vicious or non-vicious the full amount must be paid, hence the verse that he shall be quit.

The rabbis taught: It is written [ibid., ibid. 29]: "And he killeth a man or a woman." Said R. Aqiba: What does the verse mean to teach us by the expression "a man or a woman," if it is only to teach that a woman is equal to a man? This was already stated in the preceding verse: "If an ox gore a man or a woman." This verse is to make a woman equal to a man in this respect, that as the damages for the killed man must be paid to his heirs, so also in the case of a woman it is paid to her heirs. But does R. Aqiba hold that her husband does not inherit from her? Have we not learned in the following Boraitha: "It is written [Numb. xxvii. 11]: 'And he shall inherit it'?" From this is to be inferred that the husband inherits from his wife." So said R. Aqiba. Said Resh Lakish: R. Aqiba meant the atonement money, which payment is made only after her death, and thus it is only considered inchoate and the husband does not inherit such a share in her inchoate as he does in her existing estates. But what is the reason that it is collected only after

her death? Perhaps it is to be collected as soon as the court came to the conviction that she must die from the injuries. Therefore it reads [ibid., ibid. 29, 30]: "And he killeth a man or a woman, the ox shall be stoned, and his owner also should of right be put to death. But there shall be laid on him a sum of money in atonement." From which is to be inferred that the money is paid only when "his owner shall of right be put to death," which cannot be when she is still alive. But did not R. Aqiba say that even in cases of damage her husband does not inherit from her? Have we not learned in a Boraitha: "If one struck a woman and caused her to abort he must pay for the damage and pain to herself, and the value of the children to the husband; if her husband is dead he pays to *his* heirs; if the woman is dead he pays to *her* heirs. If she was a bondwoman and became free, or she was a proselyte, the one who has to make the payment need not pay, for he himself acquires title to the payment, as these classes of persons have no legal heirs." Hence we see that even for the damage and pain the payment must be made to her heirs and not to the husband. Said Rabba: The case was that she was a divorced woman; and so also said R. Na'hman: If the case was with a divorced woman, why should she not take a share of the money paid for the children? Said R. Papa: The Scripture has awarded the money for the children to their father, even if they were begotten illegally, as it is written [Ex. xxi. 22]: "As the husband of the woman lay upon him."

Resh Lakish said: An ox that killed a bondman unintentionally is free from the payment of the thirty shekels, as it is written [ibid., ibid. 32]: "Thirty shekels shall be given to his master, and the ox shall be stoned," from which it is to infer that only when the ox is to be stoned the money is to be paid, but not otherwise. Said Rabba: The same is the case as regards atonement money in case the ox killed a freeman unintentionally, for it is written [ibid.]: "The ox shall be stoned, and his owner also should of right be put to death, but there shall be laid on him a sum of money in atonement," from which is to be inferred that only when the ox is stoned, etc., the atonement money is to be paid, but not otherwise. Abayi objected: We have learned: "(If one confess, saying) my ox has killed a certain person, or his ox, he has to pay on his own testimony." Does it not mean atonement money also? Nay, it means the money for damages. If it is so, why does the latter part state:

" My ox has killed the slave of a certain man; he is not compelled to pay on his own testimony " ? Now if this is not the fine but damages, why should he not pay ? Said Rabba to him: I could answer you that the first part treats of damages and the latter of fine, but I do not like to give you a *far-fetched* answer. Both parts treat of damages, but in the first instance the atonement money is paid upon his own testimony under the following circumstances: That witnesses came and testified that his ox killed a man, but were unable to testify whether he was vicious or non-vicious, and the owner admits that he was vicious, in such a case he has to pay the atonement money on his own testimony, but where there are no witnesses he pays only the damage, but not the atonement money. And in the case of a slave, if witnesses come and testify that the ox killed the slave, but they are unable to testify whether he was vicious or not, and the owner admits that he was vicious, he has not to pay the fine upon his own testimony, and where there are no witnesses he need not pay even the damages. R. Samuel b. Itzhak objected: We have learned: " The same liability one has for a freeman he also has for a bondman, either as to atonement money or as to the death penalty." Is there then any atonement money in case of a bondman ? We must therefore say that it means damages; hence we see that one pays damages even on his own testimony. Some say that he himself answered this objection, and others say that Rabba said to him: This Boraitha is to be explained thus: In every case where one is liable to pay atonement money—for instance, a freeman—when done with intention and there is testimony of witnesses, he is liable under the same circumstances to pay a fine of thirty shekels in the case of a slave, and in case he is liable for damages only—as, for instance, when witnesses testify that he has done it without intention—in case of a slave under the same circumstances he pays only damages, but no fine; but if he himself admits, although in case of a freeman he has to pay damages, in case of a slave under such circumstances he is free. Rabha questioned Rabba: If one's fire has done damage without intention is there a liability or not ? Shall we assume that it is only in case of an ox where, when intentionally he pays atonement money, when unintentionally he pays damage, but in the case of fire, where there is no atonement money at all (as, if intentionally, he is guilty of a capital crime), if it was unintentionally he shall not pay damages, or the atonement money is not to be taken into consideration, and the damages

must be paid at any rate; as we do not know of any reason why fire should be distinguished from an ox when done unintentionally, as both are his property? This remains unanswered. When R. Dimi came from Palestine he said in the name of R. Johanan thus: It could be written: "Shall be laid on him a sum of money in atonement." Why is the word "if" * added? To teach that the atonement money shall be paid when done unintentionally as well as if done intentionally. Said Abayi to him: According to your theory, why should we not say the same of a bondman, where it is also written [ibid. 31] "if," even when done unintentionally; and if you should say that so it really is, why then said Resh Lakish that if an ox killed a slave unintentionally he is free from the thirty shekels? He answered: What contradiction do you adduce? They are two different persons, and differ in their opinions. When Rabhin came from Palestine he said that R. Johanan has declared plainly that the same is the case with a slave when killed, even unintentionally, and that he deduced it from the word "if," as explained above.

"*A male or female minor.*" The rabbis taught: It is written [ibid. 31]: "If he gore a son or gore a daughter;" that is, to make one liable for little children as for grown persons. But is this not common-sense? There is a liability of a human being for a human being, and the same liability is of an ox for a human being; as in the former there is no difference as to whether young or old, so also in the latter case, and this can be inferred also by the following *a fortiori* conclusion: In the case of human beings, in which the murderer is guilty only when he is a grown-up person, but not a child, for it is written plainly "*man*" (and a child is not called "*man*"); in the case of an ox, in which there is no difference as to whether it is old or young (as the Scripture calls him ox from the very same day he was born, Lev. xxii. 27), so much the more that he shall be guilty for children as well as for grown persons. Why, then, is a verse needed? Nay (as to all that was said above could be objected thus): In the case of human beings there is a liability for the four certain things, which is not the case with an ox, and one might say, as in the case of an ox, there is no liability for the four things; so also should there be a distinction between chil-

* The text reads "Im," which literally means "if"; Leeser, however, translates it "but," according to the sense of the verse.

dren and grown persons; hence the above passage. From this passage we deduce only as to a vicious ox; whence do we know that as to a non-vicious one? This is common-sense: As there is a liability for a grown man or woman, and the same liability is for children, and as to grown persons no distinction is made between a vicious and non-vicious ox, the same is the case with children. This can also be inferred by a *fortiori* conclusion: Grown persons, who are responsible for their acts, if they were killed by an ox there is no distinction made between a vicious and non-vicious one; so much the less in case of children, who are not responsible for their acts, that no distinction is to be made whether the ox was vicious or not. Is it not against the rule to draw an *a fortiori* conclusion from a rigorous one to a lenient one to make the lenient rigorous? (It is deduced that no distinction is made between a vicious and non-vicious ox in regard to grown persons from the case of the children, and the verse, "If he gore a son," etc., speaks of a vicious ox; now you compare again the case of children to the case of grown persons, to say that as there is no distinction, so is none here, consequently you draw from the rigorous one, *i.e.*, grown persons, which is based only upon common-sense, to the case of children, where the Scripture says plainly that the ox must be vicious, and consequently lenient, as it can be said that only a vicious and not a non-vicious is meant, to make a non-vicious also liable.) And still we can say that the case of children is more lenient, for children are free from observance of the Law, which is not the case with grown man; therefore it is written: "If he gore a son, or gore a daughter," the repetition of "gore" being superfluous, to teach us that there is no distinction between a vicious and non-vicious ox, between injured and killed, and in all cases it must be paid.

MISHNA VI.: An ox that was rubbing against a wall whereby the wall fell upon a human being and killed him; if the ox intended to kill an animal and killed a man, or a non-viable child and killed a viable one, he is free.

GEMARA: Said Samuel: He is free from death, but he is liable to pay the atonement money. Rabh, however, says that he is free from both. But why shall atonement money be paid? Is he then not non-vicious? (Is it not said that he was rubbing against the wall, in which case he is surely non-vicious, at least in this case?) As Rabha explained this (*post*, page 112), that it was vicious in this respect as to fall into pits, so also here that

it was vicious in rubbing against the wall. But if so, then he must be put to death. It would be correct in the case of Rabha's explanation cited concerning a pit, because he noticed therein vegetables, and intending to eat of them he fell in, but in this case here what can be said? He was rubbing against the wall to derive benefit. How do we know that? From the fact that he continued rubbing even after the falling of the wall. But then is this the proximate cause? Is it not the remote cause, as digging up gravel? Said R. Mari, the son of R. Kahana: The case was that the wall was little by little removed by his rubbing until the very moment it fell, and therefore it was the proximate cause, but still there was no intention to kill.

There is a Boraitha which is a support to Samuel and an objection to Rabh, namely: "There are cases in which the ox is put to death and the owner pays atonement money, and there are other cases in which atonement money is paid, but the ox is not put to death, and still others in which the ox is put to death, but no atonement money is paid, and finally such cases in which there is no liability to either. How so? If there are both viciousness and intention, both atonement money is paid and the ox is killed. If viciousness without intention is present, atonement money only; non-viciousness but intentional, the ox is put to death, but no atonement money. Non-viciousness without intention, no liability at all. But if, however, he has done damage unintentionally R. Jehudah holds him liable and R. Simeon holds him free." What is the reason of R. Jehudah's decision? He compares it to atonement money: as the latter is to be paid if unintentional, so also in damages; and R. Simeon compares it to the killing of the ox: as the ox is not to be killed if it was unintentional, so also is the case with damages.

"*If the ox intended to kill an animal,*" etc. But how is the case if it intended to kill one man and killed another, is there a liability? If so, then this Mishna will not be in accordance with R. Simeon of the following Boraitha, in which he says "that even if he intended to kill one man and killed another he is also free." And his reason is because it is written [Ex. xxi. 29]: "The ox shall be stoned, and its owner," etc. The killing of the ox is equal to the death of its owner: as the owner cannot be put to death unless he killed *this* man intentionally, so also the ox is not killed unless it killed *this* man intentionally. But whence do we deduce that it is so in case of murder? Because

it is plainly written [Deut. xix. 11]: "And he lie in *wait for him*, and rise up against him," etc., which indicates that he must have the intention for the man he killed.

MISHNA VII.: An ox belonging to a woman, to orphans, or their guardian, or an ownerless ox, or an ox belonging to the sanctuary, or the ox of a proselyte who died without heirs, all those (if they kill a man) are put to death. R. Jehudah, however, holds that an ownerless ox, or that belonging to the sanctuary or to the proselyte in question are not put to death, for the reason that they have no owners.

GEMARA: The rabbis taught: "The word 'ox' is repeated seven times in the chapter of the Scripture treating of the goring of a man by an ox, which repetition means to include all those kinds of oxen stated in the Mishna. R. Jehudah, however, says that notwithstanding these repetitions, an ownerless ox, or one belonging to the sanctuary or to a proselyte are not put to death, because they have no owners. Said R. Huna: R. Jehudah makes him free even if he was consecrated or declared ownerless after the goring. Whence this theory? Because it is repeated in R. Jehudah's statement, "an ox that is ownerless *or* one belonging to a proselyte," etc., are they not both equally ownerless? Hence for the purpose stated. And so it is plainly stated in the following Boraitha: Furthermore, R. Jehudah said: Even if it was consecrated or made ownerless after goring, they are also free, as it is written [Ex. xxi. 29]: "And warning had been given to his owner," etc., which means that it is put to death then only when during the bringing to the court, the judgment, and its execution its owner is still in existence.

MISHNA VIII.: An ox that was sentenced to be put to death and his owner consecrated him, he is not consecrated. If his owner slaughtered him, his meat is prohibited. If, however, this was done before the completion of the sentence, he is consecrated, and if slaughtered his meat may be used.

If one delivered his ox to a gratuitous bailee or borrower, to a bailee for hire, to a hirer, all those substitute the owner as to responsibility for damage: a vicious one pays the whole, and a non-vicious one the half.

GEMARA: The rabbis taught: "An ox that killed a man; if before sentence he was sold or consecrated the act is valid, if slaughtered his meat may be used. If the bailee returned him to his owner the act is valid. If, however, all those enumerated

were done after sentence, neither of those acts is valid. R. Jacob, however, said that as regards the bailee the act is valid even if after sentence, and the point of their difference is thus: Whether the ox may be sentenced in its absence from before the court. The rabbis hold that the sentence must be pronounced in the presence of the ox. Now the owner may say to the bailee: If you would have returned him to me before sentence, I would have driven him away into the swamp (so that he could not be brought before the court), and R. Jacob, however, holds that as the sentence may be pronounced in his absence, there is no difference. What is the reason for the rabbis' theory? The verse quoted above, "The ox shall be stoned, and his owner," etc., from which is to infer that the ox is in this respect equal to his owner, as his owner could not be sentenced to death in his absence, the same is the case with the ox. R. Jacob, however, objected and said: The owner is different, because he could argue before the court, but for what purpose is the presence of the ox necessary in the court?

"*If he delivered him to a bailee,*" etc. The rabbis taught: The following four substitute the owner: The gratuitous bailee, the borrower, the bailee for hire, and the hirer. If the ox under the control of the above killed a man while being non-vicious, he must be put to death, and no atonement money is paid; if while being vicious, also atonement money is paid; and all of them with the exception of gratuitous bailee must pay the value of the ox to its owner. Let us see how was the case. If they guarded him as required, let all of them be free; if they have not guarded him as required, let even the gratuitous bailee also pay? The case was that they have not sufficiently guarded him. For the gratuitous bailee it is considered sufficient, and therefore he is free, but for all others it is not sufficient (because a greater degree of care is required of them). Let us see, according to whom is this Boraitha? If according to R. Meir, who says that a hirer is equal to a gratuitous bailee: "Why did not the Boraitha add to the gratuitous bailee also the hirer? And if it is according to R. Jehudah, who says that a hirer is equal to a bailee for hire, why did not the Boraitha add to the gratuitous bailee also that all of them in the case of a vicious ox are free from atonement money" (as R. Jehudah holds that even slight care is sufficient for the above substitutes)? Said R. Huna b. Hinua: The Boraitha is in accordance with R. Eliezer, who says that there is no guard for a vicious ox unless the knife, and he

also holds according to R. Jehudah, who says that the hirer is equal to a bailee for hire. Abayi, however, says that the Boraitha is in accordance with R. Meir, and it is as Rabbah b. Abuhu changed the statement of the rabbis as follows: One who hires an ox, how shall he pay? R. Meir says, as a bailee for hire, and R. Jehudah says, as a gratuitous bailee.

R. Elazar said: One who delivered his ox to a gratuitous bailee, and the ox did damage, the bailee is liable, but if he was injured he is free. Let us see how the case was. If the bailee agreed to guard him against injury, then let him be responsible if even he was *injured*, and even he did not let him be free even if he *did* damage. Said Rabha: The case was that he *did* take the responsibility, but he knew at the time that he was a goring ox, and common-sense dictates that his intention was to guard him against goring as it was his habit, but it could not enter his mind that he will be gored by others.

MISHNA IX.: If its owner properly tied him and locked him up, and still he broke out and did damage, be it a vicious or a non-vicious one there is a liability. Such is the dictum of R. Meir. R. Jehudah, however, holds that a non-vicious is liable, and a vicious is not, for it is written [Ex. xxi. 29]: "And he hath not kept him in," but here he had. R. Eliezer, however, says there is no guard for a vicious ox except the knife.

GEMARA: We have learned in a Boraitha: R. Eliezer b. Jacob said: "Whether vicious or non-vicious, if they were slightly guarded (from negligence) he is free from the *whole* damage." The reason for this is because he is in accordance with R. Jehudah, who said above that slight care is sufficient for a vicious ox, and he holds that even a non-vicious ox must also be guarded from the analogy of expression "gore." As in the case of a vicious one it is plainly written, "He hath not kept him in," so also it is in case of a non-vicious.

R. Ada b. A'hba said: R. Jehudah made him free (in our Mishna) from viciousness, but not from *non*-viciousness (*i.e.*, he must still pay half).

Rabh said: If he was vicious to gore with the right horn he is not considered vicious as to the left horn. According to whom is Rabh's saying? (The saying of Rabh is certainly not regarding the payment, as it is certain that even when he was vicious toward human beings he is not considered vicious toward an animal, and it is therefore self-evident that if it was known to be vicious with his right horn, no claim can be made that the

whole must be paid if he gored the first time with the left horn. Rabh's saying therefore must be interpreted to have reference to "taking care.") If it is in accordance with R. Meir even a non-vicious one must be taken good care of? And if according to R. Jehudah, who holds that only slight care is sufficient, then why is it necessary to make the distinction between viciousness and non-viciousness, as to goring with left and right horns: there is a distinction also in the very case of the right horn, viz., if no care at all was taken of him then the viciousness prevails, but if any care at all was taken of him, only the non-viciousness prevails and the viciousness is gone? It can be said that he is in accordance with R. Jehudah, but he does not hold of the theory of R. Ada b. A'hba. And Rabh's saying is to be explained thus: To find in one and the same ox both viciousness and non-viciousness, it can be only when he was vicious to gore with the right and not with the left horn; but if he was vicious as to both horns, then the element of non-viciousness can no more be found in him (*i.e.*, if no care at all was taken of him he is vicious in all respects, but if any care at all was taken the viciousness is gone and the non-viciousness remains).

"*R. Eliezer says for a vicious ox,*" etc. Said Abayi: The reason for R. Eliezer's saying is as we have learned in the following Boraitha: R. Nathan said: Whence do we deduce that one must not raise a noxious dog in his house, nor maintain a defective ladder? For it is written [Deut. xxii. 8]: "That thou bring not blood upon thy house."

CHAPTER V.

RULES CONCERNING A GORING OX; EXCAVATIONS ON PUBLIC AND PRIVATE PREMISES; EXCAVATIONS MADE BY PARTNERS, ETC.

MISHNA 1.: Should an ox gore a cow and the new-born calf be found dead at her side, and it be not known whether she gave birth to it before the goring or by reason of the goring, the owner of the ox pays half the damage for the cow and one-fourth for the calf. So also should a cow gore an ox and her new-born calf be found alive at her side, and it be not known whether she gave birth before the goring or by reason of the goring, the owner of the cow pays half the damage from the body of the cow and one-fourth from that of the calf.

GEMARA: Said R. Jehudah in the name of Samuel: This is the dictum of Summachus, who holds that money about which there is a doubt as to whom it rightly belongs, must be divided. But the sages said: There is a principal rule—the burden of proof is upon the plaintiff. [For what purpose is the statement that there is a principal rule? It was necessary that, even when the plaintiff claimed positively while the defendant only said that he was doubtful about it (in which case one might say that there need be no proof at all), this rule apply.] The same we have also learned in the following Boraitha (the exact statement of the Mishna with the addition): This is the dictum of Summachus, but the sages say that the burden of proof is upon the plaintiff.

Said R. Samuel b. Na'hmani: Whence is this rule deduced? From [Ex. xxiv. 14]: "Whoever may have any cause to be decided, let him come unto them." That means, he shall produce proof before them. R. Ashi opposed: Why is a verse necessary? Is it not common-sense that one who feels pain goes to a physician? We must therefore say that this verse applies to the saying of R. Na'hman in the name of Rabba b. Abbuhu: Whence is it deduced that in case of a claim and counterclaim the claim must first be passed upon and judgment awarded and executed, and then the counterclaim must be proved (as at this

stage the former defendant is now the plaintiff)? From the above-quoted passage, which means that the plaintiff who has the cause to be decided shall be heard first. The sages of Nahardea, however, said that in some cases it might happen that the counterclaim must be passed upon first, and that is in case the judgment, if awarded against the defendant, would have to be collected from the latter's real estate; for if the judgment were allowed to be collected before the counterclaim was proved, the estate would sell much cheaper than if he should prove his counterclaim and sell his estate at a proper price.

"*So also should a cow gore an ox,*" etc. Half and a quarter of the damage! Why three-quarters—he has to pay only half? Said Rabha: The Mishna meant to say thus: If the cow is there, one-half of the damage is collected from the body of the cow; but if she cannot be found, one-quarter is collected from the body of the calf, and the reason is because it is doubtful whether the calf was with its mother at the time of the goring or not; but if we should be certain that it was, half would be collected from the body of the calf.

This decision of Rabha is in accordance with his theory elsewhere as to a cow that has done damage—the same may be collected from its offspring, because the latter is considered a part of her own body. A hen that has done damage—the latter cannot be collected from her eggs, for the reason that they are completely separated from the hen and it does not care any more for them.

Rabha said again (in the first instance, when the ox gored the cow): The cow and her offspring are not separately appraised, but both of them together (*i.e.*, the value of the cow before giving birth and that after she gave birth, and not the value of the cow separately and that of the calf separately); for otherwise it would work too much harm to the defendant. The same is the case if one cut off the hand of his neighbor's slave or if one damage his neighbor's field (that is, in each of those cases the value prior to doing the damage and that after doing the damage is ascertained, and thus the damage is appraised, and not by appraising separately the damaged part and the main body). Said R. A'ha the son of Rabha to R. Ashi: If in reality the law is so, what do we care for the defendant? let him suffer. Why, then, did Rabha protect him? Because the defendant might say: "I caused injury to a gravid cow, and therefore the appraisement must also be made of such a cow."

It is certain, if the cow belonged to one person and the calf to another, that for the reduction of the fatness it must be paid to the owner of the cow; but for the depreciation on account of the reduction in fulness, to whom is this to be paid? (*I.e.*, if while the cow was gravid the owner of the cow sold the calf to be born to another person, and through the injury the cow miscarried, and by reason thereof the cow became reduced both in fatness and in fulness (figure), both of which are elements making up the value of a cow; now, for the reduction in fatness the owner of the cow must be paid, for the calf has not contributed to it; but for the depreciation on account of the decrease in the fulness, shall the owner of the calf be paid? for the calf gave her that fulness, or both the cow and the calf contributed to it, and the value of this damage must be divided.) R. Papa says it is paid to the owner of the cow only. R. A'ha the son of R. Iki says that it must be divided, and so the Halakha prevails.

MISHNA II. : A potter that placed his pottery in the court of another without his permission, and the court-owner's cattle broke them, there is no liability. If the cattle were injured thereby, the potter is liable. If, however, he placed them there with permission, the court-owner is liable. The same is the case with one who placed his fruit in another's courtyard and it was consumed by an animal of the court-owner. Should one lead his ox into the court of another without permission and it be gored by the ox of the court-owner, or be bitten by his dog, there is no liability. If, however, the ox in question gored the court-owner's ox, or it fell into the well and spoiled the water, he is liable. If the court-owner's father or son was in the well (at the time, and was killed), he must pay atonement money. If, however, he led it there with permission, the court-owner is liable. Rabbi, however, says that in all these cases the court-owner is not liable unless he expressly undertook to take care of the ox.

GEMARA: Is the reason for the statement in the first part of the Mishna only because he placed them without permission, but if with permission the potter would not be liable for injuries to the animals of the court-owner, and we do not say that it is implied that the potter has assumed the care of the animals, and this can be only in accordance with Rabbi, who holds that wherever it is not expressly assumed there is no implied assumption to take care? Now, the latter part, which states: "If he placed them there with permission the court-owner is liable," is

certainly in accordance with the rabbis, who hold that there is an implied assumption even when nothing was expressly mentioned; and in the last part Rabbi declared that in all cases he is not liable unless the court-owner expressly assumed the care; hence the first and last parts will be in accordance with Rabbi, and the middle part in accordance with the rabbis? Said R. Zera: Separate the clauses, and say that the one who taught this part did not teach the other. Rabha, however, says: The whole Mishna can be explained to be in accordance with the rabbis, and that the case was that he entered with permission and the court-owner assured the safety of the pottery (and the potter assumed nothing), in which case he is responsible if even the wind should break them.

"*If he placed his fruit,*" etc. Said Rabh: The case is only if she slipped on account of them; but if she consumed them (and by reason thereof died) there is no liability, for she was not compelled to eat them.

Come and hear: "One who led his ox into another's courtyard, and it consumed wheat which caused it diarrhœa and it died, there is no liability. If, however, he led it in with permission, the court-owner is liable." Why not argue here the same way, and say that it was not compelled to eat? Said Rabh: "You wish to contradict a case *with* permission by a case *without* permission? In the former event he assured the safety of the ox, and therefore he is liable if even the ox should choke himself."

The schoolmen propounded the following question: "When he assured the safety of the ox, did it only extend to himself (*i.e.*, to protect the ox against the injury by his own animals), or also to all cattle?" Come and hear: "R. Jehudah b. Simeon taught in Section Damages, of the school of Qarna: If one placed his fruit in the courtyard of another without permission and an ox came from some other place and consumed it, he is free; if, however, *with* permission, he is liable. Who is liable and who is free—is it not the court-owner?" (Hence we see that he must guard him also against injury by others?) Nay, it may be said that it has reference to the owner of the ox. If so, what difference is there whether it was with or without permission? There is: If with permission, it is to be considered the premises of the plaintiff, in which case the tooth is liable (for as soon as the court-owner allowed him to enter he thereby assigned him room in his court); but without permis-

sion, it cannot be considered that he consumed it "in *another* man's field," which is required in the case of the tooth, and therefore there can be no liability.

Come and hear: "If one lead his ox into a courtyard without permission and an ox come from another place and gore it, he is free; if, however, *with* permission, he is liable." Who is free and who is liable—is it not the court-owner? Nay, it is the owner of the ox. If so, what difference is there whether with or without permission? The Boraitha is in accordance with R. Tarphon, who says that there is an extra rule as to the horn if on the premises of the plaintiff, in which case he pays the whole. Now, if with permission, it is considered the premises of the plaintiff (for the reason stated above) and he pays the whole damage; but if without permission, it is equal to the case of the horn on public ground, in which case only half is paid.

It happened that a woman entered a house to bake, and the house-owner's goat having consumed the dough, became feverish and died. Rabha then made the woman pay for the goat. Shall we assume that he differs with Rabh, who said that it was not compelled to consume it? What comparison is this? There it was without permission, and therefore the safety was not assured; but here it was with permission, and therefore the safety of the goat was assured by the woman (for the reason stated further on, that in baking by a woman modesty is required, as she has to bare her arms and the owner of the house cannot stay in the room; it is therefore considered that he has assigned the whole room to the woman, and therefore she is responsible for the damage done to the house-owner). And why is this different from the following case: If a woman enter another's premises to grind her wheat without permission and the house-owner's animal consume the wheat, there is no liability. If, however, the animal was injured thereby, the woman is liable. The reason then is because it was without permission, but if with permission she would be free? There is a difference: In case of grinding wheat, where no modesty is required and the owner could be present, the care of the animal devolves upon him; but in case of baking modesty is required (as stated above).

If one lead his ox into a courtyard," etc. Rabha said: One who leads his ox into a courtyard without permission, and the ox digs an excavation in the courtyard, the owner of the ox is liable for the damage caused to the court, and the court-owner

is liable for the damages caused by the excavation (if he renounced ownership), although the Master said elsewhere, on the strength of the passage [Ex. xxi. 33]: "If a *man* dig a pit," a *man*, and not an *ox*; for here in this case he had to fill up the pit (before renouncing ownership), and by not so doing it is considered as if he dug it.

Rabha said again: "One who leads his ox into a court without the permission of its owner, and it injures the owner, or the latter is injured through it, he is liable. If, however, it lie down (and by doing so breaks vessels, or while being in such a position the court-owner stumbles over it and is injured), there is none." Does, then, the lying down relieve him from liability? Said R. Papa: Rabha means, not that the ox itself lay down, but that it lay down (voided) excrement and thereby soiled the vessels of the court-owner, in which case the excrement is considered a pit; and we do not find that there is a liability for damage to vessels by a pit. This would be correct according to Samuel, who holds that any obstacle is considered a pit; but as to Rabh, who holds that it is not considered a pit, unless ownership is renounced, what can be said? Generally from dung ownership is renounced.

Rabha said again: If one enter a court without permission and injure the court-owner, or the latter be injured through him (by jostling against him), he is liable; if the court-owner injure him, he is free. Said R. Papa: "This was said only in case the court-owner has not noticed him; but if he has, he is liable." What is the reason? Because he can say to him: "You have the right only to drive him out, but not to injure him." And each follows his own theory, for Rabha, and according to others R. Papa, said: If both of them were there with permission (*e.g.*, on a public highway), or both of them without permission, if one injure the other (by striking with the hand, although unintentionally), both are liable (for as to damages there is no difference whether with or without intention); but if one was injured through the other (as by jostling), they are free. The reason, then, is because both of them were either with or without permission; but if one was with and the other one without permission, the one who was with permission is free and the other is liable.

"If he fall into the pit and spoil the water," etc. Said Rabha: This was taught only when it was spoiled through the body (*e.g.*, when the body was soiled); but if it was so because

of the (putrefied) smell, he is free. And the reason is, because the carcass is only the *germon* (origin) of the smell, and for *germon* there is no liability.

"*If his father, his son,*" etc. Why so? Is he not a non-vicious one? Said Ula: It is in accordance with R. Jose the Galilean, who holds, with R. Tarphon, that the horn on the premises of the plaintiff pays the whole damage, so also here he pays the whole sum of atonement money, and for that reason he teaches, "*if his father,*" etc., to indicate that it was the premises of the plaintiff.

"*If he lead him in with permission,*" etc. It was taught: "Rabh said: The Halakha prevails according to the first Tana, while Samuel holds that the Halakha prevails according to Rabbi."

The rabbis taught: "If he said: 'Lead in your ox and take care of him,' if he did damage, he is liable; if he was injured, there is no liability. If he, however, said: 'Lead in your ox and *I* will take care of him,' the reverse is the case." Is there not a difficulty in the explanation of the Boraitha? First it states, if he told him to lead in the ox and to take care of him he is liable if he did damage, etc.—then the reason is because he told him expressly to take care of him; but if nothing was said as to care, the reverse would be the case, for the reason that, when nothing is mentioned, the court-owner impliedly assumes the care. How, then, should the last part: "If he, however, told him: 'Lead in your ox and *I* will take care of him,' etc., be explained? Is it not to infer that the reason was because he expressly said that he would take care of him, but if nothing was said as to care, the owner of the ox is liable and the court-owner is free, for the reason that under such circumstances the court-owner does not assume the care, which is according to Rabbi, who holds that the court-owner is not liable unless he expressly assumes the care, and so the first part would be according to the rabbis and the last part according to Rabbi? Said Rabha: The whole Mishna can be explained to be in accordance with the rabbis, thus: Because it states in the first part "*and you* take care of him," it states also in the last part, "*and I* will take care of him." R. Papa said: The whole Mishna may be explained in accordance with Rabbi, but that he holds with R. Tarphon, who says that the horn on the premises of the plaintiff pays the whole, and therefore if he tell him, "*You* take care," the court-owner has not assigned him any room, and thus

it is to be considered as the horn on the premises of the plaintiff, which pays the whole; but if he keep silent, it is considered that he has assigned him room in the court, and thereby the court becomes a partnership, and under such circumstances only half is paid.

MISHNA III.: If an ox intend to gore another ox, and injure a woman and cause her to miscarry, the owner of the ox is free from paying for the child. If, however, a man intend to hurt another man, and hurt a woman and cause her to miscarry, he must pay for the child. How is this payment made? The woman is appraised as to the difference in her value (as a slave) before and after she gave birth. Said R. Simeon b. Gamaliel: If so, then her value increases after giving birth. We must therefore say that the worth of the infant is appraised and its value is paid to her husband if she has one, or to his heirs if she has no husband. If she was a manumitted slave or a proselyte, there is no liability.

GEMARA: The reason is only because it intended to gore another ox, but if it originally intended to gore the woman he is liable for the infant. Shall we assume that this is a contradiction to R. Ada bar A'hba, who said elsewhere that even in such a case there is no liability? Nay, R. Ada b. A'hba may answer that, even according to our Mishna, there is no liability even if it intended to gore the woman. But why does the Mishna say that it intended to gore another ox? Because in the last part it states a case where a *man* intended to injure another one, in which it is essential, for so states the Scripture; therefore the same expression was used.

"*How is this payment to be made,*" etc. The value of the infant? It ought to read "the increased valuation *caused* by the infant"? (for so does the Mishna state, that the woman is "appraised," etc.). It really means: "How does he pay the value of the infant and the increased valuation *caused by* the infant? The woman is appraised," etc.

"*Said R. Simeon b. Gamaliel,*" etc. What does he mean? Said Rabha: He means thus: Is, then, the value of a woman during pregnancy higher than after she gives birth—is not the reverse the fact? We must therefore say "that the worth of the infant," etc., and so also we have learned in a Boraitha elsewhere. Rabha, however, says: He means thus: Does, then, the increase in value of the woman belong wholly to the husband, and she has no share in the increase of value caused even

by her infant? The infant is appraised and its value paid to the husband, and the money for the increase in valuation is divided between the husband and the wife. We have so also learned plainly in a Boraitha, with the addition that each item must be separately appraised: the pain, the damage; the value of the infant, however, must be paid to the husband only, but the increase in valuation caused by it must be divided. If so, then the two statements of R. Simeon b. Gamaliel contradict each other? This presents no difficulty. The one case is that of a first-birth, and the other is not.

And the rabbis, who hold that the increase in valuation also belongs to the husband, what is their reason? As we have learned in the following Boraitha: From the Scripture, which reads [Ex. xxi. 22]: "And her children depart from her," do I not know that she was with child? Why does it state, "a woman with child"? To tell thee that the increase in value caused by pregnancy belongs to the husband. R. Simeon b. Gamaliel, however, applies the passage quoted to the following Boraitha: R. Eliezer b. Jacob said: He is not liable unless he struck her over the womb. And R. Papa explained the above statement of R. Eliezer b. Jacob, that he does not mean the womb only, but any part of the body except the arm or foot.

"If she was a bondwoman," etc., "or a proselyte woman," etc. Said Rabba: This is to be explained that he wounded her before her husband died, in which case the deceased acquired title to the money to be paid, and upon his death the same is inherited by the defendant, in whose possession the money still is (and so is the law as regards the property of a proselyte who died without leaving heirs); but if he wounded her after the death of her husband, the money is to be paid to her. Said R. Hisda: "Who is the author of this statement? Are, then, children as packages of money, that their ownership may pass from one to another? Where there is a husband alive the Scripture made an exception, in that the money to be paid should belong to him; but where there is none, no payment at all is to be made." Regarding this statement the Tanaim of the following Boraitha differ: "An Israelite's daughter that was married to a proselyte and she has conceived by him, and some one wounded her, if during the lifetime of the proselyte, the value of the infant goes to him; if after his decease, one Boraitha states that the defendant must pay to the mother and another Boraitha states that he is free."

According to Rabba's theory there is no doubt that the Tanaim differ, but according to R. Hisda's theory, in accordance with whom will be the Boraitha which states that he must pay? It is in accordance with Rabban Simeon b. Gamaliel, who said that the mother gets one-half of the money to be paid even when her husband is alive, and the whole if he is dead.

R. Iba the elder propounded the following question to R. Na'hman: One who took possession of the documents of a proselyte (which he held against the lands of an Israelite), what is the law? Shall we assume, of one who receives mortgages on estates, that his main intention is to take possession of the lands, and whereas of the latter the proselyte has as yet not taken possession, the one who took possession of the documents has acquired no title, because these documents are not considered property, or is it considered that the proselyte's intention was also as to the documents (and so they *are* his property)? He said to him: Answer me, my Master, could the intention of the proselyte be to wrap up a bottle in them? He answered: Yea, it may have been also for that very purpose.

Rabba said: "If an Israelite's pledge is in the hands of a proselyte and the latter dies, and another Israelite comes and takes possession of it, he may be deprived of the possession (by the owner of the pledged article). Why so? Because as soon as the proselyte died the lien on the pledge became null and void. If, however, a proselyte's pledge is held by an Israelite and the proselyte dies, and another Israelite takes possession of it, the pledgee has his lien on the pledge to the extent of his debt and the other one acquires title as to the balance. Why should not the pledgee's premises (on which the pledge is located) acquire the title for its owner? Did not R. Jose b. Hanina say that one's premises acquire title for their owner even without his knowledge? It may be explained that he was not there, and therefore when the owner is there, and he wishes he himself could acquire title, his premises can also do so for him; but where there is no owner to acquire title himself, his premises cannot do so for him. And so the Halakha prevails.

MISHNA IV.: One who digs a pit on private ground and opens it into public ground, or *vice versa*, or on private ground and opens it into the private ground of another person, is liable.

GEMARA: The rabbis taught: One who digs a pit on private premises and opens it into public premises is liable; and this is the kind of a pit that was meant by the Scripture. Such

is the dictum of R. Ishmael. R. Aqiba says: The pit mentioned in the Scripture is where one renounced ownership to his premises (on which there was a pit), but did not renounce it to the pit. Said Rabba: As to a pit on public ground, all agree that there is a liability, but as to one on one's own premises, R. Aqiba holds that even in such a case there is a liability, for it is written [Ex. xxi. 34]: "The owner of the pit"; that means that the Scripture meant a pit that has an owner, while R. Ishmael holds that it means the one to whom the cause of the injury previously belonged. But what does R. Aqiba mean by his saying, "That is the pit meant by the Scripture"? Thus: Why should this case be free from payment? Is this not the very case with which the Scripture began as regards payment? * R. Joseph, however, says, that as to a pit on private premises all agree that there is a liability, for the reason stated by R. Aqiba; they only differ as to a pit on public ground. R. Ishmael holds that one is also liable in such a case, thus: It is written [ibid., ibid. 33]: "And if a man open a pit, or if a man dig a pit"; now, if for the opening one is liable, so much the more is he for the digging? We must therefore say that the liability came to him because of the digging and opening only (*i.e.*, that neither the premises nor the pit is his, as being on public ground). R. Aqiba, however, may explain it thus: Both statements are necessary, for if the Scripture should state only as to the opening, one might say that only in case of opening it is sufficient to cover it, but in case of digging it is not, unless he stuff it up; and if the Scripture should state only the digging one might say that only in such a case it must be covered, for he has done some substantial act; but in case of opening only there is no need even to cover it, for no substantial act was done. Hence the necessity of both verses. And what does R. Ishmael mean by his statement, "This is the pit," etc.? He means that this is the pit with which the passage began as to damages.

There is an objection from the following: One who digs a pit on public ground and opens it into private ground is free, although it is not permitted to do so, for the reason that no excavation must be made under public ground. One who digs

* Rashi explains that of the pit mentioned as regards payment it is plainly written, "the *owner* of the pit shall pay"; of a pit, however, on public ground the Scripture begins with, "If one *open* a pit"—and the Mishna treats of one that *dug* a pit. Hence R. Aqiba's statement.

a round, oval, or obtuse-angle-shaped pit on private ground and opens it into public ground is liable. And one who digs pits on private premises adjoining public ground, as, for instance, those who dig pits to lay foundations for buildings, is free. R. Jose b. Jehudah, however, makes him liable, unless he put up a partition ten spans high, or unless the pit was at least four spans distant from the pathway for man and beast. Now the first Tana holds him free, because it was for laying foundations; but otherwise he would also hold him liable? (Hence there is a liability for a pit on one's own premises?) According to whose theory is the statement of the first Tana? It would be correct according to Rabba, for it could be explained that the first part is according to R. Ishmael and the last part according to R. Aqiba; but according to R. Joseph, the last part is in accordance with all and the first part in accordance with none? R. Joseph may say that the whole Boraitha is in accordance with all, but the first part treats of a case where he renounced ownership neither to the premises nor to the pit (and although he must not do so, nevertheless there is no liability). Said R. Ashi: Now that we arrive at the conclusion that according to R. Joseph's theory the Boraitha is in accordance with all, the same may be explained also according to Rabba's theory that the whole Boraitha is in accordance with R. Ishmael; but the reason why, according to your inference, there would be a liability, if it is not for laying a foundation, is because he extended the excavation under the public ground (and therefore, if not for laying foundations, it should be considered digging on public ground).

The rabbis taught: One who digs and opens a well and delivers it over to the community is free (if any accident happened). Otherwise he is liable. And so also was the custom of Nehunia the pit-digger, to dig and open wells and deliver them over to the community. And when the rabbis heard of it, they said: "He is acting in accordance with the Halakha."

The rabbis taught: It happened to the daughter of the very same Nehunia, that she fell into a large well. They came and informed R. Hanina b. Dosa of it. During the first hour he said to them: "Go in peace"; and so also during the second. At the third (when there was fear that she might have died), he said that she was out already and saved. When the girl was asked who saved her, she said that a ram passed by led by an old man (the ram of Isaac led by Abraham), who saved

her. When R. Hanina b. Dosa was asked whether he knew of her safety by prophecy, he said: I am no prophet, nor am I the son of a prophet, but I thought to myself, "Can it be that the children of that upright man (Nehunia, who was digging wells to enable the pilgrims to drink water from them) shall die by the very thing he was taking so much pains to prepare for the welfare of Israel?" Said R. A'ha: Notwithstanding this, his son died of thirst. The reason is, that the Holy One, blessed be He, is particular with the upright around Him, even on a hairbreadth, as it is written [Ps. l. 3]: "And round him there rageth a mighty storm" * (and there must have been some sin committed by Nehunia for which he was punished). R. Nehunia says: From the following passage [ibid. lxix. 8]: "God is *greatly* terrific in the secret council of the holy ones, and fear-inspiring over all that are about him." R. Hanina said: One who says that the Holy One, blessed be He, is liberal (to forgive every one his sins), his life may be disposed of liberally (for he encourages people to sin), as it is written [Deut. xxxiii. 4]: "He is the Rock, his work is *perfect*; for all his ways are just." R. Hana, and according to others R. Samuel b. Na'hmani, says: It is written [Ex. xxxiv. 6], "Long-suffering" in the plural, and not in the singular, to signify that He is long-suffering towards the upright and also towards the wicked.

The rabbis taught: One shall not remove stones from his own premises to public ground. It happened once that one did so, and a pious one passing by at the time and seeing him do that said to him: "Thou ignoramus, why dost thou remove stones from premises not belonging to thee to thy own premises?" He laughed at him. Some time later he was compelled to sell his lands, and while walking on the public highway in front of his former lands he stumbled over the stones he once piled up. He then exclaimed: "I see now that the pious one was right in his saying!"

MISHNA V: One who digs a pit on public ground and an ox or an ass falls into it (and is killed), he is liable. It matters not as to the shape of the pit, whether round, oval, or a cavern, rectangular or acute-angular, in all cases he is liable. If this is so, then why is it written "pit" [בֹּרַי]? To infer from this that as a round pit in order to be sufficient to cause death must

* The Hebrew term is "Nisarah," and the Talmud explains it to mean a "hair," from the Hebrew word "saar" (a hair).

be no less than ten spans deep, so also all other forms must be at least ten spans deep. If they were of less depth, however, there is no liability for death; but for injuries there is.

GEMARA: Rabh said: The pit for which the Scripture made one liable is because of the vapors (therein contained), but not because of the shock (the animal receives). From this may be inferred that Rabh holds that the vapors kill the ox for which the digger of the pit is liable; if the ox should be killed not by the vapors, but by the shock received at the bottom of the pit, there should be no liability, because the ground is considered ownerless. Samuel, however, holds because of the vapors, and so much the more because of the shock; and if one might say that the Scripture meant only as to the shock and not as to the vapors, and therefore if it should be proved that the death was caused by the vapors and not by the shock there should be no liability, it would be incorrect, for the Scripture is testifying that the digger of a pit is liable, and even if the pit were filled with wool sponges. On what point do they differ (for according to both, if the ox was killed he must be paid for)? The difference is in case he formed a hill (ten spans high) on public ground (from which the ox fell down and was killed): according to Rabh he is not liable, while according to Samuel he is. What is the reason of Rabh's opinion? The passage states [Ex. xxi. 33], "*Fall* into it," which signifies that there must be the usual way of falling (into an excavation, and face downward), but according to Samuel "*fall*" means in any manner.

There is an objection from our Mishna: If so, then for what purpose is written "pit," etc.? Now, it would be correct according to Samuel, for the "so also," etc., would include also a hill on public ground; but according to Rabh, what does this include? It includes rectangular and acute-angular pits. But are these not expressly stated therein? They are first stated, and then it is explained whence they are deduced; and it was necessary to enumerate all the forms of a pit, to teach that in each of them there are sufficient vapors to kill, if they are ten spans deep. It happened that an ox fell into a lake from which the neighboring lands used to be irrigated, and its owner slaughtered it. R. Na'hman nevertheless declared him *trepha* (illegal, because, according to his theory, the limbs of the ox were broken by the fall). The same, however, declared that if the owner would spend only one kabh of flour in going around and asking the law in his case, he would learn that if the animal

under such circumstances should be alive twenty-four hours after the fall it could be held fit for eating, and he would not lose his ox, which is worth many kabbim of flour. From this we see that R. Na'hman holds that an animal may be killed from shock in a pit less than ten spans deep.

Rabha objected to R. Na'hman from our Mishna: "If they were less than ten spans deep and an ox or an ass fell into them and was killed, there is no liability." Is not the reason because there is no shock? Nay, because there are no vapors. If so, then why is it stated further: "If he be injured, he is liable." Why so—there are no vapors? He answered: "There are no vapors sufficient to kill, but sufficient to injure."

He again objected from the following Boraitha: It is written [Deut. xxii. 8]: "If any one were to fall *from* there"—this signifies that it means only *from* there, but not *thereinto*. How so? If the level of the public highway were ten spans higher than the roof of the house, so that some one might fall from the highway to the roof, there is no liability (because there was no obligation to make a battlement); if, however, the highway were ten spans lower than the roof, there is a liability (for a battlement has to be made). Now then, if shock in an excavation less than ten spans deep also kills, why state *ten*? He answered: "This case is different, for it states 'house,' and less than ten cannot be called a 'house.'"

MISHNA VI.: When a pit belongs to two partners, and one of them passes by and does not cover it, and so also does the second, the latter only is liable.

GEMARA: Let us see. How can there be a pit of two partners on public ground? This case could be if we should say that the Halakha prevails in accordance with R. Aqiba, who holds one liable for a pit even if it be on his own premises, and partnership in the pit would be possible if both partners dig a pit on their premises and subsequently renounce their ownership to the premises but not to the pit; but if the Halakha prevails according to him who says that if one dig a pit on his own premises there is no liability, how is it possible on the one hand that there should be liability for the same pit on public ground, and on the other hand how can there be a partnership pit on the public ground? Shall we assume that both of them together hired an agent to dig the pit for them? Is there not a rule that there can be no agent to commit a transgression, for the agent ought not to commit any transgression if even he was hired to

do so? Consequently the partners could not be responsible for the acts of the agent. If we assume that the partnership consisted in that each of them dug five spans deep, then there can be no partnership, for the act of the first one can be taken into account according to Rabbi's theory only as to injuries; but even according to him as to death, and according to the rabbis' theory as to both injuries and death, it cannot be counted. How, then, can there be a partnership in a pit? Said R. Johanan: It is possible if both of them together removed a lump of earth from it which completed it to make it ten spans deep.

Where are the theories of Rabbi and his colleagues, mentioned above, stated? In the following Boraitha: "If one dig a pit nine spans deep and another one complete it to make it ten deep, the latter one is liable. Rabbi, however, says: The latter one only is liable in case of death, and both are liable in case of injuries."

What is the reason of the rabbis' theory? It is written [ibid., ibid. 33]: "And if a *man* dig a pit," which signifies that it must be by *one* only. Rabbi, however, explains this passage to mean that it must be dug by a *man* and not by an ox.

The rabbis taught: "If one dig a pit ten spans deep and another one complete it to make it twenty, and still another one make it thirty deep, all of them are liable." There is a contradiction from what we have learned in the following: "If one dig a pit ten spans deep and another one plaster and lime it (and thereby makes it narrow and increases its vapors), the last one is liable." Shall we not assume that the one case (where all are liable) is according to Rabbi and the other is according to his colleagues?

Said R. Zbid: "Both may be explained to be according to Rabbi only, thus: The case where all are liable is correct, as stated, and the case where only the last one is liable is where there were originally in it not sufficient vapors even to injure, and the other one by his acts produced so much vapors as to be sufficient both to injure and kill."

Rabha said: "If one place a stone at the edge of a pit which is less than ten spans deep and thereby complete its walls to measure ten spans, whether he is responsible or not would raise the same difference of opinion as between Rabbi and his colleagues stated above." Is this not self-evident? One might say that if one dig one span more in the *bottom*, and by doing so he increase the vapors to be sufficient to kill, he is liable,

because the vapors produced by him killed the animal; but if he raise the walls at the top (by placing the stone), by which he did not increase the vapors, as they were there already, one might say that he was not liable, because the animal was not killed by the vapors produced by him—he comes to teach us that there is no difference.

Rabba bar bar Hana in the name of Samuel bar Martha said: A pit eight spans deep, two of which are filled with water, there is a liability. Why so? Each span of water equals two of dry ground. The schoolmen propounded a question: If the pit was nine spans deep and only one span of them was filled with water, what is the law—shall we say that as there is only a little water there are no vapors in it, or shall we say that as it is nine spans deep the vapors of the water complete it to make it ten? Again, if the pit was seven spans deep, three of which were filled with water, what is the law—shall we say that as there is much water in it there are vapors, or because it is not sufficiently deep there are none? This remains unanswered.

R. Shizbi questioned Rabba: "If one dig a pit ten spans deep and another widen it (toward one direction only), what is the law?" He answered: "Then he diminished the vapors!" The former rejoined: "But he increased the possibility of being injured?" Rabba made no answer. Said R. Ashi: "A case of this kind must be examined. If he fell in through the side which was widened, then he surely increased the possibility of falling in, and he is responsible; if, however, he fell in through the other side, then he diminished the vapors, and he is not."

It was taught: "A pit the depth of which is of the same dimensions as its width, Rabba and R. Joseph, both in the name of Rabba bar bar Hana quoting R. Mani, differ as to the decision of those quoted: One holds that there are always vapors (sufficient to kill) therein unless the width exceeds its depth, and one holds that there are no vapors therein unless the depth exceeds its width."

"*If one passed by and did not cover it.*" From what time on is he free? (That we say that the other one was charged with covering it, for the case undoubtedly is that the first one not only passed by but also used the pit; because if not so, then the first one ought to be liable as well, as it was negligence also on his part not to cover it.) As to this the following Tanaim differs: "One is drawing water from a well and another comes telling him to let him draw water, as soon as he lets him do so,

the liability of the first ceases. R. Eliezer b. Jacob, however, says that the liability ceases from the moment he delivered him the cover of the well. On what point do they differ? R. Eliezer b. Jacob holds that the theory of choice * applies to such a case, and each drew water from his own part (and therefore the second is not considered to have borrowed from the first his share, so as to be charged with the care of the whole, and for that reason both are liable in case of damages; but if he accepted the cover, he thereby became charged with the care of the whole), and the rabbis hold that the theory of choice does not apply to such a case. R. Elazar said: One who sells his well, title passes with the delivery of the cover. How was the case? If he sold it for money, let the title pass by the payment of the money; if by occupancy, let the title pass by this act? The case was by occupancy, which requires that he should expressly tell him, "go and occupy and acquire title"; and if he delivered the cover to him, it is considered as if he told him so.

R. Jehoshua b. Levi said: One who sells his house, the title passes with the delivery of the keys (as it is the same as the delivery of the cover of the pit).

Resh Lakish in the name of R. Janai said: "One who sells a flock of cattle, title passes with the delivery of the Mashkhukhith (the drawing-rope). How was the case? If he drew them (removed them from one place to another), let title pass by this act? If by delivery, let title pass by doing this? The case was that he drew them, which requires that the vendor shall tell the vendee expressly, "Draw them and acquire title," and as soon as he delivered the Mashkhukhith it is considered as if he told the vendee expressly, "Draw, and acquire title to them." What is meant by Mashkhukhith? It means the bell. R. Jacob said: "It means the forerunning goat kept at the head of the flock as leader, as a certain Galilean lectured in the presence of R. Hisda: When the shepherd gets angry at his flock, he blinds the leading-goat at the head of the flock (so that the leader falls and with him all the flock)."

MISHNA VII.: If the first one covered it, but when the second one passed by he found it uncovered and did not cover it, the latter is liable. If the owner of a pit properly cover it, and still an ox or an ass fall into it and is killed, there is no liability. If however, he do not properly cover it, he is liable.

* See Erubin, pages 80-82.

If an ox fall forward, face downward, into a pit by reason of the noise caused by the digging, there is a liability; if, however, it fall backward, there is none. If an ox or an ass with its housings fall into it and the housings be damaged, there is a liability for the animal but not for the housings. If there fall therein an ox, deaf, raging, or young, there is a liability (explained further on). If a boy or a girl, a male or a female slave, fall in, there is none.

GEMARA: Until what time is the first one free? Said Rabb: Until he again knows of his own knowledge that the pit is uncovered. Samuel, however, says: Until he is informed, even if he has not seen it himself. R. Johanan says: Time must be allowed him until he could be informed and could hire workmen to cut wood and cover it.

"If he cover it properly," etc. If he covered it properly, how could the animal fall in? Said R. Itz'hak bar bar Hana: The case was, that the cover became rotten from the inside (and could not be noticed).

The schoolmen propounded the following question: "If he covered it sufficiently to withstand oxen but not camels, and camels came along and made the cover shaky and then oxen fell therein, what is the law? Let us see. How was the case? If camels are usual there, then certainly the act is wilful; if they are not, then it is only an accident? The question is only where camels come there at times. Shall we say that, because camels do come there, it is considered wilful, for he should have had it in mind, or do we say that because at that time they were not there it might be considered an accident?" According to others the schoolmen did not question as to such a case; for there is no doubt that, as long as they came at times, he should have had it in mind, but what they did question was this: If he covered it sufficiently to withstand oxen but not camels, and the latter are usual there and the cover became rotten from within, what is the law? Do we say that *because* it is considered wilful as to camels it is so also as to allowing it to rot, or that the theory of *because* does not apply here? Come and hear: "An ox that was deaf, raging, young, or blind, or an ox that walked in the night-time, he is liable; if, however, the ox was sound and it was in the day-time, he is free." Now, why should it be so? Why not say *because* it is considered wilful as to an unsound ox it is also considered so as to a sound one? Infer from this that the theory of *because* does not apply to such cases.

"*If it fell in forward*," etc. Said Rabh: By "forward" is meant that it fell on his face, and by "backward" that it struck the back of its head against the bottom of the pit. And both of them have reference to the pit. [And this is in accordance with his theory that the Scripture made one liable in case of a pit only because of the vapors, but not because of the shock.] Samuel, however, says: "In case of a pit there is no difference whether it fall forward or backward, but he is liable." [For he follows his theory as to the vapors, and so much the more because of the shock.] But how is the case possible that when it fall backward from the sound of the digging he shall be free? As, for instance, when it stumbles over the pit and falls backward and strikes outside of the pit. Samuel objected to Rabh from the following Boraitha: "As regards a pit, whether it fall backward or forward, he is liable?" This objection remains.

R. Hisda said: Rabh admits in case of a pit on one's own premises that he is liable, because the owner of the ox may say, "You are liable either way; for whether he died from the vapors or from the shock, it was yours." Rabha, however, says: The case in the above Boraitha, which states that he is liable if even the ox fall backward, was that he turned over; that is, he first fell face downward, but before he reached the ground he turned over and fell on his back, and therefore it is the vapors that he inhaled while falling face downward that kill him. R. Joseph says: The Boraitha in question does not mean to say that the owner of the pit is liable, but, on the contrary, that the owner of the ox is liable, and it treats of a case where the ox did damage to a well, namely, by (entering a courtyard without permission, the owner of which renounced ownership neither to the courtyard nor to the well, and) falling into the well, spoiling the water therein contained; in which case he is liable, no matter which way it fell. R. Hanina taught in support of Rabh: It is written: "And fall"—that means that the falling should be in the usual manner, face downward. From this it was said that if he fell face forward into a pit from the sound of the digging there is a liability; if backward from the same cause, there is none.

The Master said: "If he fall face downward from the sound of the digging, there is a liability." Why so? Was this not caused by the one who was doing the digging? (In this case it is assumed that the owner has hired another person to do the digging, and the latter is only the *germon* (medium), and there

is no liability for being the *germon*?) Said R. Simi b. Ashi: It is in accordance with R. Nathan, who said that the damage must be paid by the owner of the place where it was done, for the reason that the digger cannot be liable, because he is only the *germon* of the damage, as we have learned in the following Boraitha: "An ox that pushed another ox into a pit, the owner of the ox, and not the owner of the pit, is liable. R. Nathan, however, said that each one of them pays half (for both have their share in it)." But have we not learned in another Boraitha: "R. Nathan said: The pit-owner pays three-fourths and the owner of the ox one-fourth"? This presents no difficulty: One case treats of a vicious and the other of a non-vicious ox. But what does he hold in case of a non-vicious ox? If he holds that each one has done the *whole* damage, let each one pay half? And if, on the other hand, he holds that each one has done *half* the damage (and therefore the owner of the ox pays as for a non-vicious one one-fourth, which is half of the damage he did), only three-fourths are paid and one-fourth is suffered by the plaintiff? Said Rabha: R. Nathan was a judge, and he dived into the very depth of the Halakha. He holds that each has done only half the damage; but as to the objection raised that the owner of the ox should pay only one-fourth, it may be said that the owner of the killed ox may say to the owner of the pit: "I found my ox in your pit and you killed him; therefore, whatever I can realize from the owner of the ox who pushed mine in I will, and the balance you will have to pay."

Rabha said: "One who places a stone on the edge of the opening of a pit and an ox stumbles over the stone and falls into the pit," as to this question the difference of the rabbis and R. Nathan comes in (according to the rabbis the one who placed the stone is liable, for he caused the fall, and he cannot be considered as the *germon*, for the placing of a stone in itself is considered the same as a pit; and according to R. Nathan both are liable, for both contributed). Is this not self-evident? Lest one say: In that case the pit-owner may say to the owner of the ox, "Were it not for my pit your ox would have (instead of pushing him in) killed him"; but here, in this case, the one who placed the stone may say to the pit-owner, "Were it not for your pit, what harm would my stone have done him? Had he stumbled over, he would have gotten up at once?" It therefore teaches that he may, however, say to him, "Were it not for your stone, he would not have fallen into the pit."

Rabha said: An ox and a man who together push some other into a pit (so that the ox, the man, and the pit have all contributed), as regards damages all are liable; as regards the four things and the value of the infant (if it should be the case), the man is liable and the others are free; as to payment of atonement money and the thirty shekels for a slave, the ox is liable and the others are free; as regards damage to vessels and an ox that became desecrated and was redeemed, the man and the owner of the ox are liable, and the owner of the pit is free. Why is the owner of the pit free in this latter case of a redeemed ox? Because it is written [Ex. xxi. 36]: "And the dead shall belong to him," which means in a case where the dead can belong to him, excepting this case (for although it was redeemed the carcass cannot be sold but must be buried).

"*If an ox fall in,*" etc. Our Mishna is not in accordance with R. Jehudah of the following Boraitha: "R. Jehudah makes one liable for damages to vessels caused by a pit." What is the reason for the rabbis' theory? It is written [ibid.]: "And an ox or an ass fall therein," which signifies an ox but not a man, an ass but not vessels. R. Jehudah, however, holds that the "or" means to add also vessels. Now, according to R. Jehudah, who admits that the word "ox" means to exclude man, what does the word "ass" mean to exclude? Therefore said Rabha: The necessity of stating "ass" as regards a pit according to R. Jehudah, and "lamb" as regards a lost thing according to all, is really difficult to explain.

"*If an ox, deaf,*" etc. What does this mean? Shall we assume that the ox *belongs* to a deaf person, etc., but if he belongs to a sound person there is no liability? How is that possible? Said R. Johanan: It means that the *ox* was deaf, etc. But if he was sound, there is no liability? Said Rabha: "Yea, an ox that is deaf, etc., but if he was sound there is no liability, because a sound ox is capable of taking care of himself. The following Boraitha is plainly in support of the above: If there fall therein a deaf, raging, young, or blind ox, or an ox walking in the night-time, there is a liability. If it was a sound one, however, and in the day-time, there is no liability.

MISHNA VIII.: There is no difference between an ox and another animal as regards falling into a pit; to have been kept distant from Mount Sinai [Ex. xiii.], as to payment of double, to restitution of lost property; as regards unloading; muzzling, kilayim [of species], and as regards Sabbath. Neither is there

any difference between the above-mentioned and a beast or bird. If so, why does the Scripture mention "ox or ass"? Because the verse speaks of what is usual.

GEMARA: Concerning falling into a pit, it reads [Ex. xxi. 34]: "In money unto the *owner* thereof," which signifies any animal that has an owner. Concerning Mount Sinai, it reads [ibid. xix. 13]: "Whether it be *animal** or man, it shall not live," which includes also beasts; and the word "whether" includes also birds. Concerning payment of double, it reads [ibid. xxii. 8]: "For *all* manner of trespass," which signifies that every manner of trespass (wilfulness and even as regards inanimate subjects). Concerning restitution of a lost thing, it reads [Deut. xxii. 3]: "Every lost thing of thy brother's." Concerning unloading, we deduce it from the analogy of expression of "ass" used here, and in regard to Sabbath [Deut. v. 14] (as concerning the latter, other animals are also included, so also here). Concerning muzzling [Deut. xxv. 4], we deduce it from the analogy of the term "ox" used here, and concerning Sabbath [ibid.]. Concerning kilayim, if it relates to that of ploughing, we deduce it from the analogy of the term "ox" in the manner just stated; if it relates to that of coupling of animals, it is deduced from the analogy of the word "any of thy cattle" used here, and concerning Sabbath. And whence do we know that it is so as to Sabbath itself? From the following Boraitha: R. Jose says in the name of R. Ishmael: At the first commandments it is written [Ex. xx. 10]: "Thy man-servant, nor thy maid-servant, nor thy cattle"; and at the second commandments it is written [Deut. v. 14]: "Nor thy *ox*, nor thy *ass*, nor any of thy cattle." Why were they expressly stated? Are, then, the ox and the ass not included in "cattle"? To tell thee that, as the terms "ox" and "ass" mentioned here include beasts and birds, to put them on the same footing, so also, wherever these two terms are mentioned, they include beasts and birds. But perhaps the statement in the first commandments should be taken as *general* and that of the last commandments as *particular*, and as there is a rule that the *general* includes nothing but the *particular*, this means to say that only ox and ass are meant, and nothing else? Nay, it states, at the last commandments, also "*all*† of thy cattle," and the word

* Leeser translates "beast."

† The Talmud translates the Hebrew term literally, "all," while Leeser translates it "any."

"all" adds all other beasts. Is it really so, that wherever "all" is written it adds something? Is not the same word used at tithing, and still it is construed to be a case of *general* and *particular*? (See Erubim, p. 64.) We may say that "all" is sometimes also a *general*, but in this particular instance it must be explained only as to add; for it would have been sufficient to state only "and cattle," as it does in the first commandments, and still it states, "and *all* cattle," to infer that it plainly means to add.

Now, having come to the conclusion that this "all" means to add, why was it necessary to state "cattle" in the first and "ox" and "ass" in the last commandments? It can be explained that these particular expressions were mentioned for the purpose of deducing muzzling, unloading, and kilayim by the analogy of expression stated above. If also (that as regards kilayim it is deduced from Sabbath), let even a man be prohibited from drawing a wagon together with an animal, as he is also prohibited as regards Sabbath? Why, then, have we learned in the following Mishna: "A man is permitted with all of them to plough and draw"? Said R. Papa: One of the inhabitants of Papanai knew the reason for that, and that was R. A'ha bar Jacob, who explained it thus: It is written [ibid. 14]: "In order that thy man-servant and thy maid-servant may rest as well as thou"—that means that they are compared to them only as regards rest, but not as regards any other thing.

R. Hanina b. Egil asked R. Hyya b. Aba: Why in the first commandments is it not written "that it may be well with thee," and in the second commandments it is so written [Deut. v. 16]? He rejoined: "Instead of asking me for the reason, you had better ask me whether it is so written at all; for I did not notice it. You had better go to R. Tan'hum b. Hanilai, who used to frequent R. Joshua b. Levi, who was well versed in Agadah." He went there and got the answer from R. Tan'hum. From R. Joshua b. Levi I heard nothing about it, but so told me Samuel b. Na'hum the brother of R. Aha b. Hanina's mother [according to others, the father of the same]: The reason is because the first commandments (contained on the tables) were destined to be broken. And if so, what of it? Said R. Ashi: If this had been written thereon and subsequently (the tables) had been broken, Heaven save! "good" would have ceased from Israel.

R. Jehushua said: One who sees the letter "*Teth*" in his

dream, it is a good omen for him. Why so? Because the first time this letter is used in the Scripture is in the word "*Tobh*" (good) in the verse [Gen. i. 4]: "And God saw the light, that it was good (*tobh*)."

"*And so also a beast,*" etc. Said Resh Lakish: In this Mishna Rabh teaches us that a cock and a peacock and a pheasant are considered *kilayim* with each other. Is this not self-evident? Said R. Habiba: Because they are usually raised together, one might say that they are one species. Hence this statement.

Samuel said: The ordinary goose and the wild goose are considered *kilayim*. Rabha b. R. Hanan opposed. Why so? If because the one has a long beak and the other a short one, then let a Persian and an Arabian camel also be *kilayim*, because the one has a thick and the other a thin neck? Therefore said Abayi: The reason is because the one has his testicles on the outside, while the other has them inside. R. Papa said: The one hatches one egg at a time, while the other hatches many at a time.

CHAPTER VI.

REGULATIONS CONCERNING THE GUARDING OF ANIMALS AGAINST DOING DAMAGE. CONCERNING THE STARTING OF FIRE; IF IT PASSES OVER A WALL. FOR WHAT DISTANCES PASSED BY A FIRE IS THE ONE WHO STARTED IT LIABLE?

MISHNA 7: If one drive his sheep into a sheep-cot and properly bolt the gate, but still they manage to come out and do damage, he is free. If he do not properly bolt the gate, he is liable. If they break out in the night time, or robbers break in the gate, and the sheep come out and cause damage, he is free. If the robbers lead them out, they are responsible for the damage. If one exposes his cattle to the sun, or he places them in the custody of a deaf-mute, a fool, or a minor, and they break away and do damage, he is liable; if, however, he places them with a (professional) shepherd, the latter substitutes him (as regards liability for damages). If the cattle fall into a garden and consume something, the value of the benefit they derive is to be paid. If, however, they enter the garden in the usual way, the value of the damage is paid. How is the value of the damage to be ascertained? It is appraised how much a measure of the land required for planting a saah was worth before and how much it is worth after. R. Simeon says: If they consume ripe fruit, the value of ripe fruit is paid; if they consume one saah, the value of one; if two, the value of two is paid.

GEMARA: The rabbis taught: When is it called properly and when not properly bolted? If the gate is bolted so as to withstand an ordinary wind, it is called "properly"; if not, it is called "improperly." Said R. Mani b. Patish: Who is the Tana who holds that slight care is sufficient for a vicious one? It is R. Jehudah of the following Mishna (*supra*, page 104): If his owner secured him with the rope and properly locked him up, and still he came out and did damage, whether he was non-vicious or he was vicious, there is a liability. Such is the dictum of R. Meir. R. Jehudah, however, says: For a non-vicious

there is, but for a vicious one there is no liability; as it is written [Ex. xxi. 36]: "And his owner had *not* kept him in," but here he had. R. Elazar, however, said: "There is no other care for a vicious one than the knife." It can be said that the Mishna is in accordance with R. Meir also, but the tooth and foot are different, for the Scripture required only slight care with them, as R. Elazar, and according to others a Boraitha taught: "There are four things regarding which the Scripture diminished the amount of care, and they are the pit, the fire, the tooth, and the foot: The pit, as it is written [ibid., ibid. 33]: "And if a man open a pit, or if a man dig a pit, and do not cover it"; but if he had only covered it (without placing a layer of earth on it), it is sufficient. Fire, as it is written [ibid. xxii. 5]: "He that *kindled* the fire shall surely make restitution," which signifies that it must be done *purposely*. The tooth and foot, as it is written [ibid., ibid. 4]: "And he *let* his beasts enter, and they fed in another man's field," which signifies an intentional act, but not otherwise. Said Rabba: From our Mishna it is also to be inferred (that the reason is because the Scripture diminished the amount of care), for it states *sheep* instead of *ox* (although sheep require less care), of which it treats throughout. We must say, then, that this is because the Law requires only slight care, and therefore the Mishna mentioned only sheep, which usually do damage only with the tooth and foot, and not with the horn, and also for the reason that the tooth and foot are considered vicious from the beginning, which is not the case with the horn. Infer from all this that slight care only is required.

We have learned in a Boraitha: "R. Jehoshua said: There are four things (for which) one who does them cannot be held responsible before an earthly tribunal, although he will be punished for them by the Divine court, and they are: he who breaks the fence of the stall where his neighbor's cattle are kept (only when the fence was shaky); he who bends his neighbor's growing crop in the direction of fire (only during the prevalence of an unusual wind); he who hires a false witness (only for the benefit of his neighbor); and he who suppresses his own testimony and thereby deprives his neighbor from its benefit (only if he was the sole witness). But if the circumstances are different, he is liable also to an earthly tribunal.

R. Ashi said: The case of bending one's crop in the direction of the fire may be explained that he spread blankets over

the crop, and thereby made it "hidden articles," for which there is no liability for the one who starts the fire (as explained elsewhere).

But are there not other cases in which one is liable only to heavenly justice? Yea, there are, but those just stated had to be enumerated here, for one might say that in these cases there should be no liability even to the Divine court. Thus, in the first case, because it had to be abolished anyhow; in the second, because by an unusual wind it would have caught fire without that and (according to R. Ashi it is also necessary to mention this case, lest one say he may argue that he spread the blankets over it in order to protect it against the fire); in the third, because the witness had not to listen to the one who hired him, as it was prohibited by the Law; and in the last case, because who could guarantee that if he should not have testified the other would have admitted his liability? And lest one say that in such cases there is no liability, even to the Divine court, hence the statement.

"*If he expose them to the sun,*" etc. Said Rabba: And this is so even if they undermined (the fence and did damage); lest one say that in such a case the damage was done through accident, he comes to teach us that even this is considered wilful. Why so? Because the plaintiff may say to the defendant: Did you not know that when exposing them to the sun they would do all they could to break out?

"*If the robbers lead them out,*" etc. Is this not self-evident, for by this act they place them under their own control as regards everything? The case was that they only stood before them on each side (so as to leave only the way leading to the standing crop open). And this is in accordance with Rabba, who said in the name of R. Mathua, quoting Rabh: One who leads another one's animal to, and places it in, one's barn (and it does damage), is liable. "Places?" Is this not self-evident? We must say, then, that it means that he stood before them (as explained above). Said Abayi to R. Joseph: You explained to us the above saying of Rabh, that the case was that he struck it (driving it on), so also was the case here with the robbers, that they did not lead them out, but only struck them with a cane (and this action is considered equivalent to leading them out with the hand).

"*If he deliver them to a shepherd,*" etc. From the fact that it states that he delivered them to a *shepherd*, and it does not

state that "he delivered them to another," it is to be inferred that the shepherd in turn delivered them to his assistant, for such is the custom of a shepherd; but if he delivered them to a layman the shepherd is not liable. Shall we assume that this will be a support to Rabba, who said elsewhere: "A bailee who intrusts his bailment to another bailee is liable?" Nay, perhaps the statement here is because it is customary so to do, but such is the law, even if it was delivered to a layman.

It was taught: A bailee of a lost article, Rabba says that he is considered a gratuitous bailee for he derives no benefit from such bailment; R. Joseph, however, says that because the Scripture imposed this duty upon him, against his will, he is considered a bailee for hire.

R. Joseph objected to Rabba from the following Boraitha: If he returned the lost article in a place where its owner were likely to see it, he is absolved from any obligation to further trouble himself with it; and if it was stolen or lost, he is responsible. Does this not mean if it was stolen or lost while under his control (and still he is liable; hence he is considered a bailee for hire)? Nay, it means from the place to which he returned it. But does it not state that he need not trouble with it any more? He answered him: The case was that he returned it in the noon-time, and it teaches two cases, thus: If he returned it in the morning, when it could be noticed by its owner, who usually passes by that place, he need no more trouble himself with it; if, however, he did so in the noon-time, when the owner does not usually pass by, and it was stolen or lost, he is responsible. He again objected from the following: "He is always liable until he return it to the control of the owner." Does that not mean if even he placed it in his house, hence we see that he is considered a bailee for hire? He answered him: I admit that in case of animated beings more care is required, for they are used to walk away.

Rabba then objected to R. Joseph's statement from a Boraitha which teaches: It is written [Deut. xxii. 1]: "Bring them back." "Bring them" means to the owner's house; "back" means to his garden or to the owner's ruined (vacant) house. We must say, then, that in the last two places the returned property is not guarded; because if it is, then what difference is there between these two places and the house? Now then, if he is considered a bailee for hire, why is he not liable for it at the last two places? And R. Joseph answered: The Boraitha

speaks of a case where the property was guarded, and the difference between those places and the house is that in the former case the owner is not notified, and it comes to teach us that the knowledge of the owner is not required, as R. Elazar states in Baba Metzia, p. 31*a*.

Said Abayi to R. Joseph: Do you yourself not admit that he is considered a gratuitous bailee? Did not R. Hyya b. Aba say in the name of R. Johanan that, regarding found property, if the finder claims that it was stolen from him (and it was found out that it was not so), he pays double (as it is written [Ex. xxii. 7, 8]: "If the thief be not found . . . or for any manner of lost thing"); and if he would be considered a bailee for hire, why should he pay double (by his own claim he admits that he has to pay the value of the bailment)? He answered: The case was that he claimed to have been robbed by armed robbers (*i.e.*, an accident, in which case he is free). He objected again: If so, then it is robbery, and not theft? R. Joseph rejoined: I say that even armed robbery, when committed not publicly, is still considered theft, and he must pay, according to Scripture, double. Abayi objected again: (It was stated elsewhere in regard to the comparison between a gratuitous bailee and a bailee for hire, as follows:) "Nay, a gratuitous bailee pays double and a bailee for hire does not." Now, if armed robbers pay also double, like ordinary thieves, there can also be a case of a bailee for hire who should pay double, as, for instance, when he claims that he was robbed by armed robbers (and it was found out to be not so)? He rejoined: It means thus: Nay, there can be no comparison between a gratuitous bailee who pays double, whatever his claim may be, and a bailee for hire who pays double only when he claims to have been robbed by armed robbers. He still objected from the following Boraitha: It is written [Ex. xxii. 9]: "And it die, or be hurt"; from this we know only as to death or hurt. Wherefrom do we know also as to theft or loss? This is to be drawn by an *a fortiori* conclusion, thus: A bailee for hire who is not liable for death or hurt is still liable for theft or loss, a borrower who is liable for death or hurt ought so much the more to be liable for theft or loss. And this *a fortiori* conclusion is irrefutable. Now, if armed robbers are considered ordinary thieves, why is it irrefutable—can it then not be refuted thus: There is an exception with a bailee for hire who pays double when he claims that he was robbed by armed robbers? He rejoined: The Tana of this

Boraitha holds that even to pay only the actual value without an oath is better than to pay double under oath (and therefore the *a fortiori* conclusion cannot be refuted). (The explanation of this statement will be found in Baba Metzia, where this case is treated at length.)

"*If it fall into a garden,*" etc. Said Rabh: The case was that it struck upon the growing crop, and the benefit derived for which payment must be made is that it was prevented from striking hard upon the ground. But how is the case if it consumed some plants, does it not pay? Shall we say that Rabh is in accordance with his theory (above, page 109) "that the animal ought not to have eaten"? What comparison is this? When did Rabh say this? Only when the animal was injured by the fruit which it consumed and the owner of the animal claims payment for such injuries, in such a case the owner of the fruit can say that the animal ought not to have eaten; but when the animal *did injury to the owner of the fruit* by consuming it, did Rabh then say that it must not be paid? But what, then, did Rabh mean by his statement above? Rabh means to state a case of "not only"; viz., Not only that he pays where it consumed, but even when it fell on the crop and consumed nothing it must pay, for the benefit it derived in being prevented from striking hard upon the ground, and lest the owner of the animal say that this was only his duty, similar to frightening away a lion from his neighbor's field, for which the Law awards no compensation, it comes to teach us that payment must be made for the benefit. But why is this really not to be compared to frightening away a lion from one's neighbor's field? Because in such cases one does not incur any expense, but here he has actual loss.

In what manner did it fall? R. Kahana said that it slipped out by reason of the urine it let. Rabha, however, said that it was pushed in by another animal. According to the latter, so much the more if it happened by reason of her own urine; but according to the former, only in such a case; but when pushed in by another animal it is considered wilful, and the value of the damage is paid, for he (the owner of the field) can say to the owner of the animal: "You should have seen to it that the animals could have passed one by one, without being pushed in." Said R. Kahana: The case is only if it damaged one plant-bed (that it pays the benefit that it derived); but if it went from one plant-bed to another, consuming the plants, it

pays the full value. R. Johanan, however, says that even in such a case, and even if it continued doing so the whole day, only the value of the benefit derived is paid (because when once it was already there it could not keep away from consuming), until the owner has noticed that the animal left the field and then returned again. Said R. Papa: It must not be said that the owner of the animal must have notice of both the leaving and the returning, it is sufficient if he only had notice of the leaving and did not care to keep it from returning, because the owner of the field may say to the owner of the animal: "You should have known that, so long as it knew the way, it would go there at the earliest opportunity, and you should have taken care of it."

"*How does it pay what it damaged,*" etc. Whence is this deduced? Said R. Mathua: It is written [Ex. xxii. 4]: "And they feed in another man's field"—this teaches us that the appraisement is made with the *other* field (which was not damaged). But is this passage not necessary, to exclude public ground? If so, then the Scripture ought to read, "and they feed another man's field." Why *in* another man's field? Hence to infer both.

How is the appraisement made? Said R. Jose b. Hanina: One saah in sixty (*i.e.*, the Mishna means not only sixty times the portion damaged, but thus: To the measure of land sufficient for planting a saah of grain, on which the damage was done, are added fifty-nine measures of such dimensions, and appraisement is then made as to the value of such a lot of land if sold as one lot of land; then the value of a measure sufficient for the planting of one saah is apportioned, and then is ascertained the difference in price of such saah on account of such damage. The reason is, that no undue advantage should be taken of the defendant; for a small plot of land is comparatively higher in price than a plot of sixty times its size, because a poor man can also afford to buy it and there are more purchasers). R. Janai, however, says: One Tirkav in sixty (thirty saah, and not sixty saah, in order not to take undue advantage of the plaintiff, as for plots of sixty saah buyers are not so numerous, because for a man of moderate means it is too much and for a rich man it is too small a plot). But Hezekiah says: The appraisement is made only by one in sixty times the quantity damaged. An objection was raised from the following: "If she consumed a kabh or two, one must not say that their

value must be paid, but it is assumed as if it were a small plant-bed and is thus appraised." Is it not to be presumed that this plant-bed is appraised separately and for itself? Nay, it means in sixty times its size.

The rabbis taught: "The appraisement is not one kabh in sixty kabh, for it increases its value; neither one kur in sixty kurs, for it unreasonably reduces its value." What does this mean? Said R. Huna b. Menoah in the name of R. Aha the son of R. Ika, it means thus: A measure of a kabh is not appraised separately, for the plaintiff may unduly benefit by it; nor a kabh as relative to a kur, for the plaintiff may unduly be injured by it (for the damage may not be so well noticed), but every unit is appraised at sixty times its value (for the reason stated above).

It happened that one came before the Exilarch and complained of one who destroyed one of his trees. Said the Exilarch to the defendant: "I know of my own knowledge that the tree was one of a group of three trees which was worth one hundred zuz. You will therefore pay him one-third of this amount." The complainant refused to accept this decision, saying: Before the Exilarch, who applies the Persian law, what have I to do? and he went before R. Na'hman, who assessed the damage by appraising the destroyed tree as relative to a group of sixty trees. Said Rabha to him: The rule of sixty was held when damage was done by one's *property* (without the intention of its owner), and you wish to apply the same rule to this case, where the person himself has done the damage intentionally? Said Abayi to Rabha: Why do you think that in case of damage done by one's own person this rule should not apply, because "sixty" is not mentioned in the following Boraitha: "One who destroys the young grapes of his neighbor's vineyard, the damage is assessed by appraising the value of the vineyard before and after the destruction"? But have we not learned in another Boraitha, similar to this as regards damage by one's property, viz.: If the animal destroyed a bough, R. Jose said, the assessors of fines in Jerusalem say that a bough one year old is worth two silver dinars; two years old—four. If it consumed hay, R. Jose the Galilean says that the damage is assessed by appraising the value of what remained. The sages, however, hold that the value of the land before and after the consumption of the hay is appraised (and the difference in value is the damage). If it consumed grapes in the budding stage,

R. Jehoshua says that they are considered as if ready to be plucked, the rabbis, however, apply the former rule. R. Simeon b. Jehudah says in the name of R. Simeon: This was said only when the grapes or figs were still in sprouts; but if they were already developed to the size of a white bean, they are considered as ready to be plucked? Now then, as to the sages, although they do not mention the rule of sixty, still we know from elsewhere that such is their theory, and therefore it does not state it here expressly. Interpret the above Boraitha in the same manner. The Master said: R. Simeon b. Jehudah said, etc. This was said only when the grapes and figs were still in sprouts, from which it is to be inferred that if they were in the budding stage they are considered as ready to be plucked. How should the latter part be explained: "If it consumed figs or grapes when already of the size of a white bean, they are considered as ready to be plucked"—from which it is to be inferred that if in the budding stage it is appraised as to how much it was worth before and how much after? Said Rabhina: Add, and teach together thus: "This is in a case where it consumed grapes and figs in the sprouting stage; but if in the budding stage or when they were already of the size of a white bean, they are considered as ready to be plucked." If this is so, is it not the same as what R. Jehoshua said? The difference is as to the deduction from the amount of damage of the value of the increased sap (of the tree by reason of the destroyed fruit, which benefits the remaining fruit). But it is not known who is the one who holds him liable. Abayi, however, says: It is very well known, because the Tana who takes into consideration the increase of sap is R. Simeon b. Jehudah, who holds something similar in Khethuboth, p. 39a.

R. Papa and R. Huna the son of R. Jehoshua used to appraise the tree together with a small portion of the ground on which it was growing. The Halakha, however, prevails in accordance with R. Papa and R. Huna the son of R. Jehoshua as regards Aramean trees and in accordance with the Exilarch as regards Persian trees (because they are expensive).

Eliezer the Little once put on black shoes and stood in the market-place of Nahardea. When the officers of the Exilarch asked him for the reason, he answered that it was because he was lamenting the fall of Jerusalem.

They said to him: "Are you such a great man as to be worthy of lamenting the fall of Jerusalem?" And thinking

that he was doing that in search of notoriety, they placed him under arrest. He, however, protested and said: "I am a great man." When asked to prove it, he said: "Either you ask me some difficult question, or I will ask one of you." They said to him: "You ask the question." He asked thus: "One who destroys a young date-tree (on which the dates are not yet ripe), what amount of damages must he pay?" They answered: "He pays the value of the tree." "But there are already dates on it?" They rejoined: "Then let him also pay the value of the dates." "But did he, then, take the dates with him; he only destroyed the tree?" he argued. "Well, let us then hear what you have to say to that." He answered: "The damage is appraised as to one in sixty." They said to him: "But who agrees with you in that?" He answered: "Samuel is still alive and his college is in full bloom." When they inquired of Samuel and verified that he agreed with him, they liberated him.

"*R. Simeon says: If it consumed ripe fruit,*" etc. Why so? Was it not said above that [Ex. xxii. 4] "And they feed in another man's field" teaches that it should be appraised together with the ground? This is so only when the ground is needed, but in this case (*ripe fruit*), where they no longer need the ground, it must be appraised separately and paid in full. Said R. Huna b. Hyya in the name of R. Jeremiah b. Aba: There was a case, and Rabh acted in accordance with R. Meir; but in his lectures, however, he declared that the Halakha prevails in accordance with R. Simeon b. Gamaliel. He acted in accordance with R. Meir of the following Boraitha: If he (the husband) transferred some of his estates to one, and his wife did not sign the release of her dower (the amount stated in her marriage contract), and then he transferred other estates to another and she did sign, she lost her dower. Such is the dictum of R. Meir. (And she cannot say: I did this favor to my husband and signed the release as to the second estates because I lose nothing thereby, as I take my dower in the first estates, from which I have not released my right.) And he lectured that the Halakha prevails in accordance with R. Simeon b. Gamaliel of our Mishna, that if the fruit was ripe it must be appraised separately.*

* No commentary explains for what purpose this statement is made here and what the marriage contract has to do with the appraisement of fruit, or why R. Huna finds it necessary to declare that there is a contradiction in Rabh's decision between his action in practice and the above lecture. It seems to us that this is to be explained

MISHNA II.: One who puts up a stack of grain on another's land without permission, and the land-owner's animal consumed some of the grain, he is free. If the animal was injured thereby, the one who put up the stack is liable. If, however, it was done with permission, the land-owner is liable.

GEMARA: Said R. Papa: It treats here of a case where there was a watchman who told him, "Go and put up your stack," which is construed to mean, "Go, put up your stack, and I will take care of it."

MISHNA III.: One who started a fire through the medium of a deaf-mute, idiot, or minor, he is free from responsibility to an earthly tribunal, but he is liable to the Divine court. If, however, he started the fire through the medium of a sound person, the latter is liable. If one brought fire and the other wood, he that brought the wood is liable. But if the wood was brought first by one, and subsequently another brought the fire, he who brought the fire is liable. If one came and blew at the fire and kindled it, the one who did so is liable. If, however, it was kindled by the wind, all are free.

GEMARA: Said Resh Lakish in the name of Hezekiah: He is not liable to earthly tribunals only if he delivered to the persons mentioned in the Mishna a burning coal and they blew at it; but if he handed them a flame, he who handed it to them is liable. Why so? Because it is his own act that caused the fire. R. Johanan, however, says that even in such a case he is free. Why so? Because it was the deaf-mute's tongue (medium) that caused it. And the court cannot hold him liable unless he handed them both fire and fuel, for in such a case surely his intention was to cause it.

"*If the wind kindled it, all are free.*" The rabbis taught: "If he was blowing at the fire and so also was at the same time the wind—if his blowing, independently of the wind, was sufficient to kindle the fire he is liable; if not, he is free. Why so—let it be as if he was winnowing and the wind helped him, in

thus: The opposition to R. Simeon b. Gamaliel in our Mishna is anonymous, and there is a rule that the author of all the anonymous Mishnas is R. Meir; and R. Meir's decree regarding the marriage contract agrees with the decision in our Mishna, as his theory as regards the marriage contract is that, although the two estates are separate, still they are considered one, because they belong to one owner; and according to this theory, although the fruit is ripe and no more needs the ground, it can nevertheless not be appraised separate from the ground, because they belong to one owner, and the verse quoted applies. Hence the contradiction. The statement of R. Huna is the only one of its kind in the whole Talmud.

which case he is liable? Said R. Ashi: This was said only as regards Sabbath, where the Scripture requires intentional work (and of course he is satisfied with the help afforded him by the wind and thus it is intentional); but here he is the mere cause (*germon*), and there is no liability as regards damages for being a mere *germon*.

MISHNA IV.: If one start a fire and it consume wood, stones, or earth, he is liable; for it is written [Ex. xxii. 5]: "If a fire break out, and meet with thorns, so that stacks of corn, or the standing corn of the field, be consumed thereby, he that kindled the fire shall surely make restitution."

GEMARA: Said Rabha: All those various things were necessary to be enumerated in the Scripture, for one could not be deduced from the other by comparison. Thus, if it mentioned thorns only, it could be assumed that only in such a case there is a liability, because they are destined to be burnt and one does not take proper care, and therefore it is considered gross negligence; but in case of stacks, which are not so and usually one takes proper care of them, it would be considered an accident, for which there is no liability; again, if it mentioned stacks only, it could be assumed that there is a liability, because the damage is great; but in case of thorns, where the damage is little, one might say that there is no liability. But for what purpose is "standing corn" mentioned? To teach that as standing corn is exposed to view, so everything is exposed to view (to exclude that which was concealed from view). [But according to R. Jehudah, who holds that there is a liability also for such things, what does the case just mentioned teach? It comes to include all that is in a standing position, as trees and animals.] "Field"—to include the case where the fire singed the surface of fallow ground or of stones. But let the Scripture mention only "field," and it would include all the others? If so, one might say that it applies only to the *products* of the field (but not to the ground itself), hence it teaches us that (by stating "standing corn" expressly and "field," to include the ground itself).

R. Simeon b. Na'hmani said in the name of R. Johanan: No chastisement comes upon the world unless there are wicked ones in existence, as it is written [ibid., ibid.]: "If a fire break out and meet with thorns." When does a fire break out—when there are *thorns* prepared for it? Its first victims, however, are the upright, as it is written [ibid., ibid.]: "So that stacks of

corn *be* consumed"—not it *shall* consume, to signify that the stacks of corn (the upright) are consumed *first*.

R. Joseph taught: It is written [Ex. xii. 22]: "And none of you shall go out from the door of his house until the morning?" Infer from this that as soon as permission is given to the executioner he makes no distinction between upright and wicked; and furthermore, he picks out his first victims from among the upright, as it is written [Ezek. xxi. 8]: "And I will cut off from thee the righteous *and* the wicked." R. Joseph cried, saying: If they are liable to so much misfortune, what good is there in being upright? Said Abayi: It is of great good to them, as it is written [Isa. lvii. 1]: "*Before* the evil the righteous is taken away" (*i.e.*, that he shall not see the evil that will come in the future).

The rabbis taught: When pestilence is raging in town, stay in-doors, as it is written [Ex. xii. 22]: "And none of you shall go out from the door of his house until the morning"; and it is also written [Isa. xxvi. 20]: "Go, my people, enter thou into thy chambers, and shut thy door behind thee"; and again it is written [Deut. xxxii. 25]: "Without shall the sword destroy, and terror within the chambers." Why the citation of the two additional passages? Lest one say that it is so only as to night-time but not as to day-time, hence the passage in Isaiah, which means at any time; and lest one say that this is so only where there is no terror within the house, but when there is it could be assumed that it were more advisable to go out and associate with others, hence the last-quoted verse in Deuteronomy, to teach that although within the house terror reigns, yet without it is still worse, as "without the sword shall destroy." Rabha in times of fury used to keep the windows shut, for it is written [Jer. ix. 20]: "For death is come up through our *windows*."

The rabbis taught: If there is a famine in town, do not spare your feet and leave town, as it is written [Gen. xii. 10]: "And there arose a famine in the land: and Abram *went down* into Egypt to sojourn there." And it is also written [II Kings, vii. 4]: "If we say, We will enter into the city, then is the famine in the city; and we shall die there." For what purpose is the quotation of the additional passage? Lest one say that it is so only where there is no risk of life, but where there is it is not so, hence the quotation, which is followed by [*ibid.*, *ibid.*]: "If they let us live, we shall live; and if they kill us, we shall but die."

The rabbis taught again: "When there is a pestilence in town, a person shall not walk in the middle of the road; for so long as the Angel of Death has received his permission to rage, he does so high-handed. On the contrary, when peace reigns, one must not walk on the sideways; for so long as he has not the permission, he hides himself away."

R. Ami and R. Assi were sitting before R. Itz'hak Nap'ha. One was asking him to say some Halakha, and the other to say some Agadah. When he began to say a Halakha he was interrupted by one, and when an Agadah he was interrupted by the other. He then said: I will tell you a parable: It is like unto a man who has two wives—an old one and a young one. The young one picks his gray hair and the old one his black hair. The result is that he becomes bald-headed. I will tell you, however, now something which will be to the satisfaction of both of you: (*Agadah*)—It is written [Ex. xxii. 5]: "If a fire *break* out and meet with thorns"—that means, if it should break out of *itself*—"he that kindled the fire shall surely make restitution." Said the Holy One, blessed be He, "I shall surely make restitution for the fire I kindled in Zion," as it is written [Lam. iv. 11]: "He kindled a fire in Zion, which had devoured her foundations"; and, "I shall also build it up again by fire," as it is written [Zech. ii. 9]: "But I—I will be unto her . . . a wall of fire round about, and for glory will I be in the midst of her." (*Halakha*)—Why does the verse begin with the damage by one's property (if a fire break out) and end with damages done by one's person (*he* that kindled the fire)? To teach thee that one is liable for his fire on the same principle as liability for one's arrow.

MISHNA V.: If the fire passed over a fence four ells high, or through a public highway or a river, there is no liability.

GEMARA: But have we not learned in a Boraitha, as regards a fence of such height, that there *is* a liability? Said R. Papa: The Tana of our Mishna counts regressively, viz.: For six, five, and down to (and including) four ells there is no liability; while the Tana of the Boraitha counts progressively, viz.: For two, three, up to (but not including) four, there is a liability. (Hence for four ells, according to both, there is no liability.) Said Rabha: The rule that for four ells there is no liability applies also to a field filled with thorns (which makes it very inflammable). Said R. Papa: The four ells begin to count from the edge of the thorns upwards.

Rabh said: Our Mishna treats of a case where the fire was rising upwards, but if it was creeping (and consuming whatever was in its way, and therefore if it even crossed a public highway, there is a liability) there is a liability even up to a hundred ells. Samuel, however, says the reverse: Our Mishna treats where the fire was creeping; but if it was rising upwards, any dimensions are sufficient to relieve from liability. The following Boraitha is in support of Rabh: This (that if it crossed a public highway there is no liability) was said only if the fire was rising; but if it was creeping and fuel was within reach, even a hundred miles, there is a liability. If it crossed a river or a pool eighteen ells wide, there is no liability.

"*A public highway.*" Who is the Tana who holds so? Said Rabha: It is R. Eliezer, who says in the following Boraitha: If it was sixteen ells, as wide as a public highway, there is no liability.

"*Or a river.*" Rabh said: It means a full-sized river. Samuel, however, said: It means a lake (from which the neighboring fields are irrigated). According to Rabh, it is so even if the river dried up (for so that it be wide enough, it is considered as a public highway), but according to Samuel there must be water in the lake.

MISHNA VI.: If one start a fire on his own premises, how far must the fire pass (in order to subject him to liability)? R. Eliezer b. Azariah said: It is looked upon as if it were in the centre of a space of land sufficient for planting a kur of grain (and if it pass out of such distance, he is liable). R. Eliezer says: Over sixteen ells, as wide as a public highway. R. Aqiba says: Over fifty ells. R. Simeon, however, says: It is written [Ex. xxii. 5]: "He that kindled the fire shall surely make restitution"—that means that he must make restitution for all that was burnt through the fire he started.

GEMARA: Does, then, R. Simeon not hold of distances in regard to fire? (*i.e.*, that a fire must not be built unless it is a certain distance from other objects). Have we not learned in the following Mishna (Baba Bathra, Ch. II., M. 2): R. Simeon says: These distances were said only for the purpose that if they were observed, and still damage was done, there is no liability (hence we see that he holds of distances?). Said R. Na'hman in the name of Rabba b. Abuah: R. Simeon's statement in the Mishna, that one must pay for what was burnt through his fire means that the fire was made by the one who started it of such height

that it could pass the different distances stated, respectively. R. Joseph in the name of R. Jehudah, quoting Samuel, said: The Halakha prevails in accordance with R. Simeon, and so also said R. Na'hman in the name of the same authority.

MISHNA VII. : If one cause his neighbor's stack of grain to burn down, and there be vessels therein which also are burnt, R. Jehudah says that he must pay also for the vessels. The rabbis, however, hold that he pays only for a stack of wheat or barley, as the case may be, of such dimensions. If a bound kid were therein and a slave was standing near by and both were burnt, he must pay for the kid (but not for the slave, as he should have escaped); if, however, a bound slave were therein and a kid was standing near by and both were burnt, he is free (from damages, because he is guilty of murder). And the sages concede to R. Jehudah that, if one set fire to another's house (or palace), he pays for all that was therein contained, for it is customary with people to keep their property in the house.

GEMARA: R. Kahana said: The rabbis and R. Jehudah differ only in case he started the fire on his own and it communicated to another's premises, in which case R. Jehudah holds one liable for the damage done by fire to concealed articles, and the rabbis do not, but if he started the fire on another's premises, they all agree that he pays for all that was contained therein. Said Rabha to him: If so, why does the Mishna state further on that "the rabbis concede," etc.—let it distinguish in that very statement, and say that the case is so only if he started the fire on his own premises, but if on another's they all agree that he must pay for all that was contained therein? Therefore said Rabha: They differ in both; viz., if he started the fire on his own premises and it communicated to another's. R. Jehudah holds him liable for concealed articles and the rabbis hold him free; and also in the other case, R. Jehudah holds that he must pay for all that was concealed therein, even if it were *apvaxis* (a belt made with pockets to place money therein). The rabbis, however, hold that he is liable only for such articles as are usually kept there, as a threshing-board or an ox-bow, but not for such articles as it is not customary to keep there.

The rabbis taught: If one cause a stack of grain belonging to another to burn down, and there be vessels therein which also are burnt, R. Jehudah says that he pays for all that was contained therein. The rabbis, however, hold that he pays only for a stack of wheat or barley, and the vessels are considered as

if their space was occupied with grain. This is so only when he started the fire on his own premises and it communicated to another's; but if he started it originally on another's premises, he pays for all that was therein. And R. Jehudah concedes to the rabbis that, if one permit his neighbor to place a stack of grain on his premises and the other did so and concealed some articles therein (and the owner of the premises cause a fire to burn them) he pays only for the grain; if he permitted him a stack of wheat and he placed there a stack of barley, or *vice versa*, or of wheat and he covered it with barley, or of barley and he covered it with wheat, that he pays only the value of barley.

Rabha said: If one give a golden dinar to a woman and say to her: "Take care of it, for it is a silver dinar," and she damage it, she pays for a golden dinar; for he may say to her: "What right had you to damage it?" If, however, it was lost because of her negligence, she pays only for a silver dinar; for she can say to him: "I obliged myself to take care of a silver dinar only, but not of a golden one." Said R. Mordecai to R. Ashi: Ye learned this in the name of Rabha, while we derived it from the above Boraitha, which states that, if one allowed him to place a stack of wheat and he covered it with barley, or *vice versa*, he pays only the value of barley; hence we see that he may say to him that he obliged himself to take care of barley only. So also here. She may say, "I obliged myself to take care of a silver dinar, but not of a golden dinar." Rabh said: I heard something in regard to R. Jehudah of our Mishna, and I cannot recollect what it was. Said Samuel: Does (Aba) not recollect what was said in regard to R. Jehudah's theory that one is liable for concealed articles? That he must make oath as to the value, as enacted in case of a bailee who claims that he was robbed.

It happened that one kicked the money-pouch of his neighbor into the river. The owner came and claimed that such and such articles were therein. When it came before R. Ashi, he was deliberating as to what was the law in such cases. Said Rabhina to R. A'ha the son of Rabha, according to others R. A'ha the son of Rabha to R. Ashi: Is this not stated in our Mishna: "And the sages concede to R. Jehudah that if one," etc., "because it is customary with people," etc.? He answered: If he had claimed that he had money therein it would be so, but here he claims that he had therein pearls; and the

question is, is it customary with people to keep pearls in a money-pouch? This remains unanswered.

Said R. Jemar to R. Ashi: If one claimed that he kept a silver cup in his house, what is the law? He answered: It must be investigated whether he is a man of such standing that he has silver cups, or whether he is a person whom others trust and deposit with him such article. Then he makes oath, and he is paid; if not, he is not believed, and no oath is given him.

R. Ada the son of R. Avia questioned R. Ashi: What difference is there between a robber and one who uses violence? He answered: He who uses violence pays the value (to the owner who gives up the articles under duress) while a robber does not. He rejoined: If he pays the value, why is it called violence—has not R. Huna said: If even one were threatened with hanging in order to compel him to sell his property, the sale is valid? This presents no difficulty. R. Huna said so only when he finally consented, and said plainly, "I am willing to sell it"; but if he never voluntarily consented it is considered violence, even if the value of the article was received by him.

MISHNA VIII.: If a spark escape from under the blacksmith's hammer and do damage, there is a liability. A camel that was walking on a public highway laden with flax, and the flax pressed into a store and caught fire from the store-keeper's lit candle and set fire to the house, the driver of the camel is liable. If, however, the candle was placed outside the store, the store-keeper is liable. R. Jehudah says: If it was a Hanuka lamp, there is no liability.

GEMARA: Said Rabbina in the name of Rabha: From the statement of R. Jehudah it is to be inferred that there is a merit in placing the Hanuka lamp within ten spans (above the ground); for if it should be assumed to be above ten, why should R. Jehudah say that there is no liability—let him say that the store-keeper should have placed it above the camel and its rider? Hence as stated: Nay, it may be said that it might be placed even above them; but as an answer to the claim that he should have placed it above the camel and its rider, he may say that when one is occupied in the performance of a merit the rabbis do not put him to so much trouble.

CHAPTER VII.

RULES AND REGULATIONS CONCERNING THE PAYMENT OF DOUBLE,
AND FOUR AND FIVE COLLUSIVE WITNESSES; THE RAISING OF
YOUNG CATTLE IN PALESTINE, ETC.

MISHNA I.: The payment of double (in cases of larceny) is more rigorous than the payment of four and five fold; for the former is applicable to animate as well as to inanimate beings, while the latter is applicable to an ox and a sheep alone, as it is written [Ex. xxi. 37]: "If a man steal an ox or a sheep, and kill it or sell it," etc.

The one who steals a stolen article from a thief does not pay double, neither does he pay four or five fold if he afterward slaughtered or sold it.

GEMARA: It does not state that the payment of double is applicable to a thief as well as to one who claims that the bailment was stolen from him, and the payment of four and five fold is applicable to a thief only. Shall we assume from this that this is a support to R. Hyya b. Aba, who said in the name of R. Johanan: One who avails himself, as regards a bailment, of the claim that it was stolen from him, pays double; if he slaughtered or sold it, he pays four and five fold? Does, then, the Mishna state, "there is no difference," etc., "and *only* in this case," etc.? It states only "is more rigorous" and mentioned only one, and did not care to enumerate all.

"*For the payment of four,*" etc. Whence is this deduced? From the following Boraitha: The rabbis taught: It is written [Ex. xxii. 6]: "For all manner of trespass"—this is a *general term*; "for ox, for ass, for lamb, for raiment"—this is a *particular term*; "or for any manner of lost thing"—which is again a *general term*. It is, then, a general, particular, and again a general term, in which case it is construed to be limited to the particular term; and as the particular term states expressly a movable subject, the substance of which is counted as money (a value is put on it), so also the others mean only movable subjects the substances of which are counted as money,

excluding land, which is not movable; slaves, who are likened to land; also documents, which, although movable, their substance is not counted for money; as well as consecrated articles, because the Scripture reads "his *neighbor's*." (The further discussion which follows here belongs to Mishna VI., Chapter IX. of this volume, and is to be found there.)

R. Ilai said: If he stole a lamb and while in his possession it grew into a ram, or a calf and it grew into an ox, this is considered a (material) change while in his possession and he acquires title to it; and if he subsequently slaughtered or sold it, it is considered his own (and he is not liable to the payment of four and five fold). R. Hanina objected to him from the following: If he stole a lamb and it grew into a ram, or a calf and it grew into an ox, he is still liable to the payment of double, and four and five fold, and the payment may be made in such cattle as they were at the time when the theft was committed. Now, if he acquired title by the change, why should he pay—did he not slaughter or sell his own? He answered: But what is your opinion—that the change does not acquire title? why should he pay as at the time the theft was committed—why not their present value? He answered: Because he may say: "Did I then steal of you an ox? I stole of you a calf!" He rejoined: May the Merciful save us from such opinions! He retorted: On the contrary, may the Merciful save us from such opinions as yours.

R. Zera opposed: Let title be acquired (if not by the change in the body of the stolen subject) by the change in its name? Said Rabha: There was no change of name, for a calf one day old is already called "ox," as it is written [Lev. xxii. 27]: "When an *ox* or a sheep or a goat is *born*," etc., and so also a ram, as it is written [Gen. xxxi. 38]: "And the rams of thy flock have I not eaten." Did Jacob then mean to say that only rams he did not eat, but lambs he did? Infer from this that a lamb one day old is already termed *ram*. But, in any event, is this not an objection to R. Ilai? Said R. Shesheth: The above Boraitha is in accordance with the school of Shammai, who hold that the change does not affect the title of the owner, as we have learned in the following Boraitha: If one give to a harlot as her hire wheat and she grind it into fine flour, or olives and she press them into oil, or grapes and she press them into wine—one Boraitha teaches that it is prohibited (to be used for an offering under Deut. xxiii. 19), and another Boraitha teaches

that it is permitted; and R. Joseph said that Gorion of Asphark explained the above, that those who prohibited their use are of the school of Shammai and those who permitted their use are of the school of Hillel. What is the reason of the Beth Shammai? Because it is written [ibid., ibid.]: "For *both* (בְּשֵׁנִי) of them," which means to include also their changed forms; and the Beth Hillel are not very particular about the word "both," and hold that it means only their original but not their changed form.

Now, let us see: The point of difference (between R. Ilai and R. Hanina) is that one holds that the change does, while the other holds that it does not acquire title; but as to the payment, both agree that the original value must be paid, as further on the Boraitha teaches: He pays double, four or five fold, as at the time the theft was committed. Shall we assume that from this there is an objection to Rabh, who said above that where the principal only is paid the original value at the time the theft was committed is paid, but double, four and five fold, is paid as at the time of the *trial*? Said Rabha: If he makes restitution in specie, he returns lambs; but if he pays money, he pays their present value.

Rabba said: That a change acquires title is both written and taught: *Written* [Lev. v. 23]: "And he shall restore the robbed article* that he hath taken violently away." Why did the Scripture mention "that he hath taken violently away"? (is it not understood from the words "*robbed* article"?)—to teach that if it is still in the same state as at the time it was stolen it must be returned in specie; if not, money only shall be paid. *Taught*: if one robbed wood and made it into vessels, wool and made it into garments, he pays as at the time of the theft. "If he had not succeeded in giving it to him (to the priest, the first shorn wool) until he died he is free." Hence we see that change acquires title.

Resignation of hope (when an article was robbed or lost and its owner resigned his hope to regain it), the rabbis said that it does acquire title for the robber. But we do not know whether they mean that it is so biblically, or rabbinically only. It may be said that it is biblically, because it may be equal to one who found an article of which its owner resigned his hope to regain it immediately after it was lost and before it reached the hands of the finder; and the same can be said of the robber that, when

* Leeser does not translate this word literally.

the robbed one resigned his hope of regaining it immediately after he was robbed, the robber subsequently acquired title. On the other hand, it cannot be equalled to a lost article, for when it reached the finder he took it permissively, while the robber, when he took the article, committed a sin. Therefore biblically he never acquired title; but rabbinically it was enacted that he should acquire title for the benefit of those who might wish to repent (that they might be able to return its value). R. Joseph, however, says that resignation of hope does not acquire title even rabbinically (and the stolen article must be returned in specie), and he objected to Rabba from the following: If he stole leaven and kept it over Passover, he may say to the owner, "Yours is before you as it was" (although the owner can no more derive benefit from it, still the damage is not visible). Now, in this case it is certain that the owner has resigned his hope of regaining it, as it is of no value at all for him even if returned; and if this acquires title, why may he say to him, "Yours is before you"—did not the thief acquire title as soon as hope was resigned? And if he desires to repent, he ought to pay the full value in money? He answered: What I mean is, in a case where the one resigned his hope and the other desired to acquire title to it; but in your case, although the owner resigned his hope, the thief did not want to acquire title, as also to him it was of no value.

Rabha said: The discussion whether change in name or action, or resignation of hope, does or does not acquire title remained unexplained for twenty-two years, until R. Joseph became the president of the college, and explained that the change of name is equivalent to change in act, which surely acquires title, as the reason for both is the same. For instance, change in act—if he made vessels out of stolen wood, there is no more wood, but vessels, and at the same time the name was also changed; consequently the acquisition of title comes from both the change in act and in name. The same theory can apply to a thing where the change in act was slight, scarcely noticed; as, for instance, if he trimmed a hide into a horse-blanket, in which case the principal thing is the change in name; for before it was known as a hide, while now it is known as a horse-blanket, and title is acquired.

But is there not a case of a robbed beam which was built into a house—a case very similar to the above, and in which the principal change was in name; because before it was known as

beam and after as a roof, and nevertheless, if not for the rabbinical enactment for the benefit of those who might wish to repent, biblically he had to take apart the building and return the beam in specie? Answered R. Joseph: In this case there was no change in name, as it was called a beam even after being built into the house (as all the beams together are called a roof, but each one separately still retains the name beam; and we so find it in a Boraitha elsewhere).

R. Zera says: Even if the beam in question does no more retain its original name when built into the roof, it would still not be considered a change; for as soon as the building is taken apart the original name "beam" is used again, while in the case of the hide, as soon as it was changed into a horse-blanket, it will never be called "hide" again.

R. Hisda in the name of R. Jonathan said: Whence is it deduced that a change does not acquire title? It is written [Lev. v. 23]: "And he shall return the stolen article," which means in specie under all circumstances. But is it not also written "that he hath taken violently away" (which may be explained to include the value thereof)? This verse is needed to deduce from it that he pays an additional fifth part for his own theft, but not for that of his father (as will be explained in Chapter IX.).

Ula said: Whence is it deduced that resignation of hope to regain property does not acquire title? It is written [Mal. i. 13]: "And ye brought what was robbed, and the lame, and the sick"—that means that "what was robbed" is equal to the lame in this respect, that as the lame cannot be remedied neither can robbery, no matter whether before or after resignation of hope. Rabha deduced this from the expression [Lev. i. 3] "*his* offering," which means but not what was robbed. If before resignation of hope, it is self-evident—why, then, the verse? We must therefore say that it means even after resignation. Infer from this that resignation of hope does not acquire title.

"*And the payment of four*," etc. Why so? Let it be deduced by an analogy of expression of the word "ox" mentioned here and "ox" mentioned in regard to observation of Sabbath; as there "ox" includes beasts and birds, so also here? Said Rabha: The verse says here [Ex. xxi. 37]: "An ox or a sheep" twice, to teach it of only those two, but no others.

"*The one who steals*," etc. Rabh said: This was taught only before resignation of hope; but if after that the first thief

acquired title, and the second thief must pay him double. Said R. Shesheth: "I would say that Rabh said this while he was napping, for we have learned: R. Aqiba said: Why did the Scripture say that if he slaughtered and sold it he must pay four and five fold? Because the sin was deeply rooted in him (and he acquired title to it by his acts). Now, let us see. When? If before resignation, what deep-rooting is there? (he has not acquired title and his acts helped nothing, as no one holds that title is acquired before resignation of hope). We must therefore say that it was after resignation. Now then, if resignation acquires title, why should he pay four and five fold—did he not kill or sell his own? It may be explained as Rabha said (that he must pay four and five fold even before resignation of hope, and the reason is) because he repeated his sin.

(An objection was raised.) Come and hear: It is written [Ex. xxi. 37]: "And kill it, or sell it"; as if killed it can no more return to life, so also in case of sale it must be such that it should not return again. When? If before resignation, it does return? We must therefore say that it relates to after resignation. Now, if resignation acquires title, why should he pay four and five fold—was it not his own when he slaughtered or sold it? It is as R. Na'hman said elsewhere, that even before resignation of hope, if the thief hired it out to a third party for thirty days, although the thief had no title to it, still his act of hiring was valid. So also can our case be explained.

It was taught: One who sells before resignation of hope to regain it, R. Na'hman says that he is liable to pay four fold because he sold it; and the Scripture holds him liable to pay whether before or after resignation. R. Shesheth says that he is free, because it cannot be called sale when the sale is invalid; and therefore his acts were of no effect, and the liability is only where his acts are of effect, as in case of slaughtering. So also was R. Elazar's opinion, that it means after resignation of hope. As R. Elazar said: It must be declared that resignation of hope to regain stolen property comes generally immediately after the occurrence of the theft (and if the thief sold it, his act is valid, because there were both resignation of hope and change of control); and this theory is supported by the Scripture, which holds the thief liable to the payment of four and five fold without fear that the owner might have not resigned his hope; and this is only because generally hope is resigned immediately after the occurrence of the theft. But perhaps the Scripture means even

before resignation of hope ? This would not be correct, for sale and slaughtering are written together; and as in case of slaughtering his acts are accomplished and cannot be undone, so also in case of sale. But perhaps this is so when we know for certain that he has resigned his hope ? This also would not be correct, for the same reason that sale and slaughtering are written together; and as in case of slaughtering there is no difference whether before or after resignation of hope, so also is the case with sale. Said R. Johanan to him: The case of kidnapping [Ex. xxi. 16], in which there is surely no resignation of hope, for no one gives up hope in such cases, and still the Scripture makes him guilty, can prove that the Scripture does not require any resignation of hope. [From this we see that R. Johanan holds that he is liable before resignation of hope.] But what is the law after resignation of hope ? (Does he agree with Rabh's opinion stated above ?) Nay, he holds him liable whether before or after resignation of hope. Resh Lakish, however, holds him liable only before resignation of hope but not after that; for after resignation he acquired title, and if he killed or sold it he did so to his own.

R. Johanan said: A stolen thing of which the owners have not resigned hope to regain it cannot be consecrated. By the owner thereof, because it is not under his control; and by the thief, because he has no title thereto. Did, indeed, R. Johanan say so ? did not R. Johanan say that the Halakha always prevails according to an anonymous Mishna, and there is a Mishna [Second Tithe, Chap. V., M. 1]: A vineyard in the fourth year of its planting (the fruit of which must first be redeemed before using it) used to be marked with clods (of earth), and this was a sign that benefit might be derived from it after being redeemed, as benefit may be derived from earth. In the third year of its planting, however, in which the fruit must be destroyed without deriving any benefit at all from it, it used to be marked with fragments of broken clay vessels, for a sign that as from such fragments no benefit can be had, so also none must be had from the fruit. Graves used to be marked with limestone (to warn passers-by not to step on them lest they become unclean), which is white, for a sign that therein were interred (human) bones, which are also white; and the limestone was dissolved and spread upon the graves, to be more visible. R. Simeon b. Gamaliel, however, said that the vineyards used to be marked in the Sabbatical year only, because the fruit was

considered ownerless, and therefore warning had to be given not to use it (because of the third and fourth years); but in other years, when the fruit must not be used without the permission of the owner, it was not marked, but, on the contrary, let the wicked thief eat of it, and suffer the consequences.

The pious man, however, used to place money in the vineyard, declaring: "All that is plucked and gathered of this fruit shall be redeemed by this money." (Hence we see that although not under his control, still it is redeemed—how, then, can R. Johanan say that neither can consecrate a stolen thing?) But lest one say that the above statement regarding the pious one is not anonymous, but is the continuation of the statement of R. Simeon b. Gamaliel (even then R. Johanan would contradict himself), as Rabba bar bar Hana said in his name, that wherever the teachings of R. Simeon b. Gamaliel are mentioned in our Mishnayoth the Halakha prevails according to him, except in three cases? (which are enumerated in Sanhedrin), it may be said: Do not read, "The pious man used to place money in the vineyard, declaring, 'All that was plucked,' etc., but read, 'All that *will* be plucked,' etc. (*i.e.*, that the money was placed when the fruit was still attached to the trees, and as in the Sabbatical year all fruit is ownerless, the one who plucks and gathers it becomes its owner and at the same time the money placed there redeems it)." But, after all, could, then, R. Johanan say so—did he not say elsewhere that the declaration of the pious ones and of R. Dosa were of one and the same theory, and in the declaration of R. Dosa it is plainly stated "that *was* plucked," as we have learned in the following Boraitha: R. Jehudah said: In the morning the owner of the ground gets up and says, "All that the poor will pluck and gather to-day is hereby declared ownerless." R. Dosa said: The declaration is made toward evening, and thus: "All that the poor *have* plucked and gathered is hereby declared to have been ownerless"? Change the names in the Boraitha, and read instead of R. Dosa R. Jehudah, and instead of R. Jehudah R. Dosa. Why do you declare that Boraitha incorrect—better correct the statement of R. Johanan and place R. Johanan instead of R. Dosa? It may be said that the names in the Boraitha must be changed in any event, for from this Boraitha is to be inferred that R. Jehudah holds to the theory of choice,* and it is known from his statements else-

* This is explained in Section Moed.

where that he does not hold this theory. But, after all, why do you change the names in the Boraitha—because it would be a contradiction between one statement of R. Jehudah and another one? There would be the same contradiction between one statement of R. Johanan and another, as it is known that also R. Johanan does not hold to the theory of choice [and if we should make his declaration read, “that what the poor *will* gather,” it would show that R. Johanan does hold to the theory of choice (as the declaration is made previous to the gathering of the fruit, and whatever had been gathered by the poor had been chosen previously in his mind)]. As R. Assi said in the name of R. Johanan: “Brothers that have partitioned among themselves estates that they inherited, they are considered as vendees, and the estates return in the jubilee year” (and we do not say that the part which came to him by partition was chosen previously to be his part of the inheritance, which, according to the biblical law, does not return; hence he does not hold to the theory of choice?). Therefore R. Johanan’s statement above remains unchanged, but his statement that stolen property cannot be consecrated, etc., is based upon our Mishna (*supra*, page 149), which states, “The one who steals a stolen article from a thief does not pay double” (which is anonymous). And why so? It would be correct that he should not pay to the thief, for it is written [Ex. xxii. 6]: “And it be stolen out of the *man’s house*,” but not of the house of the *thief*. But why should he not pay it to the *owner* of the property? We must say, then, that to the thief he does not pay because it was not his, and not to the owner because it was not under his control; and this is the very statement of R. Johanan. But still, why should he adopt *this* anonymous Mishna and ignore the *other*—why not adopt the anonymous Mishna which treats of the pious ones? Because for this statement support can be found in the Scripture [Lev. xxvii. 14]: “And if a man sanctify his house as holy unto the Lord,” from which is to be deduced that as “his house” is under his own control, so also other things which are under his own control (but not otherwise).

Abayi said: If it should not be said in the name of R. Johanan that “the pious” and R. Dosa are of the same theory, I would say that the pious ones hold to the theory of R. Dosa, but R. Dosa does not hold to the theory of the pious ones, viz.: The pious ones hold to the theory of R. Dosa because they arrived at their decision to make such declaration by draw-

ing the following *a fortiori* conclusion: A thief who has committed a sin, the rabbis made an enactment for him not to pay double (to enable him to repent and to make restitution); so much the more an enactment must be made for the poor (to prevent them from sin). R. Dosa, however, does not concur with them, for according to him the rabbis made their enactment for the poor only and not for the thief (and the law that the thief must not pay double to the first thief is not an enactment of the rabbis but a biblical law). Said Rabha: Were it not for the above statement of R. Johanan that the pious ones and R. Dosa, etc., I would say that under "the pious ones" R. Meir is meant, because did not R. Meir say elsewhere that second tithe is consecrated property, and nevertheless as regards its redemption the Law considers it as if it were under the owner's control? *

The sages of Nahardea said: No writ of replevin of personal property is granted by the court, the bailee of which denied its possession before the court. This is so when the bailee denied its possession, for it would look as if the court issued a writ the execution of which was not certain; but when he admitted possession but not ownership by the plaintiff, a writ might be issued. The same said also: A writ of replevin which does not contain the following direction: "Investigate, take possession, and retain it for yourself," is invalid; for the bailee can say to him, "The property is not assigned to you, and you are not the proper party plaintiff." Said Abayi: If the direction is contained, but it states only as to part of it, the bailee cannot say that he is not the proper party plaintiff; for if part is assigned to him by the court, he has authority to replevy the whole. Said Ameimar: If the writ did not contain the above direction, and nevertheless he took possession of it, the court cannot compel him to return it. (Rashi explains that according to other commentators it means that if the messenger of the court who executed the writ of replevin has kept the property for himself for a debt due him from one of the parties to the litigation, the court cannot compel him to give it up. Rashi approves of this explanation, saying that he found it in the Decisions of the Gaonim.) R. Ashi, however, says that the court has the right to compel him to return it, because when

* R. Meir's statement and the full discussion of it will be found translated in the forthcoming tracts at the proper place.

the court appointed one to execute its mandates it was upon the written condition that he should obey all the orders of the court ; consequently he is only a messenger of the court and he has no right to keep it for himself. And so also the Halakha prevails.

MISHNA II. : If two witnesses testify that one stole (an ox or a sheep), and either the same or other witnesses testify that he slaughtered or sold the same, he must pay four and five fold. If one stole the same and sold it on the Sabbath, or he stole and sold it for idolatry ; or he stole and slaughtered it on the Day of Atonement ; or he stole from his father and slaughtered and sold it, and thereafter his father died ; or he stole and slaughtered it and then consecrated it—in all those cases he pays four and five fold. The same is the case if he stole and slaughtered it in order to use it as a medicine, or to feed his dogs therewith ; or he slaughtered it and it was found unfit for eating (*trep̄ha*) ; or he slaughtered it in the Temple court without consecrating it as an offering. R. Simeon, however, makes him free in the two last-named cases.

GEMARA : “ *If he stole and sold it on the Sabbath,*” etc. But have we not learned elsewhere that in such a case he is free ? Said Rami b. Hama : The Boraitha which says that he is free from the payment of four and five fold treats of a case where the thief sold the stolen property to the owner of a garden and received in payment figs which the thief himself plucked on Sabbath (and thus incurred the penalty of capital punishment, and there is a rule that where there is capital punishment there can be no mention of civil liability). But it may be said that such must not be considered a sale. For if, for instance, the owner of the garden should claim before the court that he has not received from the thief the value of the figs, we would not make him liable to pay for the figs as he has committed a crime, and the above maxim applies also here ; consequently there was no sale.

Said Rabha : Even in a case where the court would not entertain the plaintiff’s complaint, the sale would still be called a sale as regards the same required by Scripture. As, for instance, the law prohibits the hire of a harlot, even if she was his own mother (and he promised her a sheep as her hire). Now, if she would sue him before a court for failing to pay her the hire, would the court then direct him to pay it—and nevertheless if he had given her the sheep it would be called “harlot’s hire” and its use would be

prohibited? The same is the case here: although as regards the enforcement of payment of the claim the court would not interfere, still, because he transferred it to him in this manner the sale is valid.

"If he stole and sold it on the Day of Atonement," etc. Why so? It is true that there is no capital punishment; but is he not liable to punishment by stripes—and there is a rule that he who is punished by stripes is free from payment? It may be said that it is according to R. Meir, who holds that stripes do not absolve from civil liability. If so, then let him also be liable if he slaughtered it on the Sabbath. And lest one say that R. Meir holds only that stripes do not free from payment but capital punishment does, have we not learned in the following Boraitha: If he stole and slaughtered it on the Sabbath . . . (although he incurs the death penalty) he pays four and five: such is the dictum of R. Meir. The rabbis, however, make him free? Said the schoolmen: Leave the Boraitha alone, as it was taught in regard to the same: R. Abin, R. Ilai, and the whole society said in the name of R. Johanan that the Boraitha treats of a case where he slaughtered it through an agent. But is there, then, a case where one commits a transgression and another is liable for it (have we not a rule that there is no agent to commit a sin)? Said Rabha: The case here is different, for the verse reads [Ex. xxi. 37]: "And kill it or sell it." As in case of sale there must be another person (to buy it), so also in case of slaughtering, when it was slaughtered by another under his direction. The school of R. Ishmael inferred this from the additional word "or"; the school of Hezekiah inferred it from the word "for" used in that verse.

Mar Zutra opposed: Is there, then, a case where one, if he did it himself, would not be liable, but if he did it though a messenger he would be liable? Said R. Ashi to him: There the reason is not because he is not liable, but because he is guilty of a capital punishment, and the above rule applies. Now, when you say that the above Boraitha treats of a case where he slaughtered it through a messenger, why do the rabbis make him free of four and five fold? The schoolmen explained that by the "rabbis" mentioned in the Boraitha in question is meant R. Simeon, who holds that slaughtering which is not legal is not called slaughtering in accordance with the requirements of the Scripture.

"If he stole from his father," etc. Rabha questioned R. Nahman:

If he stole an ox belonging to two partners and slaughtered him, and then he confessed to one of the partners, what is the law? Shall we say that the Scripture [Ex. xxi. 37] meant five *whole* oxen, but not *half* oxen (for every partner has a right only to one-half of each ox), or shall we say that in "five oxen" the halves are included? He answered him: The Scripture reads "five (whole) oxen," and not *half* oxen. He objected: It states further: "If he stole from his father and slaughtered or sold it, and thereafter his father died (and the thief became one of the heirs), he pays four or five." Now, when he is one of the heirs, is this not equal to the case where he confessed to one partner (and this makes him free entirely for the above reason—"an ox" and not "a half ox"; and the same ought to be here, because he is an heir, and the payment of a "whole" ox does no longer hold)? He answered him: The case here was that his father before he died laid already the matter before the court. But how is it if he had not laid the matter before the court—does he not pay? If so, why should it state in the latter part, "If he stole from his father and he died, and thereafter he slaughtered or sold it, he does not pay"? Let the Tana distinguish in the very first case, thus: This was said only where the deceased laid the matter before the court; but if he had not yet done so, he does not pay? He rejoined: It is really so; but because it states in the first part, "If he stole from his father and slaughtered it, and thereafter the father died," it also states in the latter part, "If he stole from his father, who soon died, and thereafter he slaughtered or sold it." On the next morning R. Nahman said to Rabha: (I have reconsidered the matter, have changed my mind, and came to the conclusion thus:) In the expression "five oxen" halves are included, and what I told you last night was said without careful deliberation. But what difference is there between the first and the last part (why does the latter part make him free)? He answered: The Scripture reads, "*and* killed it," which means that as the stealing was in transgression, so also ought to be the killing, as is the case in the first part. In the latter part, however, the killing was no more in transgression, as it belonged to him.

"*One who slaughtered,*" etc., "*and it was found unfit,*" etc. Said R. Simeon in the name of R. Levi the elder: It is considered slaughtered only when the act is fully accomplished. R. Johanan, however, says: It is so considered from the very beginning. Said R. Habibi of Husnahah to R. Ashi: Shall we assume that R. Johanan holds that the prohibition to use meat

of cattle slaughtered in the Temple court, which was not consecrated as an offering, is not biblical? (See Kiddushin, p. 58.) For if it is biblical, as soon as the act of slaughtering began it became a forbidden thing from which no benefit must be derived, and the remainder of the act was carried out on what belonged no more to the owner—why then is he liable to pay four and five fold? Said R. A'ha the son of Rabha to him: The liability is incurred from the very beginning of the act. Said R. Ashi: This is no answer, for it reads "and kill it," which means the fully accomplished act, which would not be so in this case. But then the above question remains? He rejoined: So said R. Gamda in the name of Rabha: The liability is incurred in case he cut part of the trachea and gullet outside, and the remainder of same inside the Temple court (in which case there is the fully accomplished act before it became a prohibited thing).

MISHNA III. If two witnesses testify that one stole an animal, and those very same witnesses testify that he had thereafter slaughtered or sold it, and subsequently those witnesses are proved collusive, the collusive witnesses must pay the full liability of four and five fold. If two witnesses testify that he stole it and other two testify that he slaughtered or sold it, and both sets of witnesses are proved collusive, the first set pays the double and the second set pays the balance of the five. If the second set is found collusive, the thief pays for two and the collusive witnesses for three. If only one of the second set is proved collusive, the whole testimony of the second set is invalidated. If one of the first set was found collusive, the whole testimony in the case was invalidated; for if there is no theft, there can be no (liability for) slaughtering or selling.

GEMARA: It was taught: A collusive witness—Abayi said that he is considered such from the date on which he gave the collusive testimony (and all the testimony he gave since then is incompetent); for as soon as he gave the collusive testimony he was considered wicked, and it is written [Ex. xxiii. 1]: "Put not . . . wicked to be a witness." Rabha says that he is considered such only from the date on which he was proved collusive; for a collusive witness is an exception in the law, for they are two against two. Why, then, give more veracity to the latter two than to the former? Therefore the law applying to a collusive witness begins only from the date on which he was proved such. According to others, Rabha agrees with Abayi that he is considered collusive from the date on which the tes-

timony was given; but in case they have in the meantime signed their names to a bill of sale, Rabha does not hold the conveyance invalid, in order that the grantee should suffer no damage. In which case can there be a difference in those two versions? In case two witnesses proved the collusiveness of one and two others proved the collusiveness of the other, or that their testimony was made incompetent by other witnesses testifying that they were robbers: according to the first version the reason of Rabha is because it is an exception. Here there is no exception, because there are four against two; consequently Rabha would agree with Abayi that all their testimony given in the meantime is invalid. According to the others, who say that the reason is that the grantee shall suffer no damages by invalidating the conveyance, there is no difference whether there were two or four. R. Jeremiah of Diphthi said: There happened a case and R. Papa acted in accordance with Rabha. R. Ashi, however, said that the Halakha prevails according to Abayi. There is a rule that always the Halakha prevails according to Rabha when he differs with Abayi, except in the six cases, the case at bar being one of them.

There is an objection from our Mishna, which states: "If two witnesses testified that he stole an animal, etc., they pay the full liability." Shall we not assume that they at one time testified as to the theft and at another time as to the slaughtering, and then they were first proved collusive as to the theft and subsequently as to the slaughtering? Now then, if they were considered collusive from the date on which they gave the collusive testimony, as soon as they were proved collusive as to the theft, it was established that their testimony as to the slaughtering was incompetent, and why should they pay for the testimony of the slaughtering? It may be explained that the case was that they were proved collusive as to the slaughtering first. But still, when they were subsequently proved collusive as to the theft it was established that they were incompetent, and why should they pay for their testimony of slaughtering? The Halakha prevails that the Mishna treats of a case where their testimony was given at one and the same time, and subsequently they were proved collusive.

Rabha said: Witnesses that testified that one has committed murder and the court found the accused guilty on their testimony, and two other witnesses subsequently denied the testimony, and still another set of two witnesses testified that the first two

were with them at another place at the alleged time of the murder (*alibi*), which testimony makes them collusive (according to Scripture), they must suffer the death penalty, for denial is the beginning of collusion which is subsequently proved by the last witnesses. And he said again : My theory is based upon the following Boraitha : " If two witnesses testify that a certain person blinded his slave's eye and thereafter knocked out one of his teeth, and they also testify that the owner of the slave admitted it, and subsequently the witnesses are found collusive, they must pay to the slave the value of the eye." Now, how is the case? Shall we assume that it was as stated without any other set of witnesses to deny the former testimony, and the slave was manumitted on their testimony, then the expression ought to be "and they pay to *him* (instead of 'to the slave,' for he was already manumitted) the value of his eye, and to his master the value of an uninjured slave"? Another proof is that the case is that there was no denial—that they also testify that the owner admitted it, for what purpose is this? We must therefore say that another set of two witnesses testify that he knocked out one of his teeth first, and then blinded his eye, in which case the owner must pay him the value of the eye; then came a third set of witnesses and testified that he *first* blinded his eye and *then* knocked out his tooth, in which case the owner must pay him only the value of the tooth, because there is a contradiction between the first and the middle sets, and the statement that the owner admitted it means that he is more satisfied with their testimony, as he has to pay only the value of a tooth, and the statement that they were found collusive has reference to the middle set, and nevertheless it is stated that they must pay the slave the value of the eye, hence that denial is the beginning of collusion. (For if it is not, why should the law of collusion apply to them after their testimony became incompetent?) Said Abayi : Nay, not as you say, that because if there would be three sets of witnesses, as soon as the middle one was denied by the first one the third set could not make it collusive. The case, however, was that the set which became afterwards collusive is the first set, and your proof from the fact that the Boraitha does not state that the collusive set has to pay to the master can be explained thus : The second set did not deny the fact, but only reversed the order, *i.e.*, they say to the first set, "On that day on which you claim that the master had blinded his eye," etc., "you were with us and you could not witness the crime; but we did witness on another day that the master first

knocked out his tooth and then blinded his eye." And therefore the Boraitha does not state that they must pay the value of the slave, etc., because the slave becomes free even on their testimony; and I take this from the last part of the same Boraitha: "We testify that a certain person knocked out his slave's tooth and blinded his eye, and this is just as the slave says, and thereafter they were proved collusive, they pay the value of the eye to the owner." Now, how was the case? If the second set does not admit any wounding at all, then the first set must pay to the owner the value of the whole slave. It is therefore apparent that all admit that he wounded him, but that they reverse the order of the wounding, and thus prove them collusive. Now, as the last part treats of a case where they became collusive through the reversal, the first part must also treat of a similar case. (Says the Gemara :) After all, let us see how the case was: If the second set testify that it happened on a later date, then the first must still pay the full value of the slave, because on the day on which they testify it happened the slave had not to be manumitted? We must therefore say that the second set testify that it happened on an earlier date. But still, even in such a case, if the slave had not summoned him to court before the testimony of the first was given, they must still pay the full value of the slave; for before their testimony the owner was not subject to liability (to manumit the slave)? It must therefore be said that the case was after judgment was given.

R. Zera opposed: Whence do we know that money must be paid? Perhaps when he only blinded his eye he is manumitted because of that, if when he only knocked out one of his teeth he is manumitted because of that, and when he did both—blinded his eye and knocked out one of his teeth—he is also only manumitted and no money is paid. Said Abayi: As to your question, the verse reads, "for the sake of his tooth," which does not mean for the sake of his tooth *and* eye; and also "for the sake of his eye," which does not mean for the sake of his eye *and* tooth.

Regarding witnesses whose testimony was first denied and then proved collusive (as to which Abayi and Rabha differ above), R. Johanan and R. Elazar also differ: One holds that they are put to death, the other holds that they are not. It may be inferred that the one who holds that they are not put to death is R. Elazar, for he said elsewhere that witnesses whose testimony was only denied (but not proved collusive), in a case in which human life was involved, have to suffer the penalty of

stripes. Now, if we should assume that R. Elazar is the one who holds that they have to suffer the death penalty if proved collusive, why should they be punished with stripes in case their testimony was only denied? is it not a "negative process" that entails the death penalty by the court, and in such cases no stripes are administered? We must therefore say that it is R. Elazar who holds in the above Boraitha that they have not to suffer the death penalty.

"They are punished with stripes." Why so? Are they not two against two? Why should more credence be given to the one set than to the other? Said Abayi: The case is that the supposed murdered person appeared in court alive.

MISHNA IV.: If two witnesses testify that he stole it, and one witness, or he himself, testifies that he slaughtered or sold it, he pays only two, but not four and five fold. If he stole and slaughtered it on Sabbath, or sold it for purposes of idolatry; if he stole it from his father and this latter died, and subsequently he slaughtered or sold it; if he stole and consecrated it, and thereafter slaughtered or sold it—in all those cases he pays only double and not four and five fold. R. Simeon says: If one stole consecrated cattle for which the one who consecrated them is responsible, and slaughtered them, he must pay four and five fold; if, however, it is that for which he is not responsible, the thief is free.

GEMARA: The Mishna states, "If one witness," etc. Is this not self-evident? It may be said that it means to teach us that when he himself admits that he slaughtered, it is equal to the case where one witness testifies; as in the latter case, if thereafter another witness comes and testifies to the same thing, their testimony is taken together to make up the requisite number of witnesses, so also in this case the testimony of another witness is added to his own, in opposition to what R. Huna said in the name of Rabh, that one who admits to the court that he has incurred the liability to pay a fine and thereafter witnesses appear, he is free. R. Hisda objected to R. Huna's statement from the following: It happened that R. Gamaliel blinded the eye of his slave Tabi and he was very glad of the occurrence. When he met R. Jehoshua, he said to him: Do not you know yet that my slave Tabi is manumitted because I blinded his eye? Said R. Jehoshua to him: Your statement does not make him free, for he has no witnesses. Hence we infer from R. Jehoshua's answer that if there appear witnesses after an admission of the

incurrence of the liability to pay a fine, the latter must be paid? He answered him: The case of R. Gamaliel is different, for he had not admitted it before the court. But was, then, R. Jehoshua not the president of the court? Yea, but it was not during the session of the court, but only as to a private person. But have we not learned in another Boraitha that what R. Jehoshua said to him was: This is nothing, for you yourself admitted it (from which is to be inferred that even if witnesses appear thereafter he is also free)? And is it not also to be assumed that the reason for the different statements of the Boraithas is: The Tana who says that he told him, "because he has no witnesses," holds that if witnesses should appear after the admission the slave would be liberated, and the Tana who says that R. Jehoshua told him, "because you already admitted," means to say that after admission the testimony of witnesses is of no avail? Nay, all agree that witnesses who appear after an admission count nothing; but the point of difference is this: The one who says, "because he has no witnesses," means that it was not before the court, and the one who says, "because you already admitted," means that he had done so before the court.

It was taught: "One who admits that he has incurred the liability of a fine and thereafter witnesses appear, Rabh says that he is free. Samuel, however, says that he must pay." Said Rabha for Ahilai: The reason of Rabh's theory is because in the verse [Ex. xxii. 3] the word "found" is repeated twice, which means that if it should be "found" by testimony of witnesses, he should be "found" (liable to pay the fine) by the court, excluding the case of self-incrimination. But is this not deduced from the verse [ibid., ibid. 8]: "And he whom the *judges* may condemn"? We must therefore say that the first-quoted verse means to exclude the case where one admits his liability to pay a fine and thereafter witnesses appear.

What does Samuel deduce from this verse? He deduces that the thief himself must pay double, as it was taught in the school of Hezekiah that the double payment applies only when he himself stole it, but not where he claims that it was stolen from him. Rabh objected to Samuel from the following: If on seeing that witnesses were coming the thief admits the theft, but denies the slaughtering, etc., he pays only the principal. (Hence we see that if he admits before witnesses appear he is free from the payment of double, which is a fine?) He answered him: The case is that the witnesses withdrew and did not appear. But since it

states in the last part: "R. Elazar b. R. Simeon said: Let witnesses come and testify (after he admitted, so that the fine should be paid)," it is to be inferred that the Tana of the first part holds that he is not liable (although the witnesses came and testify?) Said Samuel: The very same R. Elazar b. Simeon quoted by you, who holds as I do, is the basis of my theory.

According to Samuel, surely Tanaim differ (and the Tana of the first part cannot be explained to be in accordance with him); but according to Rabh it is to be assumed that he explains Elazar's statement to be in accordance with him, namely: Elazar's statement was only where he admits for fear of witnesses; but where the admission is made without such fear, even he would concede that he is free? (Yea, so it is.) Said R. Hamnuna: It seems that Rabh's theory is applicable to the following case: If one confesses to theft and thereafter witnesses testify to the same, he is free from fine, for by his confession he made himself liable to pay the principal; but when he first denies, and after witnesses testify that he committed the theft he confesses to both the theft and the slaughtering, he is liable to pay four and five fold, for he sought to free himself entirely. Said Rabha to him: By your statement you caused grief to all the elders of the college: Did not R. Gamaliel by his confession, "I have blinded the eye of my slave," make himself free from fine, and still R. Huna, who was objected to from this fact by R. Hisda, did not give the reason stated by you (and R. Huna was an actual disciple of Rabh? hence, your statement is not correct)? (Notwithstanding the objection of Rabha, it was taught by R. Hyya b. Aba in the name of R. Johanan exactly as stated by R. Hamnuna.)

Said R. Ashi: From both our Mishna and the above-quoted Boraitha it is also to be inferred that R. Johanan's statement is correct, viz.: The Mishna, viz.: "If two witnesses testify that he committed the theft," etc. Why should it not better state: "If one witness or he himself testifies that he stole and slaughtered it, he pays only the principal" (for all what the Mishna means to teach us is that one's own confession frees him from the payment of fine; and if it should state as just mentioned, it would also include the payment of four and five fold)? We must therefore say that the Mishna comes to teach that only in case he did not make himself liable even for the payment of the principal, as e. g. that witnesses testify to the theft, and he only confessed, or one witness testifies to the slaughtering, etc., then only may it be said that his confession is equivalent to the testimony of one

witness ; so that if another witness should come thereafter and testify, his testimony would be added to that of the first witness and he would be liable ; so also if after he confessed one witness appears, his testimony should be added to the confession, and he should be liable to pay four and five fold ; but when he first confesses to both the theft and the slaughtering, or only one witness testifies thereto, in which case he makes himself liable to the payment of the principal, if even thereafter another witness comes, his testimony is not to be added to the confession, and he has to pay only the principal.

The Boraitha, viz. : " If one seeing witnesses coming confesses to the theft, but denies the slaughtering," etc. Why does the Boraitha state as it does? Let it state, ". . . and he admits that he stole it, *or* that he slaughtered and sold it, he pays the principal only " ? (And we would infer from this that also when he even admits only the slaughtering, in which case he seeks to be entirely free, it is nevertheless considered an admission to make him liable for the principal?) We must therefore say that it means to teach us that only when he confess to the theft which makes him liable to the payment of the principal he is free (from fine), but when he does not confess to the theft, but the same is proved by witnesses and thereafter he admits that he slaughtered and sold it, and subsequently the same is also proved by witnesses, in which case he did not make himself liable even to the payment of the principal, he is liable (also to pay fine). Hence, we see that the admission of having slaughtered it (not coupled with the confession to the theft) is not considered an admission at all? Nay, it may be said that it means to teach us this very thing, viz. : Because he confessed to the theft, although he did not admit that he slaughtered or sold it, and thereafter witnesses testify that he slaughtered and sold it, he is nevertheless free from four and five, for the Scripture reads, " four or five," but not " four or three " (and here, when he confesses to the theft, he is liable to the payment of the principal only, and if we should make him liable for the slaughtering, etc., he would have to pay two more for a sheep or three more for an ox, so that it would be " three or four," but not " four or five ").

" *If he stole and consecrated it, and thereafter slaughtered or sold it,*" etc. This would be correct in case of slaughtering, for at the time of the slaughtering it was already consecrated property and not that of the owner. But why should he not be liable for the consecration itself—is this not considered a transfer from one

owner to another, and what difference is there whether he sold it to a human being or to the sanctuary? Nay, there is a difference: In the first case its name is changed, for before the sale he is the ox of Reuben and after the sale he is the ox of Simeon, while when he consecrated him he still continues to be known as "*Reuben's* consecrated ox."

"*R. Simeon says*," etc. Now, when R. Simeon holds that there is no difference whether he is sold to another person or sold to the Sanctuary, then the reverse should be the conclusion: If his responsibility still continues after the consecration, he should be free, because it is still under his control; and if his responsibility ceases upon the consecration he should be liable, for by the act of the consecration he placed it under the control of the Sanctuary; and according to him, it is the same as if he sold it to a commoner? R. Simeon's statement has reference to the following Boraitha: "It may be said that the payment of four and five fold applies neither to one who steals stolen property from a thief, nor to one who steals consecrated property from the house of him who consecrated it, because it is written [Ex. xx. 6]: 'And it be stolen out of the *man's* house,' which means but not out of the house of the Sanctuary." * R. Simeon says: If he is responsible for the consecrated property, he is liable, for the reason that it is still under his control, and the verse, "be stolen out of the *man's* house," is still to be applied, but not when it is not under his control. Rabha questioned: If one makes a vow to bring a burnt-offering and sets aside an ox for such offering, and thereafter the ox is stolen, may the thief make restitution by returning a sheep, according to the rabbis, or a dove or a pigeon, according to R. Elazar b. Azariah, as we have learned in the following Mishna: "If one say, 'I oblige myself to bring a burnt-offering,' he may bring a sheep; R. Elazar b. Azariah, however, says that he may bring a dove or a pigeon." Now, how is the law in our case: Shall we assume that the thief may say, "You obliged yourself to bring a burnt-offering, and here it is," or the owner may say, "My wish is to do this merit in the best manner possible"? After he questioned, he himself answered: The restitution of the thief is acceptable according to the rabbis if it is a sheep, and according to R. Elazar b. Azariah if it is a fowl. R. A'ha the son of R. Iqa taught that the above

* Because it now belongs to the Sanctuary and not to him who consecrated it, it is considered as if it would be stolen from the house of the Sanctuary.

saying of Rabha was not questioned and answered as stated above, but was originally said so by him.

MISHNA V.: If the thief sells all but one-hundredth part of it, or he is a co-owner of it, or he slaughters it illegally so that it becomes a carrion, or he lacerates it (from the nostrils to the heart), or he tears the trachea and gullet, he pays only double, but not four and five fold.

GEMARA: What is meant by one-hundredth part of it? Said Rabh: It means of the meat which is made permissible for use by the legal slaughtering of the animal: Levi, however, holds even of the wool which is to be shorn. So also was taught plainly in a Boraitha. But according to whom, then, is Rabh's statement? According to R. Simeon b. Elazar of the following Boraitha, who said: "If he sells all but one of its fore or hind legs, he does not pay four and five fold; if, however, he sells all but its horns or its wool, he does pay four and five fold." On what point do they differ? The first Tana holds that "and kill it or sell it" [Ex. xxi. 37] means, as in case of slaughtering, it must be the whole, so also in case of sale. R. Simeon b. Elazar, however, holds that the fore and hind legs, which require legal slaughtering, if he excluded them from the sale, it is considered a sufficient remainder, and he is free from payment of four and five fold; but the horns and wool, which require no slaughtering, are not considered a sufficient remainder.

The rabbis taught: "One who steals an animal one leg of which is missing, or which is lame or blind, or one who steals an animal belonging to a co-partnership, is liable. But partners that steal together are free." But have we not learned in another Boraitha that partners are liable? Said R. Na'hman: This presents no difficulty: The first Boraitha treats of a case where one partner stole of his co-partner (and therefore it is not considered a sale of the whole, for he himself is entitled to half), and the other Boraitha treats of a case where one partner steals from a third party. Rabha objected to R. Na'hman: "Lest it be assumed that a partner who steals from his co-partner, or two partners that steal together (from a third party), should be liable, therefore it is written [ibid]. 'And kill it,' which means the *whole* of it, which cannot be the case here?" Therefore said R. Na'hman: This presents no difficulty: The Boraitha which states that he is liable means a case where he slaughters it with the knowledge of his co-partner (in which case he is considered the agent of the other partner, and the act is that of both part-

ners), and the Boraitha which states that he is free means a case where he slaughters it without the knowledge of his co-partner (in which case it is considered that he slaughters the part stolen by his co-partner, which he did without permission, and it was said above that if one slaughters the animal stolen by another one is free from four and five fold; for his own half, however, he cannot be liable, for it is not considered the slaughtering of the whole).

The Rabbis taught: "If he steals it and gives it to another party who slaughters, sells, or consecrates it; or he steals and sells it to another party on credit, or exchanged it, or makes a present of it, or gives it to his creditor in payment of a loan made to him, or he gives it to his creditor in payment for merchandise sold to him on credit, or makes it a bridal-gift—in all those cases he pays four and five fold." What new thing does this mean to teach us? The first part, which states the case where he gives it to another who slaughters it, means to teach us that in this particular case he is liable for the act of his agent, although in other cases one who appoints a messenger to commit a transgression is not liable for the act of the messenger (see above, p. 120, and the latter part, which states that he consecrates it, means to teach us that there is no difference whether he sells it to an ordinary person or to the Sanctuary.

MISHNA VI. : (The liability to the fine of four and five fold applies only where the thief slaughters it after he acquired title to it, or he slaughters it outside of the owner's premises, namely :) If he steals it within the premises of the owner and slaughters or sells it outside of it, or he steals it outside of the owner's premises and slaughters or sells it within the premises, or the stealing, slaughtering, and sale are outside of the owner's premises, he pays four and five fold. If, however, the stealing, slaughtering, and sale are within the owner's premises, he is free.

If while the thief is leading the animal out it dies, still within the premises of the owner, he is free. If he lifts it up or leads it out of the premises, and it dies, he is liable. If he redeems his first-born son with it, or he gives it to his creditor, or to a gratuitous bailee or to a borrower to do work with it, or to a bailee for hire, or to a hirer, and the other person is drawing it forth and it dies while still on the premises of the owner, he is free. If, however, he lifts it up or he leads it out of the premises and it dies, he is liable.

GEMARA. Ameimar questioned: Was it enacted that a

bailee should not be liable unless he should first draw (see above) the bailment, or not? Said R. Imar to him: Come and hear the statement of our Mishna: "If he redeems his first-born son with it, or he gives it to his creditor, etc., he is free." Does this not mean that the bailee drew it? Infer from this that there is such an enactment. We have so also learned in the following Boraitha: "R. Elazar said: As it was enacted that a buyer has to acquire title by drawing the article he buys, so also was it enacted that the bailee should draw the bailment when he takes it under his control." So also we have learned in a Boraitha with the addition: "And as title to real property can be acquired by money, conveyance, and occupancy (*hasaka*), so also title to rents can be acquired by those three." What kind of rents? Shall we assume rent of personal property—can, then, personal property be rented by a conveyance? Must it not be drawn? Said R. Hisda: Rent of real property is meant.

R. Elazar said: If it was noticed that the thief was hiding himself in the forest (for the purpose of stealing an animal) and he slaughters or sells it therein, he pays four and five fold. Why so—he had not drawn it? Said R. Hisda: The case was that he drove it on with a stick. But if he did it so openly that it could be noticed, then he is a robber (and not a thief, and according to the Scripture he is free from the payment of four and five fold)? Nay, because he tried to hide himself, he is considered a thief. Under what circumstances, then, can he be considered a robber? Said R. Abbahu: As, for instance, Benayahu the son of Yehoyada, of whom it is written [II Samuel, xxxiii. 21]: "And he snatched the spear out of the Egyptian's hand and slew him with his own spear." R. Johanan says: As, for instance, the men of Shechem, of whom it is written [Judges, ix. 25]: "And the men of Shechem set persons to lie in wait for him on the top of the mountains, and they robbed all that passed by them on that way."

The disciples questioned R. Johanan b. Zakkai: Why did the Scripture treat more rigorously with the thief than with the robber? He answered them: Because the robber put the honor of his Creator at least on the same level with that of His servant, while the thief did not do so, but, on the contrary, considered the eye and ear of Heaven as if it would not see and hear; as it is written [Is. xxix. 15]: "Woe unto those that seek to hide deeply their counsel from the Lord, so that their works may be in the dark, and they say, Who seeth us?" etc.; and it is also written [Ps. xliv. 7]: "And they say, The Lord will not see, and the God

of Jacob will not take notice of it"; and it is also written [Ezek. ix. 9]: "For they have said, The Lord hath forsaken the land and the Lord seeth not."

R. Meir said: The following parable was related in the name of R. Gamaliel: To what is the above equal? To two persons who lived in one and the same town. One made a feast and invited all the inhabitants of the town, but not the princes; the other one made a feast and invited neither the inhabitants nor the princes. Whose punishment ought to be severer? Surely that of the first one.

The same said again: Ponder over the greatness of labor: In case of stealing an ox which he prevented from laboring, the thief pays five; in case of a sheep which does not perform any work, he pays only four. R. Johanan b. Zakkai said: Ponder over the greatness of the honor of creatures. For an ox who walks with his feet, he pays five; but for a sheep, for which he had to humiliate himself by carrying it on his shoulders, he pays only four.

MISHNA VII. : No tender cattle must be raised in Palestine, but they may be raised in Syria and in the deserts of Palestine. No cocks or hens must be raised in Jerusalem (even by laymen), because of the voluntary offerings (the meat of which may be eaten in any part of the city, and as the habit of the named fowls is to peck with their beaks in the rubbish, they may peck into a dead reptile and then peck in the meat of the offerings). In all other parts of Palestine priests only must not raise them, as they use leave-offerings for their meals, and they must be very careful about cleanliness. Swine must not be raised by Jews at any place. One shall keep no dog unless on a chain, and no noose is to be laid out for trapping pigeons unless fifty riss distant from inhabited places.

GEMARA: The rabbis taught: "No tender cattle must be raised in Palestine but in its forests; in Syria, however, even in the inhabited places, and, of course, in all other places." Another Boraitha states: No tender cattle must be raised in Palestine but in the deserts of Judea, and in those of the village of Achu; and although no tender cattle must be raised, still large cattle may, for no restrictions are made for the community unless most of the people can observe them. Tender cattle may, but large cattle may not be imported from other countries. And although they must not be raised, still they may be kept during the thirty days immediately preceding a feast day, or the celebration of the wedding of one's children. But this shall not be construed to mean

that they may be kept for thirty days, and that if some cattle were bought less than thirty days before the feast day that one may continue keeping them after the feast day until the expiration of the thirty days, but that as soon as the feast day is over he must not keep them any longer. The butcher, however, may buy and slaughter them at once, or keep them (until the market day), provided that the cattle he bought last shall not be kept after the market-day to complete the thirty days.

The disciples once questioned R. Gamaliel, whether it was permitted to raise tender cattle, and he answered: "Yea." But have we not learned in our Mishna that it is not? It must be said, therefore, that they questioned him whether it was permitted to keep them, and he answered them: "Yea, provided they are kept locked in the house, so that they shall not go out and pasture with the flock."

The rabbis taught: It happened that a pious person was suffering from a severe cough, and the physicians declared that he could not be cured unless by drinking every morning fresh-drawn milk which was still warm. He obtained a goat, which he tied to the leg of his bed, and drew her milk every morning. Once his colleagues came to visit him, and on seeing the goat tied to the leg of the bed they turned back, saying: There are armed robbers in the house of this man (for the habit of a goat is to stray upon other's fields), and shall we visit him? They sat down and examined into his conduct, and found no other transgression in him except that one. The pious one himself before he died said: I know that there can be no other transgression found in me except the one of the goat, that I disregarded the prohibition of my colleagues.

R. Ishmael said: My father's family was of the citizens of upper Galilea, and why was that locality destroyed? Because they pastured their young cattle in the forests and tried civil cases by one judge; and although their forests were near their houses (in the immediate neighborhood, and they were pasturing their cattle in their own forests), still, a small-sized field was between those forests (which belonged to strangers), and they used to pass their cattle over that field.

The rabbis taught: "A shepherd (who raises tender cattle) that repented, we do not compel him to sell out all his cattle at once, but he may do so by degrees. So also is the case with a proselyte who inherited dogs and swine; we do not compel him to sell out all at once. So, also, one who made a vow to buy a

house or marry a woman in Palestine; we do not compel him to do so until he finds one fit for him. It happened once with a woman whom her son used to annoy, that she swore that she would marry the first one who would propose to her, and unsuitable persons came forward with propositions. When this came before the sages, they declared that her intention was only for a suitable person.

As it was said that no tender cattle must be raised (in Palestine), so also was it said that no tender beasts should be raised. R. Ishmael, however, said that hunters' dogs, cats, monkeys, and weasels might be raised, for they are kept for the purpose of keeping the house clean. R. Jehudah said in the name of Rabh: We follow in Babylon the practice prevailing in Palestine regarding tender cattle. Said R. Ada b. Ahba to R. Huna: But do not you raise tender cattle? He answered: Mine are taken care of by Haubah my wife. According to others, R. Huna said: We follow in Babylon the practice prevailing in Palestine regarding tender cattle since Rabh settled in Babylon (whom many followed from Palestine and who bought or rented all the land in Babylon). Rabh, Samuel, and R. Assi happened to meet at a circumcision feast, and according to others at a redemption feast. Rabh declined to enter the house before Samuel, and Samuel declined to enter before R. Assi, and the latter in his turn refused to enter before Rabh. It was then decided that Samuel should wait until Rabh and R. Assi had entered. (But why did Rabh refuse to enter before Samuel, he was surely greater than Samuel?) Rabh simply paid this courtesy to Samuel on account of his cursing him (see Sabbath, pp. 221-222). While they were so discussing a cat came and bit off the arm of the child, after which Rabh lectured that it is permitted to kill a cat and prohibited to keep it and that there can be no robbery in respect to it, and that if a cat gets lost no one need return it to its owner. If it is permitted to kill it, is it not self evident that it is prohibited to keep it? Lest one say that there is no prohibition to kill it but it may also be kept, hence the statement. Again, if it says that there can be no robbery in respect to it, why, then, the statement that it need not be returned to its owner if lost? Said Rabhina: It means even as far as its skin is concerned. An objection was raised from our Mishna: "R. Simeon b. Elazar said: Dogs, cats, etc.?" This presents no difficulty. A black one may, but a white one may not. But in the case of Rabh, was it not a black one? It was a black descending from a white one.

R. A'ha b. Papa said in the name of R. Hanina b. Papa * the following three things: (a) In case of a plague of the itch a fast day with the blowing of the horn may be ordered on the Sabbath; (b) if the door of success is closed to one, it will not open soon; and (c) if one buy a house in Palestine, the deed may be written and executed even on Sabbath. What does the statement, "if the door of success," etc., mean? Said Mar Zutra: The granting of a diploma for a rabbi †. R. Ashi said: It means that when one falls into misfortune he cannot soon recover. "If one buy, etc., the deed, etc., on Sabbath." Does it really mean that the Sabbath may be violated in such a case? Nay, it means as Rabha said, that a Gentile may be told to do it, although in ordinary cases the rabbis prohibited it on account of Sabbath-rest; still, in this particular case they did not. R. Samuel b. Na'hmani said in the name of R. Jonathan: One who buys a town in Palestine is compelled also to buy a tract of land around it to make it accessible from all four sides, in order to promote settlement in Palestine.

The rabbis taught: "Upon the following ten conditions did Joshua divide the land to the settlers: (a) That one may pasture his cattle in the forest of another; (b) he may gather wood upon another's field; (c) grass may be gathered on another's field at any place, except that of the carob-bean; (d) a branch may be cut off a tree at any place, except of an olive tree; (e) the townspeople may use the water of springs even newly opened by strangers; (f) nets may be spread in the Tiberian waters by every one for fishing purposes, provided he does not stake them so as to interfere with navigation; (g) one may evacuate behind a fence even of a field of saffron; (h) one may walk the cross way (opened on a field) until the second quarter of the season; (i) one may walk the side road when the main road is cloddy; (j) one who lost his way in a vineyard might raise and lower the tree branches in trying to find it; and, lastly, (k) a stranger who dies in a field should be interred in the place where he dies (see Erubin, p. 38)." Are there only ten, are there not eleven enumerated? The condition that one may walk the cross-walks was not made by Joshua but by Solomon, as we have learned in the

* Papa had many children, and the Gemara is not certain who of them was the author of this statement.

† There were many sages who were worthy of this honor, but circumstances prevented them from getting the diploma. The well-known Samuel was one of them. (See Vol. XI., Tract Baba Metzia.)

following Boraitha: When all the fruit is gathered in from the field and the owner still permits no one to enter his field, do not people murmur and say: What benefit does that man derive from it and what injury would the people cause him by crossing his field? Of him the verse says: When you can afford to be good, do not cause people to call you bad. Is there, then, such a verse to be found in Scripture? There is a verse similar to it, viz. [Proverbs, iii. 27]: "Withhold not a benefit from him who is deserving it, when it is in the power of thy hand to do it."

But are there no more than those enumerated? Is there not another one, of which R. Jehudah speaks in the following Boraitha: "R. Jehudah says: During the manuring season, etc., for on this condition did Joshua, etc. (*supra*, p. 66)?" Again, there are those enumerated in the following Boraitha: R. Ishmael the son of R. Johanan b. Broka says: The court declared the following conditions to have been made by Joshua when he distributed the land among Israel: (*a*) That one may enter his neighbor's orchard to cut off a tree branch and use it in saving his bee-hive, paying the owner of the orchard the value thereof; (*b*) one shall empty his vessel containing wine and save therewith his neighbor's honey (if one carrying wine and one carrying honey met together and the vessel containing the honey broke), and receive from him the value of the wine; (*c*) one shall unload his wood and load on his neighbor's hemp (under circumstances similar to those stated above), and get from him the value of his wood? The Boraitha enumerated only those which were declared to have been so unanimously, but not those that were stated by individuals without being supported by their colleagues.

But did not R. Abin upon his return (from Palestine) say in the name of R. Johanan that one more condition was made by Joshua, namely, that whether it be a tree branching over into a neighboring field or one standing near the boundary, he may bring the first-fruit to Jerusalem and read the scriptural passages [Deut. xxvi. 5]; and if the above-enumerated ten conditions were a Boraitha, R. Johanan, who was (not a Tana but only) an Amora, would not contradict it? Therefore it must be said that the phrase, "The rabbis taught: Ten conditions," mentioned above does not mean that it was a Boraitha (as it usually indicates), but that it was taught by R. Jehoshua b. Levi (who was also an Amora, and R. Johanan may differ with him). R. Gebiah of the city of Khthil taught so plainly: R. Tan'hum and R.

Brice said in the name of the certain elder who was R. Jehoshua b. Levi, that ten conditions did Joshua make with the settlers.

Ten enactments were enacted by Ezra, viz. : (a) That portions of the Scripture should be read at the Saturday afternoon prayer; (b) on Mondays and Thursdays; (c) the court should be open on Mondays and Thursdays; (d) clothes should be washed on Thursdays (for the honor of the Sabbath); (e) garlic should be eaten on the eve of Sabbath; (f) a woman should do her baking early in the morning (so as to have fresh bread for the poor who should ask for it); (g) a woman should wear underwear; (h) a woman should comb her hair before immersing (in the legal bath); (i) vendors should travel from town to town and peddle their wares unmolested. He also enacted immersion (in a legal bath) for those who see Keri (wet-dreams). Ten things were said of the city of Jerusalem (when it was the capital of Palestine): (a) Real property should always be redeemed by the seller; (b) if a slain person is found in the neighborhood of Jerusalem, the ceremony of the heifer [Deut. xxi.] should not be performed; (c) it should never be declared a condemned town [Deut. xiii. 14]; (d) the laws of plagues [Levi. xiv. 35] should not apply to the houses of Jerusalem; (e) no beams should be permitted to protrude, nor any corner boards (Erubin, p. 40); (f) no dumping places for rubbish should be permitted therein; (g) no potter's kiln should be permitted to be constructed therein; (h) no gardens or orchards should be permitted there except those of roses, that existed since the time of the first prophets; (i) no hens or cocks should be raised; and (j) no dead body should remain over-night in the city (but should be carried out of the city).

"No swine is permitted to be raised at any place." The rabbis taught: "During the civil war of the Maccabees, Hurkanoth was within and Aristobulos was without the city wall, and every day those within lowered by means of a chair a basket full of dinars from the top of the wall to those outside, and the latter sent them up cattle for the daily sacrifices. Among the outsiders was an old man who was learned in Greek science, and he said to them: So long as your enemies continue to perform the holy service you will not subdue them. On the next day, when the basket of dinars was lowered, they sent them up a swine. When the swine reached the centre of the wall he fastened his feet in the wall, and Palestine trembled for a distance of four hundred square porsa. At that time it was declared that cursed be he who raised swine and cursed be he who taught his sons Greek

science. Of that time it was taught (Tract Mena'hoth, p. 64b) that the omer was brought from the gardens of Zriphin and the two loaves from the valley of Ein Sokher."

But is, then, the study of Greek science prohibited—have we not learned in the following Boraitha: "Rabbi said: In Palestine there is no use for the Syriac language, which is not clear, when there are the Holy language (pure Hebrew) and the Greek language, both of which are very clear; and R. Jose said: In Babylon there is no use for the Aramean language, for there are the Holy language and the Persian language"? It may be said: Greek language is one thing and Greek science is another. But is, then, the study of Greek *science* prohibited—has not R. Jehudah said in the name of Samuel: So said R. Simeon b. Gamaliel: It is written [Lam. iii. 51]: "My eye affected my soul because of all the daughters of my city. There were a thousand young men in my father's house, five hundred of whom studied Scripture and five hundred *Greek science*, and of all of them only two remained: I here and my nephew in Assia"? R. Gamaliel's house was an exception, for its proximity to the government, as is stated in a Boraitha: "He who cuts his hair *χομη* imitates the ways of the Amorites, which are prohibited [Lev. xviii. 3]. Abtulumus bar Reuben, however, was permitted to do so, for he had stood near the government. The house of R. Gamaliel was permitted to study Greek science for the same reason."

"*No dog shall be kept*," etc. The rabbis taught: No one shall raise a dog unless he is kept on a chain, or unless in a town adjoining the frontier, in which he is permitted to keep him without a chain only in the night-time. There is a Boraitha: R. Eliezer the great said: The raising of dogs is equivalent to the raising of swine. For what purpose is this equivalence? That the curse said of him who raises swine should apply also to him.

R. Joseph b. Maniumi said in the name of R. Na'hman: Babylon [Nahardea] is considered a city located at the frontier.

R. Dosthai of Biri lectured: It is written [Numb. x. 36]: "And when it rested, he said, Return, O Lord, among the myriads of the thousands of Israel." Infer from this that the Shekhina does not rest on Israel unless they number two myriads two thousand. If it should happen that this number should be one less and there should be a pregnant woman whose child when born would complete it, and a dog should bark and cause the woman to miscarry, it would appear that he caused the Shekhina to withdraw from Israel.

It happened with a woman that entered a house to bake there, etc. (See Sabbath, p. 124).

"*No nets are spread*," etc. But do we go as far as that? Have we not learned in the following Mishna: "Dove-cots may be located at a distance of fifty ells from a town"? Said Abayi: They fly for a much longer distance, but as to pecking up food they do so only within fifty ells. But do they fly only thirty ris? * Have we not learned in the following Boraitha that nets should not be spread out in the neighborhood of inhabited places, even at a distance of one hundred mil? R. Joseph said that "inhabited" means where vineyards are laid out, Rabba said that it means where dove-cots are kept. If so, let him say that it must not be done for the doves themselves, in order that they should not be caught in? If you wish, it can be answered that the doves are ownerless; and if you wish, it can be answered that he himself is the owner of the doves.

* Seven and a half ris equalled one Palestinian mile.

CHAPTER VIII.

THE FIVE ITEMS OF PAYMENT IN CASE OF INJURY TO A HUMAN BEING, INDEPENDENTLY OF THE CRIMINAL LIABILITY. THE LIABILITY FOR ASSAULT WHEN NO INJURY IS SUSTAINED.

MISHNA I.: One who wounds his neighbor is liable to pay the following five things, viz.: damage, pain, healing, loss of time, and disgrace. "Damage."—If he blinds one's eye, cuts off his hand, or breaks his leg, the injured person is considered as if he were a slave sold in the market, and he is appraised at his former and his present value. "Pain."—If he burns him with a spit or with a nail, if even only on the nail (of his hand or foot), where it produces no wound, it is appraised how much a man his equal would take to suffer such pain. "Healing."—If he caused him bodily injury, he must heal him; if pus collected by reason of the wound, he must cause him to be healed; if, however, not by reason of the wound, he is free. If the wound heals up and breaks out again, even several times, he must cause it to be healed; if, however, it once heals up thoroughly, he is no more obliged to heal it. "Loss of time."—The injured person is considered as if he were a watchman of a pumpkin field, as he was already paid the value of his hand or foot. The disgrace is appraised with consideration of the station and rank of the one who causes as well as of the one who suffers it.

GEMARA: Why so? Perhaps it is to be taken literally, for the Scripture reads [Ex. xxi. 24]: "Eye for eye"? This cannot enter the mind, as we have learned in the following Boraitha: Lest one say, if he blinds one's eye or cuts off one's hand, that the same should be done unto him, therefore it is written [Lev. xxiv. 21]: "And he that killeth a beast shall make restitution *for it*; and he that killeth a man," etc. As in case of a beast only the value is paid, so also in case of a man. And lest one say, Does not the Scripture read [Numb. xxxv. 31]: "Moreover, ye shall take no redemption for the person of a murderer, who is guilty of death"? you may say that from this very verse it may be inferred that no redemption money is to be

taken for a *murderer*, but redemption money is to be taken for one who destroys such members of the body as cannot grow on again.

We have learned in a Boraitha: R. Simeon b. Johi said: "Eye for eye" means its value. You say, its value. Perhaps it means literally? Nay, for what should be done when a blind man blinds another, etc.—how should be fulfilled the commandment "eye for eye"? And lest one say that such a case is an exception, therefore the Scripture reads [Lev. xxiv. 22]: "*One manner of judicial law shall ye have*"; from which is to be inferred that it means a law which can be applied alike to all human cases.

In the school of R. Ishmael it was taught: The Scripture reads [ibid., ibid. 20]: "So should it be given* unto him"; and by "given" is meant a thing which is given from hand to hand. If so, how are the preceding words in the same verse to be explained? "In the manner he should *give* a bodily defect," etc. (hence the word "give" is used also for such a thing as is not given from hand to hand)? It may be explained thus: The school of R. Ishmael deduce it from a superfluous verse, thus: Let us see. It reads already in the preceding verse [ibid. 19]: "And if a man cause a bodily defect in his neighbor; as he hath done, so shall it be done unto him." Why, then, the repetition in verse 20? To indicate that it means money. But still the above-stated objection as to the use of the word "give" in the beginning of the verse remains? Because at the end of the verse the Scripture desired to use a term from which it should be deduced that it means *money*. It used the same expression also here.

The school of R. Hyya deduce it from the following: The Scripture reads [Deut. xix. 21]: "Hand for hand" †—that means something that can be passed from hand to hand, *i.e.*, money.

* The verse reads: "Yithain . . . Kain yinothen," of which the literal translation is "should give . . . so should be given"; and the Talmud takes it as it is, and infers from this that the expression "give" means money, which is given from hand to hand. The preceding verse (19), however, reads: "Osso . . . Yeosseh," the literal translation of which is, "did . . . should be done." Leeser translates in both instances "done," according to the sense.

† The Gemara continues with similar questions: Is it not written, "foot for foot"; and similar answers, "There is a superfluous verse," etc., are given. It also proceeds to cite other schools and individuals who deduce it from other Scriptural sources, with a lengthy discussion, and finally arrives at the same conclusion, that this law must not be understood literally. We have omitted all this, as all the explanations are as complicated as the one translated in the text. And it seems to us

It happened that an ass bit off a child's arm. When the case came before R. Papa b. Samuel he said: Go and appraise the sum to be paid for the four items. Said Rabha to him: But we have learned that *five* items are appraised? He answered: I mean in addition to the actual damage. Said Abayi: But this was an ass, and an ass pays actual damage only? He then said: Go and appraise his actual damage. But he must be appraised as if he were a slave? He answered: Go and appraise him as such. Said the child's father: I do not want to submit to such an indignity. He was told: This money belongs to the child (and you cannot deprive him of that). The father then answered: When he shall grow up, I will rather pay him of my own.

It happened that an ox lacerated the arm of a child, and the case came before Rabha. He said: Go and appraise the actual damage as if he were a slave. His disciple said to him: Are not you, master, the one who said that all appraisements which are made as of a slave are not to be collected in Babylon? He answered: The appraisal may be made, so that in case he should subsequently seize some property of the defendant he will not be compelled to return it. And Rabha in this decision follows his theory elsewhere: "Damages of an ox caused to him by another ox, or damages of an ox caused by a man, are to be collected in Babylon, but damages of a man caused to him by another man, or by an ox, are not to be collected in Babylon." Why are the latter damages not collected? Because it states [Ex. xxii. 8]: "Before the judges," etc., and in Babylon the majority of the judges are not ordained, is it not the same with damages caused by one ox to another, etc.—for they are all mentioned together in the Scripture, where the word "Eloim" is written, which means ordained judges? Rabha speaks of a case when it was caused by the tooth or foot, which are considered vicious from the beginning, and such damage is at any rate to be collected in Babylon.

"*Pain—if he burned him,*" etc. Who is the Tana who holds that pain without damage must be paid for? Said Rabha: It is Ben Azai of the following Boraitha: Rabbi said: "Burning" is mentioned in the Scripture first. Ben Azai said: "Bruise" is

that all those who participated in this discussion well knew that at the time the Thora was given the law was literal in its meaning, as it was also at that time among other nations; but with the change of time it was positively necessary to change this law, and if it could not be deduced from the Scripture it would not be accepted.

mentioned first. (How is it possible that they should differ as to which is written first and which last, when the verse [Ex. xxi. 25] reads plainly "burning" first and "bruise" last?) The point on which they differ is whether "burning" without producing a bruise is considered pain which is to be paid for: Rabbi says that the word "burning" could be explained to mean without a bruise, and the word "bruise" mentioned last is only to explain that burning without a bruise is not to be considered. Ben Azai, however, maintains that "burning" means with a bruise; and because "bruise" is repeated again, it may be inferred that when it happened that the burning was without a bruise it is also considered pain which must be paid for. R. Papa opposed: On the contrary, common sense would dictate that Rabha's statement, "Burning is mentioned first," means to say that because usually burning is accompanied with a bruise it is also considered pain and must be paid for; and Ben Azai's statement that bruise is mentioned first means to say that "bruise" is the main point, as burning without a bruise is not considered at all. It may also be explained that both agree that the word "burning" means with or without a bruise, and the point of their difference is: Given a general and a particular which do not follow one after the other (*e. g.*, in the verse in question, where the words "wound for wound" intervene between them), Rabbi holds to the rule "that a general includes nothing but what is stated in the particular" does not apply to such a case, while Ben Azai holds that it does. And lest one say: If "burning" includes also a bruise, why, then, the repetition? Say that the word "bruise" means to increase the payment.

"It is appraised how much one would," etc. When the damage is paid for, how should the pain be appraised separately? Said the father of Samuel: It should be appraised how much one would pay to have his arm, which by the decree of the government must be amputated, severed by a drug* instead of a sword. If so, it ought to state "give" instead of "take"? Said R. Huna b. R. Juhoshua: It means that the plaintiff shall take from the defendant what such a man would give.

"Healing."—If he caused him bodily injury," etc. The rabbis taught: If pus collected by reason of the wound and the wound broke out again, he must heal him; and he must also pay for the loss of his time until he shall be healed again. If, however, not

* It probably means the use of a drug as an anodyne or anæsthetic during the amputation.

by reason of the wound, he is free from both. R. Jehudah said: Even if it was by reason of the wound, he must cure him only, but not pay again for the loss of time.

The sages, however, say that the healing and the loss of time go together: When he must pay for one, he must also pay for the other, but not for one without the other. What is the point of their difference? Said Rabba: I found the disciples of the college sitting and declaring that the rabbis and R. Jehudah differed as to whether a wound might be bandaged or not (*i. e.*, whether the injured person is permitted to increase the expense of healing by bandaging up his wound and thereby causing high temperature, which produces pus). The rabbis hold that it may be bandaged at the expense of the defendant as regards both healing and loss of time. R. Jehudah, however, holds that it may not be done. But if he does so, for healing, which is plainly written in the Scripture (*thoroughly* healed), he must pay; but for loss of time, for which there is no additional word in the Scripture, he must not pay. Said I to them: If we should come to the conclusion that a wound may not be bandaged, even healing would not have to be paid for. We must therefore say that all agree that a wound may be bandaged; but they differ, if bandaged too much (and this caused high temperature and produced pus), as to who must suffer the increased expense. R. Jehudah holds: That as one must not bandage a wound more than necessary, he is only obliged to pay for healing, because the Scripture insists on it by the repetition of the word "healing"; but regarding the loss of time, about which there is no repetition in the Scripture, he has not to pay for it. The first Tana, however (of the above-mentioned Boraitha), holds that because he must pay for the increased healing, for the reason stated above, he must also pay for the increase in loss of time, which is equal to healing in all respects.

(Let us see:) According to the rabbis, who hold that he who is liable for loss of time is also liable for the expense of healing, and he who is not liable for loss of time is not liable for the expense of healing, wherefore the repetition of the word "healing" in the verse? * It is needed for what the following Boraitha states: "R. Ishmael said: It is written [Ex. xxi. 19]: *Thoroughly healed*," from which is to be inferred that a physician is permitted to heal (although the affliction came from Providence).

* The word "healing" is repeated in the text. Leeser translates it "thoroughly healed"; literally, it would be, "concerning healing he should be healed."

The rabbis taught: Whence do we know that if pus collected by reason of the wound and the wound broke out again he must heal him, and also pay for the loss of time? From [ibid., ibid.]: "Only he shall pay for his loss of time, and shall cause him to be thoroughly healed." Lest one say that it is so also if the pus collected not by reason of the wound, therefore it reads *only*. R. Jose b. Jehudah said: The above word "only" excludes the case when it collected even by reason of the wound.

The Master said: "Lest one say," etc. If not by reason of the wound, why was there a verse needed? The expression in the Boraitha "not by reason," etc., may be explained as stated in the following Boraitha: If he disobeyed the prescription of the physician and ate honey or other saccharine substances, which are injurious to a wound, and a cancer formed, shall he also be liable to heal him? Therefore it is written *only*.

If the defendant should say, "I will cure you myself," the plaintiff may object, saying: "I fear you as a lion lying in wait." And if the defendant should say, "I will get you my relative, a physician, who will cure you for nothing," he may say: "A physician who cures for nothing is worth nothing." And if he should offer to get a physician who lives at a distance from the plaintiff, the latter may object, saying: "One may get blind before seeing him." And also, conversely, if the plaintiff should demand money to heal himself, the defendant may answer: "You may not comply with the directions of the physician, and thus defer the time of the healing." And if the plaintiff should demand from the defendant to agree upon a fixed sum, the defendant may also object, saying: "You may take the money and not cure yourself, and people will call me 'a vicious ox.'"

It was taught above: "And all those are paid where actual damage is paid." Whence do we deduce this? Said R. Zbid in the name of Rabha: The Scripture reads [Ex. xxi. 25]: "Wound for wound," which means that pain is to be paid for where actual damage is paid. But is this verse not necessary to make an unintentional act equal to an intentional one, and an accidental one equal to a voluntary act? If so, let the Scripture read "wound *by* wound"—why "wound *instead* of a wound"? (See *supra*, p. 54.) To infer both. R. Papa, however, said in the name of the same: There is a repetition as to healing [ibid., 19], to add healing where actual damage is paid. But can there be a case where one should be liable for all the four things where no actual damage was done? Yea. Pain—as is stated in the Mishna:

"If he burned him with a spit or a nail," etc. Healing—as, for instance, when he had a slight wound and it was healing up, and from the medicines applied the skin turned white, and other medicines had to be applied to restore the natural color. Loss of time—when he must be confined to the house. Disgrace—when he spat in his face.

"*Loss of time*," etc. The rabbis taught: "Loss of time. He is considered as if he were a watchman of a pumpkin field; and lest one say that no justice is done in such a case, for should he be cured he could still do some kind of manual work, or serve as a messenger and get better compensation? There is no injustice, because he has already received the value of his limb."

Rabba said: If one cut off another's hand he pays him the value thereof; and as regards loss of time, it is appraised as if he were a watchman of a pumpkin field. If one breaks another's leg, he pays the value thereof; and as regards loss of time, it is appraised as if he were a doorkeeper. If one blinds another's eye, he pays him the value thereof, and the loss of time is appraised as if he were a miller. If, however, he makes him deaf, he pays the value of his whole body, for he is not fit for any work.

Rabba questioned: In case one cut off another's hand, broke his foot, blinded his eye, at intervals, and each injury was not appraised separately when it occurred, and finally he made him deaf, how shall the appraisement be made? Shall we assume that the appraisement for the deafness will be sufficient, as he has to pay him for the whole body, or each of the injuries must be appraised separately, and the difference would be that he would receive compensation for the pain and the disgrace of each injury separately? I do not question as regards actual damage, healing, and loss of time, for each of which he has not to receive separately, as he receives now compensation for the whole body as if killed, but for the pain and disgrace suffered with each injury? Another question: How is it if each injury was appraised, but the money was not yet collected? Shall we assume that because it was appraised separately each must be paid; or, because he has not yet paid and now he has to pay for the whole body that all the previous appraisements are included therein? Both questions remain undecided.*

* The codifiers of the Halakhoth, as the Alphasi, Maimonides, etc., have decided in accordance with the rule that all undecided questions found in the Talmud must be decided rigorously; *i. e.*, that in both of the above cases the defendant pays for each injury separately and then for the whole body.

Rabba questioned: If one strikes another and makes him temporarily unfit to labor, as, for instance, when he strikes him on the hand and it gets swollen, which will pass over, shall we assume that because he will recover he need pay him nothing, or perhaps for the time during which he is incapable to work he must pay? Come and hear: "One who strikes his father or mother, but makes no bruise, and one who wounds his neighbor on the Day of Atonement, is liable to all the five things." Does the first part of this Boraitha not mean a case like the one questioned by you; *i. e.*, that he struck them on the hand, which will soon pass over, and still it states that he must pay all? Nay, it may be explained that he caused him deafness, but makes no bruise. But did not Rabba say that one who causes deafness to his parents is to suffer the death penalty, for deafness is impossible without a bruise, which is a drop of blood that falls into the ear? Therefore the Boraitha must be explained that he shaved off his hair. His hair? It will surely grow on again, and this is Rabh's question (as there is no difference whether the hand will recover or the hair will grow on again?) It can be explained that the Boraitha meant that he applied a depilatory which prevents the hair from growing on again. Pain—because the depilatory entered the grooves (of his head) and caused him pain. Healing—because the pain must be allayed by medicine. Loss of time—as for instance when he was a professional buffoon who shows different grimaces and gesticulations, and he is prevented from doing so on account of that. Disgrace—there can be no greater disgrace than to be without hair.

And this matter, in which Rabba was doubtful, was certain to Abayi in one way and to Rabha in the opposite way, as it was taught: If he strikes him on his hand, which gets swollen, Abayi says he must pay both the value of his hand in his trade during the time of his sickness and also the loss of time in such labor as he could do without the hand. Rabha, however, says he is paid only what he loses every day by not working. It was taught: One who cuts off the arm of his neighbor's Hebrew servant; Abayi says he pays the value of the arm to the servant and for the loss of time to his master. Rabha, however, says: The whole must be paid to the servant, who should buy therewith land, the usufruct of which should belong to the master. It is certain that where the injury is wholly to the slave, *e. g.*, where he split his ear or his nostrils (which does not prevent him from work), that all that he gets belongs to him; but where the injury is of such a

nature that he cannot do any work, the difference between Abayi and Rabha concerning the loss of time remains.

"*Disgrace*," etc. Our Mishna is in accordance with R. Simeon of the following Boraitha only: "All those who sustain injury are looked upon as if they were independent men that became poor, as all Israelites are the children of Abraham, Isaac, and Jacob. Such is the dictum of R. Meir. R. Jehudah says: It is according to his rank and station. R. Simeon, however, says: The rich ones are looked upon as if they were independent men who became poor; the poor ones, as if they were the very poorest class." Hence our Mishna, which states that it is according to the station of the party, is not in accordance with R. Meir, who makes no difference, nor according to R. Jehudah, who says further on that a blind person gets nothing for being disgraced, but according to R. Simeon only (who considers rank and station).

According to whom is the following Boraitha: "The rabbis taught: If he intended to disgrace a small one and disgraced a big one, he pays the big one the amount he would have to pay the small one. If he intended to disgrace a slave and he disgraced a freeman, he pays to the freeman the amount he would have to pay to the slave"? It seems to be in accordance with neither of the Tana'im mentioned above. [At the first glance, the Boraitha is to be explained that "small one" means one who is poor in estate, and "big one" means one who is rich in estate, and therefore it is not in accordance with R. Meir, to whom all are equal, nor according to R. Jehudah's theory, who holds no disgrace is paid for to slaves, and, finally, not according to R. Simeon, who holds that no disgrace is paid for unless it was caused to him who was intended. Why so? Because R. Simeon equals it to murder, of which it is written [Deut. xix. 11]: "And he lie in wait for *him*," etc.; and we find also, as regards disgrace [ibid. xxv. 11]: "And *putteth forth her hand*" (which means intentionally), hence in both intention is required.] It may be explained even in accordance with R. Meir, and the terms "small" and "big" should be taken literally: a grown person and a minor. But is, then, a minor paid for disgrace? Yea, as R. Papa said elsewhere, if the minor is of such understanding that he feels ashamed when one says to him, "Be ashamed of yourself," disgrace is paid for to him.

MISHNA II.: One who causes disgrace to a nude, blind, or sleeping person is liable; if, however, one causes disgrace when

asleep, he is free. If one falls down from a roof and causes damage and disgrace, he is liable for the damage but not for the disgrace, as the latter requires intention.

GEMARA: The rabbis taught: "If he disgrace a nude person, he is liable; but still, the disgrace caused to a nude person is not equal to that caused to a dressed one. If he disgrace him in a bath-house, he is liable; but still, such disgrace is not equal to that caused to one in the market." The Master said: "If he causes disgrace to a nude person," etc. If he walks nude in the street—is, then, such a person capable of being ashamed? Said R. Papa: As for instance when a wind rolled up his clothes somewhat, and the defendant rolled them up more and thereby caused him shame. "In a bath-house." Is, then, a bath-house a place for claiming for disgrace? Said R. Papa: It means that he caused him shame while on the banks of a river.

R. Aba b. Mamel questioned: If one causes shame to a sleeping person who subsequently dies while asleep, what is the law (as to the payment for shame)? On what point is the question? Said R. Zbid: It is thus: Is shame paid for, for hurting one's feelings, and here, when he dies while sleeping, his feelings are not hurt, or it is only a fine for the indignity of one in the presence of others, and here was such indignity? Come and hear: "R. Meir says: A deaf-mute, and a minor, disgrace is paid for to them, but not to an insane person." Now, then, if it is a fine for the indignity, it is correct that a minor be also paid, but if for hurting the feelings, has a minor, then, feelings of shame? But even if it is for indignity, why should an insane person not be paid for? Insane? is there any greater shame than this?

R. Papa says: The point of the question is thus: Is the reason because of the hurting of his own feelings—here, when he dies when sleeping, there was none—or because of the feelings of the family? Come and hear, etc. (the Boraitha just quoted). Now, then, if for the sake of the family it is correct that it states also a minor, and if for his own, is, then, a minor capable of feeling shame? But even if it is because of his family, it is not correct that an insane person shall not be paid for? There is no greater shame for a family than the insanity of one of its members. Be this as it may, let it be inferred that the reason is because of his family; for if because of his own feelings, the minor stands in the way? Said R. Papa: A minor is sometimes paid for shame if he is of such understanding that he feels ashamed when one says to him: "Be ashamed of your-

self!" We have also so learned plainly in a Boraitha: "Rabbi says: A deaf-mute has, an insane person has not, but a minor sometimes has and sometimes has not, feelings of shame, as explained above."

"*One who disgraces a blind one*," etc. Our Mishna is not in accordance with R. Jehudah of the following Boraitha, who says: "A blind person has no feelings of shame; so also he used to free him from banishment, stripes, and death punishment by the court." What is the reason of R. Jehudah's theory? He deduces it from the analogy of expression "the eye," which is used in speaking of disgracing a person and also in speaking of collusive witnesses: as in the case of collusive witnesses blind persons are excluded (for if they cannot see they cannot testify). And regarding banishment, as it is stated in the following Boraitha: It is written [Numb. xxxv. 23]: "Without seeing him" (which is to be explained that *here* he has not seen, but he is capable of seeing), which excludes a blind person (who can never see). Such is the dictum of R. Jehudah. R. Meir says: (On the contrary,) it includes a blind person. What is the reason of R. Jehudah? It is written [Deut. xix. 5]: "And he that goeth into the forest with his neighbor to hew wood." Should we assume that this includes even a blind one? Therefore the Scripture says, "without seeing him," to exclude him. And R. Meir? (He may explain it thus:) The Scripture reads "without seeing him," to exclude something, and it is written [ibid., ibid. 4], "without knowledge," which also means to exclude something; and there is a rule that where there is one exclusion after another it means to include. Hence it includes the blind. R. Jehudah, however, maintains that "without knowledge" means to exclude the one who does it intentionally (who is guilty of a crime). "From death by the court." It is deduced by analogy of the expression "murderer" used here and in case of banishment. (In case of one killing a person the expression "murderer" is used [Numb. xxxv. 31], and so also in case of banishment.) "From stripes." It is deduced by the analogy of the expression "Rasha" [ibid. xxv.] (the wicked, the guilty one) used here, and in case of death by the court [Numb. xxxv. 31].

We have learned in another Boraitha: "R. Jehudah says: A blind person has no sense of shame. He also relieved him from the performance of all the commandments contained in the Scripture." Said R. Shesheth b. R. Idi: What is the reason of

his statement? It is written [Deut. vi. 1]: "And this is the commandment, with the statutes and the ordinances"—from which is to be inferred that only those who can be ordained as judges have the obligation of observing the commandments, but not those who cannot be ordained (and as a blind person cannot be ordained a judge, he is exempt).

R. Joseph said: First I used to say: If there should come one and tell me that the Halakha prevails according to R. Jehudah, who says that a blind person is exempt from the performance of commandments, I shall make a feast for the rabbis, because I, who am under no obligation to do so, still do perform them; but since I heard of what R. Hanina said, that there is more reward for him who performs a commandment which he has an obligation to than for him who performs it without such obligation, I changed my mind, and I say that I shall make a feast if one should come and tell me that the Halakha does not prevail according to R. Jehudah; for if I am required to perform the commandment, the reward will be greater.

MISHNA III.: The law is more rigorous in regard to a man than in regard to an ox in this respect, that a man pays the five certain items, and also the value of the aborted children, while an ox pays only for actual damage and is free also from paying for the aborted children. One who assaults his father or mother, but does not bruise them, and one who wounds another on the Day of Atonement, is liable to pay all the above items. One who wounds a Hebrew servant is liable to pay all, but for loss of time when he is his own. One who wounds a heathen slave of another is liable to pay all. R. Jehudah says: There is no disgrace to slaves. A deaf-mute, an insane person, and a minor, one who meets with them is in a bad position, for the one who wounds them is liable, while if they do so to others they are free. The same is the case with a slave and a (married) woman, with the difference that they must pay when they become independent; namely, when the woman is divorced and the slave is liberated. If one, however, assaults his father or mother and bruises them, or, on the Sabbath, any person, he is free from payment of the above-enumerated items, for he is guilty of a capital punishment. One who wounds his own heathen slave is free from everything.

GEMARA: R. Elazar questioned Rabh: One who wounds the minor daughter of another, to whom is the compensation to be paid? Shall we assume that as the Scripture granted the

income of a minor daughter to her father, the same is the case with the compensation for a wound inflicted upon her, for her value is diminished thereby; or perhaps the Scripture granted him only the income so far as she is under his control; for instance, if he wanted to marry her to one afflicted with scabies he could do so, but as to wounding, if he himself wanted to wound her he must not do so; hence it is an income which is not under his control, and therefore he does not acquire title to it? He answered: The Scripture granted him only the income first stated.

He objected to him from our Mishna: "But for the loss of time when he is his own?" (Hence we see that the loss of time is considered; and as the income from the labor of a minor daughter belongs to her father, he shall at least collect for the loss of time?) Said Abayi: Rabh concedes, as far as this is concerned, that her father gets it up to the age when she becomes *vigorous*. He objected again from the following: "One who wounds his grown son, he pays him at once; if he wounds his minor son, he makes an investment with the money he has to pay; if he wounds his minor daughter, he is free; and not only he, but even if others have done so to her, the father gets the payment?" He answered: This also has reference to loss of time only.

There is a contradiction to the above statement that in case of a grown son he pays him at once, from the following: One who wounds another's children—if they are grown persons, he pays them at once; if they are minors, he makes an investment with the money due; if his own children, he is free? This presents no difficulty: The one case treats of where he provides their board, and the other case treats of where he does not. Now, let us see: You interpret the first Boraitha that it treats of where he does not provide their board; then the last part of same: "If one wounds his minor daughter, he is free, and if others do so to her the payment belongs to him," also treats of where he does not provide her with board—why, then, should the payment belong to him? must she not pay for her board? As Rabha b. R. Ula explained elsewhere that it refers to that part which is in excess of what she needs for her board, so also is it to be explained here, that it relates to the excess. If so, then the second Boraitha treats of where the father does provide their board—why should they get the payment? does it not belong to the father? It may be said that one is particular only

about money of his own pocket, but about an income that comes from the outside one is not particular.

But is, then, a found article not an outside income, and still one is particular about it? An outside income which comes without any pain to the body, one is particular about; but an income which comes by reason of a wound, where she suffers bodily pain, is different. But does not the Boraitha state that if others wounded her they must pay to her father? It may be said that, as the Boraitha was interpreted that the children were not on his board, it is to show that the man is so penurious that he does not even provide board for his children, and such a man is certainly particular even about such an income; but in our case, where it is explained that they are on his board, it may be assumed that he is not particular about such an income.

What kind of investment (mentioned in the above Boraitha) should he make? R. Hisda said: He should buy with the money the Holy Scrolls. Rabba b. R. Huna said: (An article which brings benefit, *e.g.*) a date-tree, the benefit of the fruit of which should belong to the minor.

And Resh Lakish is also of the opinion that the Scripture granted to the father only the benefit derived from the labor of a minor daughter. R. Johanan, however, says: Even the money gotten for a scratch. A scratch? How can this enter the mind? Even R. Elazar questioned only in case of a wound, because her value was reduced; but in case of a scratch, which does not reduce her value, he did not question at all? Said R. Jose b. Hanina: The case is that the scratch was on the face, and in such a case it causes a reduction in her value.

"*A heathen slave*," etc. What is the reason of R. Jehudah's theory? Because it is written [Deut. xxv. 11]: "When men strive together, one with his *brother*," * which signifies one with whom there can be a fraternity, excluding a slave. The rabbis, however, maintain that the word "brother" can also mean a slave, as there is a fraternity with a slave, because he is obliged to perform many commandments which an Israelite is obliged to perform. Now then, according to R. Jehudah, who is particular about the word "brother" mentioned in the Scripture, let witnesses who were found collusive in their testimony against a slave (to convict him of a crime punishable by death) not be

* The text reads "Ish v'ochiv," which literally means "a man and his brother." Leeser, however, translates it according to the sense, "one with the other."

put to death, for it is written [ibid. xix. 19]: "Then shall ye do unto him as he had purposed to do unto his *brother*" ? Said Rabha in the name of R. Shesheth: The verse reads [ibid., ibid.]: "And thou shalt put away the evil from the midst of thee," which means under any circumstances.

Now, according to the rabbis, who maintain that a slave is also considered a "brother," let a slave be qualified to become a king? According to such a theory the same question could be put as regards a proselyte (who according to all is named brother, and nevertheless he is not qualified)? But both are excluded by the following verse [ibid. xvii. 15]: "From the midst of thy brethren shalt thou set a king over thee," which signifies from the best qualified of your brethren. The question can, however, be put thus: Let, according to the rabbis, a slave be eligible as a witness, for it is written [ibid. xix. 18]: "He had testified a falsehood against his brother" ? Said Ula: Even as regards witnesses he must be excluded by the following *a fortiori* argument, thus: An Israelitish woman is not eligible as a witness—a slave, who is not an Israelite and cannot even intermarry with an Israelitish woman, is it not logical that he should not be eligible as a witness? And if you should say that a slave has the preference, for he is circumcised, which is not the case with a woman, the case of a minor can prove it, who is circumcised, and still he is ineligible as a witness; and if you should say that a minor has no obligation of performing commandments, while a slave has, the case of the woman can be cited who has such obligation and still she is ineligible as a witness, and the former argument will be reinstated; from which it is to be seen that in some respects one has preference and in others the other has preference. In one thing, however, they are all equal, in that they are not fit to perform all the commandments to which an Israelite is subject and they are eligible as witnesses; the same is the case with a slave, who is not fit to perform all the commandments and is also eligible as a witness.

"*A deaf-mute*," etc. The mother of R. Samuel b. Aba of Hagraunia married R. Aba, and she transferred her estates to her son R. Samuel. When she died, he went before R. Jeremiah b. Aba and he installed him in the possession of the estates. His stepfather went and told this to R. Hoshiya, who in his turn told it to R. Jehudah, and the latter said to him: So said Samuel: A woman who sells her estates to some one with a condition that her husband shall have the fruition of same during

his lifetime, and thereafter she dies, her husband can recover the estates from the buyer (for he inherits from his wife, and because he had the usufruct of the estates he is considered as if he were the first buyer). When this was stated before R. Jeremiah, he said: I, however, know of a Mishna (Third Gate, Chap. VIII.) which states: "One who transfers his estates to his son, after his decease . . . If the son sell them, the buyer has nothing in them until the father dies." We see, then, that if the father die the buyer acquires title in them, and even in case the son dies when the father is still alive, in which case they never came into the possession of the son. As R. Simeon b. Lakish said, there is no difference whether the son dies during the lifetime of the father or the father dies during the lifetime of the son, in both of which cases they never came into the possession of the son, the buyer nevertheless acquires title.*

When the answer of R. Jeremiah was repeated before R. Jehudah, he said: So said Samuel: This is not equal to the case of our Mishna. Why so? Said Abayi: On account of the enactment of Usha, which is in accordance with Samuel's statement. (See Khethuboth, p. 20.) Said R. Idi b. Abin: We have so also learned in the following Boraitha: If witnesses say: "We testify that that person divorced his wife and paid her the amount of her marriage contract," and it was found that she was still with him, and cohabited with him, and those witnesses were found collusive, they must not pay the full amount of the marriage contract (because she may die before her husband and nothing will be collected, but it must be appraised how much she would get in cash now if she should transfer her right in the marriage contract, so that if she should die before her husband the buyer would lose), but only the benefit of the same; and if she dies, her husband inherits also this from her. Now then, if the enactment of Usha should be of no effect, why should her husband inherit the amount of her marriage contract—let her be able to sell her right in the marriage contract and collect the full amount of it? Said Abayi: What comparison is this: If the enactment was made regarding a woman's estate which she sells reserving the benefit, should the same enactment apply to guaranteed estates?

Said Abayi: As we have come to speak about benefit, let

* Here follows a discussion as to whether the usufruct is equivalent to the principal, which is omitted here, but will be translated in its proper place.

us say something regarding it: The above-mentioned benefit belongs to the wife; for if it should belong to the husband, let the collusive witnesses say to her: What loss did you sustain—if you had sold them, the benefit would anyhow have belonged not to you, but to your husband? Said R. Shalman: It does not matter: This benefit, although it would go to the husband, would be a benefit for her, as it would be used to increase the luxury of the household.

Rabha said: The Halakha prevails that the benefit in case of a woman who sells her right in the marriage contract belongs to herself; and if she bought estates therewith, her husband has nothing even in their income. Why so? The rabbis enacted that he should have the direct income of his wife's estates belonging to her before marriage, but not the income of her estates which she acquired after her marriage in which her husband has no share (*e.g.*, estates bought with the money paid her for disgrace caused to her, etc.). When R. Papa and R. Huna returned from Rabh's college, they questioned: On account of the enactment made in Usha, it was taught of a slave and a woman, one who meets with them is in a bad position, etc. Now, if the enactment of Usha should be of no effect, why should the compensation for her wound be paid to her husband, let it be paid to her and let her buy estates the usufruct of which shall belong to her husband? (What question is this?) Even according to the theory that the enactment of Usha is of effect and she cannot sell the right in her marriage contract absolutely, let her sell, however, her estates of which her husband has the fruition for any benefit she could derive and pay to him whom she wounded? We must then say that she does not possess any. The same is the case here.

MISHNA IV.: If one blow* into the ear of another, he pays one sela (as a fine for the disgrace he caused him). R. Jehudah, however, in the name of R. Jose the Galilean says, one manah. If he strike him with the palm of his hand on the cheek, he pays two hundred zuz; if, however, with the back of his hand, he pays four hundred. If he pull or cut his ear, or pull his hair, or spit in such a manner that the spittle fall on him, or strip him of his garment, or he bare the head of a woman in the market, four hundred zuz is to be paid. This is the rule:

* According to others, it means "boxing the ear." We, however, have translated it in accordance with our method, after the second interpretation of Rashi.

Rank and station of the parties are taken into consideration. R. Aqiba, however, says: Even the poorest of Israel must be considered as if they were independent men who had lost their estates, for they are the descendants of Abraham, Isaac, and Jacob. And it happened that one bared the head of a woman in the market, and when the case came before R. Aqiba he imposed a fine of four hundred zuz. Said the defendant to him: "Grant me time for payment," and he did so. The defendant then watched her when she was standing at the gate of her courtyard, and broke her pitcher containing oil of the value of one issar: she bared her head, dipped her hand in the oil, and rubbed it into her hair in the presence of witnesses. The defendant then brought the witnesses before R. Aqiba and said: Rabbi, do you command me to pay this woman four hundred zuz? R. Aqiba answered: Your pleading is of no avail, for one who wounds himself, although it is considered a crime, he does not pay a fine, but if others wound him he must be paid. The same is the case with one who cuts off his plants; although it is unlawful, still he pays nothing, but if others do so (to the same property) it must be paid for.

GEMARA: The schoolmen propounded a question: The manah stated in the Mishna, does it mean a manah of the city of Zur,* which contains one hundred zuz, or does it mean the manah of the country, which is one-eighth part of it? Come and hear: "It happened that a man blew into the ear of another and the case came before R. Jehudah the Second, and he said: I saw you doing it, and I hold with R. Jose the Galilean; and there are also other witnesses who saw you doing it, therefore go and pay him a manah of the city of Zur." † There was a man who did so to his neighbor, and when the case came before R. Tubiah b. Mathna he sent a message to R. Jose, questioning him whether the sela mentioned in the Mishna meant a sela of Zur or one of the country, which is only of the value of one-half of a zuz, and he answered: This is to be inferred from the end of Mishna I., Chap. IV., where it states "the first two a golden dinar"; and if the Mishna treated of a sela of the country, it would state one more case, viz.: "If the ox still gore another ox worth two hundred zuz, the owner of the ox and the owner

* One manah of Zur is 25 selas, each sela containing four zuz. A country manah is one-eighth of a manah of Zur, and also contains 25 selas, so that a country sela is one-half of a zuz.

† From here to end of paragraph is transferred from Chap. IV., Text, 36b.

of the first ox that was injured take each twelve dinars and one sela." Said R. Tubiah: Should the Tana enumerate all the possible cases as a peddler does his wares? How was the case decided? It was decided from the statement of Rabh, which R. Jehudah said in his name, that all the moneys mentioned in the Scripture mean those of Zur, and those mentioned by the rabbis mean those of the country. (Hence one-half of a zuz.) Said the plaintiff: As I have to get only one-half of a zuz, let it be for the poor, as I do not want it. Thereafter he said again: Give it to me and I will use it for improving my health. Said R. Joseph to him: The poor have already acquired title to it, and although they were not here, we the treasurers of charities are considered the hand of the poor.

Hanan the Bisha (the bad) blew into the ear of another. When the case came before R. Huna, he said: Go and pay him one-half of a zuz. Hanan had in his possession a bad zuz that he could not pass, and he tendered it to the plaintiff, asking for one-half zuz change. When he refused, he blew in his ear again, and paid him the whole zuz.

(It is said above, "I saw you doing it.") May a witness be a judge in the same case? Have we not learned in a Boraitha: If the Sanhedrin saw one murdering another, they shall be divided; viz., some of them shall appear as witnesses and the others shall perform the function of judges. Such is the dictum of R. Tarphon. R. Aqiba, however, said: As they are all witnesses, none of them can perform the function of judges? Did R. Aqiba indeed say so? Have we not learned in another Boraitha: It is written [Ex. xxi. 18]: "And if men strive together, and one smite the other with a stone, or with the fist." Said Simeon the Timani: As in the case of the fist it must be investigated whether the blow of the fist was of such violence as to make him ill, confined to his bed, the same is the case with the stone; but if the stone was lost from the hand of the witnesses, no judgment can be granted. Said R. Aqiba to him: "Did he strike him in the presence of the court, so that they could testify how much, for what, and at what place he struck him; and secondly, in case one pushes his neighbor from the top of the roof of a house or palace and he dies, are, then, the court obliged to go and investigate if the height was such as to kill a man, or shall the house or palace be brought before the Beth Din? And if you should say, 'Yea,' how should be the case if in the meantime the palace were destroyed—shall we

wait until it be rebuilt of the same height, so that it can be measured? Therefore we must assume that as in the case of the fist (which is always there) it depends upon the testimony of the witnesses whether the blow was of such violence, etc., the same is the case with the stone, except where the stone was lost before the witnesses have seen it." We see, then, that R. Aqiba said that the court can testify how the striking was, hence that a witness can act as judge? He said it only to R. Simeon: According to your theory, should the court, etc., but he himself does not allow a witness to be a judge under any circumstances.

The rabbis taught: "A non-vicious ox who killed a man and has also caused damages to another, he must be tried for the crime but not for the damages (because a non-vicious ox pays for damages from his body, and in this case his body is to be stoned); a vicious one, however, who did the same is tried first for the damages and subsequently for the crime. If, however, he was sentenced to death first, he cannot be tried again for the damages." What is the reason? Why shall he not be tried again for the damages. (In such a case the payment is to be made from the estates of the owner?) Said Rabha: I found the disciples of the college sitting and discussing about this case, and they came to the conclusion that the Boraitha is in accordance with R. Simeon the Timani's theory, that in all cases the appraisement of the court is necessary also concerning damages; and in our case, as it was already decided that the ox must be killed, the execution must not be postponed for the purpose of appraisement. Said I to them: The Boraitha can be explained also in accordance with R. Aqiba, namely, that the case was that the owner of the ox ran away (and he cannot be tried when he is not present). If so, even if the ox was not first tried for the crime, can a civil case be tried in the absence of the parties? The case was that he ran away after the witnesses testified in his presence. But if he ran away, from whom shall the payment be collected? If he was not yet tried for the crime, the appraisement of the damages can be made and the ox may be hired to do work with him until the compensation for the hire equals the amount of the payment, and subsequently he shall be tried for the crime. If so, let also a non-vicious ox be tried for the damages and then hired until the hire shall equal the amount of damages, and thereafter he shall be tried for the crime? Said R. Mari bar Kahana: From the fact that it does not state so,

it may be inferred that the hire paid for an ox is not considered as its body, but as the estates of the owner.

The schoolmen propounded a question: Is investigation (before appraisement) necessary in case of damages, or not? Shall we assume that only in case of a crime it must be investigated whether the blow was enough to kill, but in case of damages he must pay at any rate, or there is no difference and investigation must be had? Come and hear: It is stated above (p. 118), "As a pit of ten spans depth, which is capable of killing, so also other things, etc. If, however, it was less deep, he is liable only for damages but not for killing." Is it not to be assumed that it means from the bottom to the top—namely, ten spans deep is for killing, less than ten is for damages? Hence we see that investigation is not necessary, as it must be paid even if it was only two or three spans? Nay, it means from the top to the bottom—namely from one up, but not including ten, is investigated for damages, but it must be investigated how many spans deep are necessary for such damage (but if it was ten or more, then we follow the tradition that from ten up it kills).

Come and hear: Concerning the five certain things it must be investigated, appraised, and collected at once, including healing and loss of time, which are also previously appraised as how long it will take before he will be cured. If, however, it was not so—for instance, during that time he grew worse, or, on the contrary, he was cured in a shorter time, it does not matter, and the appraisement remains the same. Infer from this that there is appraisement in damages. (From this the question of the above schoolmen cannot be decided yet, as) they were not in doubt that appraisement was necessary of the time needed for the injured person to be cured, etc., but they still doubted if the article which caused the damage must be investigated whether it was capable of causing such damage or not. Come and hear the decision of Simeon the Timani stated above, from which is to be inferred that investigation is necessary also for damages. And so it is.

The Master said: If he was examined, and it was concluded that the healing must take a certain time, and he was healed before the time, he gets nevertheless the full amount. This will be a support to Rabha, who said that he who is examined, and it is concluded that his sickness will continue the whole day, and he becomes cured in half a day, so that the other half day he is doing some work, he is nevertheless paid for the full day, as it

is considered that his sickness was shortened by the mercy of Heaven.

"*If he spat in such a manner,*" etc. Said R. Papa: On those parts of his body which were not covered, but not if the spittle fell on his garments. But let it be considered as if he caused him shame by words? In the West it was said in the name of R. Jose b. Abin that from the above explanation of the Mishna by R. Papa is to be inferred that if one disgraces another by mere words he is free.

"*Rank and station,*" etc. The schoolmen propounded a question: The statement of the first Tana, shall it be construed leniently or rigorously? Leniently, if he was a poor person he must not be paid so much as if he were a rich one, or rigorously, that if he was of higher station he is paid more for the disgrace caused him? Come and hear R. Aqiba's statement in the same Mishna, that even the poorest man must be considered as an independent man, etc., from which it is seen that the first Tana meant leniently. And so it is.

"*It happened that one bared,*" etc. Do we, then, allow time for payment in such a case? Did not R. Hanina say that in cases of wounding no time is given? Yea. We do not allow time in cases of pecuniary damage, but in cases of disgrace, where there is no pecuniary damage, time is allowed.

"*He watched her when she was standing,*" etc. But the Boraitha states that R. Aqiba said to him: You dived into deep waters and brought up a fragment of a clay vessel: one may wound himself, but if others wound him they must pay (and in our Mishna it states that a man must not do so)? Said Rabha: This presents no difficulty. The Boraitha speaks of a wound which is not allowed, while the Mishna speaks of disgrace, which one is allowed to cause to himself.

But the Mishna speaks of disgrace only, and still R. Aqiba said, "Although he is not allowed," etc.? R. Aqiba meant to say thus: It is not only in case of disgrace, which one may do to himself, and still if caused by another he is responsible; but even in case of wounding, in which he is not allowed to do it to himself, and after he himself did it others came and caused him other wounds, they are nevertheless responsible.

"*One who cut off his plants,*" etc. Rabba bar bar Hana taught in the presence of Rabh: "If the plaintiff says, 'You killed my ox,' or, 'You cut off my plants,' and the defendant answer, 'You ordered me to do so,' he is free." Said Rabh to

him: If so, you would not leave life to the people—must he then be believed that he was ordered to do so? Rabba bar bar Hana answered: Then ignore it. Said Rabh to him: Why should you not explain your Boraitha that it treats of an ox which was sentenced to be killed, or of a tree which the court ordered to be cut off? He rejoined: If so, then what is the complaint of the plaintiff? The complaint is thus: I wanted to do this commandment myself, as we have learned in the following Boraitha: It is written [Lev. xvii. 13]: "Then shall he pour out the flood thereof, and cover it up," etc. This means that the covering up must be done by the one who pours it out (if he desires to do so); and it happened of one who slaughtered a fowl and another anticipated him and covered its blood with dust, that R. Gamaliel made him pay ten golden zuz. (Hence one has the right to complain for a meritorious deed which he was prevented from doing.)

Rabh said: A tree that contains a kabh of fruit is prohibited to be cut off. Said Rabhina: If, however, the tree be worth more in wood, it may be done. We have learned so also in the following Boraitha. It is written [Deut. xx. 20]: "Only those trees of which thou knowest"—that means, a tree which bears fruit; "that they are not fruit-trees"*—that means, a wild tree. Now as, according to this explanation, every tree which is needed may be cut off, why, then, the words "that they are not fruit-trees"? To teach that if there are both wild trees and fruit-trees, the wild trees have the preference to be cut off. But lest one say that even when the fruit-tree is worth more in being used for a beam in a building than for its fruit, the wild tree must be cut off first, therefore it is written "only."

The gardener of Samuel brought him dates in which Samuel tasted a taste of wine, and to the question why it was so the gardener answered that the dates were growing in the vineyard, and Samuel said: If they absorb so much sap of the vines, uproot them and bring me their roots to-morrow.

R. Hisda, when he noticed young date-trees in his vineyard, told the gardener to uproot them, saying: Vines are valuable and date-trees may be bought from their income, while date-

* The Talmud divides this verse into two parts, which in reality reads well as it is, and Rashi tried to explain it that because there are a few superfluous words it ought to read "only a tree that bears no fruit," why, then, the words, "which thou knowest"? And this is the reason why the Talmud infers from this that even a fruit-tree may be cut off when needed.

trees are only of slight value, and from their income vines cannot be bought.

MISHNA V.: All that which is said regarding payment for disgrace is only for the satisfaction of the pecuniary damage, but the hurt feelings of the disgraced are not forgiven, unless he prays and secures forgiveness from the plaintiff, as it is written [Gen. xx. 7]: "And now restore the man's wife," etc. And whence is it deduced that if the defendant does not forgive he is considered cruel? From [ibid., ibid. 17]: "And Abraham prayed unto God, and God healed Abimelech," etc. If one says to another: "Blind my eye, cut off my hand, break my foot," he (the defendant) is liable, even if he told him so on the condition that he should be free. If he told him: "Tear my garment, break my pitcher," he is liable. If, however, he told him so on the condition that he should be free, he is so. If one says to another to do such damage to a third person, even on condition that he should be free, the defendant is liable whether it be personal injuries or injuries to property.

GEMARA: The rabbis taught: All that which was said concerning disgrace is only for the civil court, as to how much the plaintiff should receive, but there can be no satisfaction for the injury to the feelings, for which, if he would even offer all the best rams of the world, they would not atone for it, unless he prays the plaintiff for forgiveness, as the verse quoted in the Mishna reads farther on: "For he is a prophet, and he will pray for thee." For he is a prophet! Must, then, only a prophet's wife be restored, and not that of an ordinary person? Said R. Simeon b. Na'hmani in the name of R. Jonathan: Read thus: Restore the man's wife; (and) because he is a prophet, he will pray for thee—which means that another's wife must be restored. And your claim [ibid., ibid. 4 and 5]: "Lord, wilt thou then slay also a righteous nation? Said he not unto me, She is my sister?" etc., is of no avail; for if a stranger comes to a city, he is usually questioned only what he would eat or drink, but not who is his wife or relatives, as your habit is; and because he was a prophet and he knew what you were going to ask him, therefore he and Sarah were compelled to say so. Infer from this that one is punished even when he commits a crime through ignorance, because he ought to learn and know.

It is written [ibid., ibid. 18]: "Every womb." Said the *disciple* of R. Janai, even the hen of Abimelech's household did

not lay its eggs. Said Rabha to Rabba bar Mari: * Whence is the following saying of the rabbis deduced: He who prays in behalf of his neighbor for a certain thing which he himself needs, he is answered first? He answered: From the following verse [Job, xlii. 10]: "And the Lord brought back the captivity of Job, when he prayed in behalf of his friends." He said to him: You deduce it from this, and I deduce it from the following verse [Gen. xx. 17]: "And Abraham prayed unto God, and God healed Abimelech, and his wife, and his maid-servants," etc.; and immediately thereafter it is written [ibid. xxi. 1]: "And the Lord visited Sarah as he had said," etc., which means, as Abraham prayed in behalf of Abimelech.

Said Rabha to Rabba bar Mari: Whence do we deduce the following people's saying: With the thorn the rose is also beaten? He answered: From the following verse [Jer. ii. 29]: "Wherefore will ye contend with me? *all* of you have transgressed against me, saith the Lord." ("All," although there were some who were righteous, as the prophets, etc.) Said he to him: You deduce it from this verse, and I deduce it from the following [Ex. xvi. 28]: "How long refuse *ye* to keep my commandments," etc. ("ye" includes Moses and Aaron also).

The same said again to the same: It is written [Gen. xlvii. 2]: "And he took some of his brothers, five men." Who were the five? He answered: So said R. Johanan: Those whose names were mentioned twice in the benediction of Moses [Deut. xliii.] (Zebulun, Gad, Dan, Asher, and Naphtali). But is not Jehudah's name also mentioned twice? Jehudah's name was mentioned twice for another purpose (explained in Tract Mak-koth, 10). He questioned him again: What is the origin of the following people's saying: "One misfortune follows the other"? He answered: In the following Mishna: "The rich bring the first-fruit in golden or silver baskets (and take the baskets back), while the poor bring it in willow baskets, and the baskets remain with the fruit for the priests." He said to him: You find it in the Mishna, and I find it in the Scripture [Lev. xiii. 45]: "And

* The following series of questions is placed here because of the verse quoted, "and Abraham prayed unto God," etc., from which Rabba bar Mari delivered his statements in the text differing from Rabha; and at the same time he mentions here all other statements which each of them deduces from different verses, and casually also others. They wanted also to find the origin of even the ordinary adages of the people in the Holy Writ, on account of what is stated elsewhere in the Talmud, that there is nothing in the world for which there can be found no hint in the Scripture. (See vol. viii., Tract Taanith, p. 9.)

the leper. . . . Unclean, unclean, shall he call out." (Hence, it is not enough that he is afflicted, he must himself call it out.)

He said again: Where is the origin for the rabbis' saying: Arise early in the morning and eat something, in the summer because of the heat and in the winter because of the cold; and people say: Sixty men were running after one who used to eat early in the morning, and could not overtake him? In the verse [Is. xlix. 10]: "They shall not be hungry nor thirsty, and neither heat nor sun shall smite them." Said he: I, however, find the origin in the following [Ex. xxiii. 25]: "And ye shall serve the Lord," which means the reading of Shema and prayer; "And he will bless thy bread, and thy water," which means the bread and salt and the pitcher of water one takes immediately thereafter; [and then he may be sure that] "I will remove sickness from the midst of thee."

He said again: What is the origin of the rabbis' saying: If your neighbor calls you "ass," put on a saddle (*i.e.*, do not answer him)? He answered: In [Gen. xvi. 8]: "And he said, Hagar, Sarah's *maid*. . . . And she said, From the face of my *mistress*."

He said again: And wherefrom is the people's saying: "When talking to a stranger, tell him first of all the position you are in"? He answered: From [ibid. xxiv. 34]: "And he said, I am Abraham's *servant*." And wherefrom is the people's saying: A duck while it keeps its head down, its eyes still look at a distance? He answered: From [I Samuel, xxv. 31]: "And when the Lord will do good unto my lord, then do thou remember thy handmaid." (While praying to save her life, she hinted that he should marry her.)

And wherefrom the following people's saying: For the wine furnished by the host to his guests thanks are due; the main thanks, however, receives the man who takes care of serving the same in a nice manner? He answered: From [Numb. xxvii. 19]: "And thou shalt lay thy hand upon him"; and also [Deut. xxxiv. 9]: "And Joshua the son of Nun was full of the spirit of wisdom; for Moses had laid his hands upon him, etc." (Hence we see that the whole credit is given to Moses.) And wherefrom the following people's saying: A tree bearing bad fruit usually keeps company with trees which do not bear fruit at all? He answered: This is written in the Pentateuch, repeated in the Prophets, mentioned a third time in the Hagiographa, also learned in a Mishna

and taught in a Boraitha: *Pentateuch* [Gen. xxviii. 9]: "And Esau went unto Ishmael." *Prophets* [Judges, xi. 3]: "And then gathered themselves to Yiphthach idle men, and they went out with him." *Hagiographa* [Ben Sira, xiii.]: "Every fowl associates with its kind and man with his equal." *Mishna*: "All that is attached to an unclean article is unclean and all that is attached to a clean article is clean." *Boraitha*: "R. Eliezer said: Not in vain did the cuckoo go to the crow, because it is of its kind." He said again: And wherefrom the following saying: If you advise your neighbor and he does not heed your advice, press him to the wall and let him suffer? He answered: From [Ezek. xxiv. 13]: "Because I endeavored to cleanse thee, and thou wouldst not be clean, thou shalt not be cleansed from thy uncleanness any more." And wherefrom the following saying: Do not spit in the well from which you drank water? He answered: From [Deut. xxiii. 8]: "Thou shalt not abhor an Edomite; for he is thy brother; thou shalt not abhor an Egyptian; because thou wast a stranger in his land." And wherefrom the following saying: If you will help me to lift the burden, I will carry it; and if not, I will not touch it? He answered: From [Judges, iv. 8]: "If thou wilt go with me, then will I go; but if thou wilt not go with me, I will not go." And wherefrom the following: When we were young we were considered as men, and now when we are old we are considered as children? He answered: It is first written [Ex. xiii. 21]: "And the *Lord* went before them . . . and by night in a pillar of fire, to give light to them"; and thereafter [ibid., xxiii. 20]: "Behold I send an *angel* before thee, to keep you on the way." And wherefrom the following: If you keep in touch with oil, your hands will become oily? He answered: From [Gen. xiii. 5]: "And Lot also, who went with Abram, had flocks, and herds, and tents." R. Hanan said: Whoso calls down divine judgment on his neighbor is punished first, etc. (See Rosh Hashana, p. 22. There, however, it is said in the name of R. Abin.) R. Itz'hux added to this: Woe to him who cries for such, more than to him upon whom the judgment is called down. We have so also learned in the following Boraitha: "Both are punished (by the Divine Court), but the one who calls down the judgment is punished first." The same said again: Do not hold light the curse of a common man, etc. (See Vol. VIII., Tract Megila, p. 38.) R. Abahu said: It is better for one to be of the persecuted than of the persecutors, as there are no more persecuted birds than doves and

pigeons, and the Scripture made them fit for the altar. "Blind my eye," etc. Said R. Assi * to Rabba: Why in the first part the condition that he should be free is of no effect, and in the second part it is? He answered: Because no one will ever forgive for the loss of the principal members of his body. Said he to him: Does, then, a man easily forgive for pain—and nevertheless a Boraitha states: "If one say to another, 'strike me,' or 'wound me, upon condition that you should not be liable for it,' and if he does so, he is free? Rabba remained silent. Thereafter he said to him: Do you know how to explain this? He said: So said R. Shesheth: The reason is for the indignity caused to his family. It was taught: R. Oshiya said: For the reason just mentioned; and Rabba said: Because one does not forgive for the loss of the principal members of his body. R. Johanan, however, said: One may forgive for all that was done to him; and our Mishna, which makes him liable, although it was on the condition that he should be free, is because there is sometimes a "nay" which means "yea" and a "yea" which means "nay" (explained in the following Boraitha). We have learned also in the following Boraitha: If one says to another, "Strike me," or "wound me," and the other asks, "On condition that I should be free?" and he answered "Yea!" (*i.e.*, if so, you would like to do so)? Hence this "yea" means "nay." "Tear my garment," and he says, "And thereafter I should pay for it?" And he answers, "Nay." which means "Yea, you may do so."†

"*Break my pitcher*," etc. There is a contradiction from the following Boraitha: It is written [Ex. xxii. 6]: "If a man . . . to keep," etc., for preservation; but not when he says to him keep it for destruction or for charity. (Hence we see that if he told him to keep it for destruction, although he did not say on the condition of being free, he is nevertheless free?) Said R. Huna: This presents no difficulty: The Boraitha speaks of when it was delivered to the bailee for, and he accepted it for,

* This name is correct, according to Alphasi, as the name mentioned in the text would be incompatible with the time in which R. Assi b. Hama lived.

† R. Johanan explains that our Mishna speaks of when there was a question and an answer between the plaintiff and the defendant, and it was not clear whether it meant yea or nay; the Boraitha, however, speaks of when the plaintiff made the condition that the defendant should be free without any question by the other. This is Rashi's explanation. The text, however, of R. Johanan's saying mentioned above seems to us to be very simple: It must be investigated how the condition is to be understood—whether it is in the absolute affirmative form or in the form of a question.

destruction—then certainly he is free ; and the Mishna speaks of when he told him to break the pitcher when the same was yet in the hands of the owner. Said Rabba to him : The words “to keep” in the Scripture mean certainly that it was delivered to the bailee ; and nevertheless, if thereafter he told him to destroy it, without making the condition to be free, he is liable, unless he told him to keep it for destruction at the time of the delivery ? Therefore said Rabba : Both cases treat of destruction after the delivery ; but the Mishna speaks of when he told him to destroy it after he received it for safe-keeping, and the Boraitha speaks of when he told him at the time of the delivery to keep it for destruction.

There was an *apvāxis* of charity which was sent to Pumbeditha, and R. Joseph deposited it with a certain man who did not take good care of it, and it was stolen from him. R. Joseph held him responsible. Said Abayi to him : Did not the Boraitha state, to keep it for preservation, but not for charity ? He answered : The poor of Pumbeditha receive each a fixed sum from charity, so that this money belonged to them, and they can be the claimants thereof (and the reason why the Boraitha holds the bailee free, if it was given to him to keep it for charity, is because where the poor do not receive fixed sums at certain periods they cannot claim a certain fixed amount, and therefore it is considered that there are no claimants).

END OF VOLUME II. (X.)

[NOTE.—The last two chapters of The First Gate will be printed in the succeeding volume.]

NEW EDITION
OF THE
BABYLONIAN TALMUD

BY
DR. MICHAEL L. RODKINSON

SECTION MOED (FESTIVALS) COMPLETE, consisting of the following volumes:

- Vol. I. TRACT SABBATH, first ten chapters, pp. xxxv + 188.
Vol. II. TRACT SABBATH (continued), fourteen chapters, pp. xxxvi-xlvii + 189-390.
Vol. III. TRACT ERUBIN (Mingling), pp. xvi + 252.
Vol. IV. TRACTS SHEKALIM (Duties) AND ROSH HASHANA (Hebrew Calendar): Hebrew and English, pp. xlv; English, 104; Hebrew, 66.
Vol. V. TRACT PESACHIM (Passover), pp. xii + 264.
Vol. VI. TRACTS YOMAH (Day of Atonement) AND HAGIGA (Holocaust): Yomah, pp. xx + 148; Hagiga, pp. vi + 54.
Vol. VII. TRACTS BETZAH (Feast), SUCCAH (Tabernacles) AND MOED KATAN (Minor Festivals): Betzah, pp. xiv + 78; Succah, pp. x + 93; Moed Katan, pp. iv + 46.
Vol. VIII. TRACTS TAANITH (Fasts), MEGILLA (Book of Esther) AND EBEL RABBATHI (Great Mourning) (with Editor's own commentary): Taanith, pp. xiv + 94; Megilla, pp. vi + 90; Ebel Rabbathi, pp. iv + 62.

SECTION JURISPRUDENCE (DAMAGES). Volume I. Ethics of Judaism (Tracts Aboth, Aboth of R. Nathan, Derech Eretz Rabba, and Zuta), pp. xxii + 136. Volume II. Baba Kama (First Gate), pp. xxv + 210. *Just published; succeeding volumes in press.*

Price \$3.00 per vol. *net*.

TRACT SHEKALIM, separate edition, Hebrew and English (with Editor's own commentary); unbound. Price \$1.50.

Of Rodkinson's 22 previous publications only a limited number of copies of the following is for sale:

History of Amulets, Charms and Talismans; a historical investigation into their Nature and Origin. Pp. x + 93. Price \$2.00.

THE PENTATEUCH: ITS LANGUAGES AND CHARACTERS. Pp. ix + 38. Price 50 cents.

URSPRUNG UND ENTWICKELUNG DES PHYLACTERIEN RITUS BEI DEN JUDEN (Hebrew). Royal 8vo, pp. xxiv + 152. Price \$3.00.

DER CHARAKTER DER ISRAELITEN, ETC. (Hebrew). Pp. vi + 31. Price 50 cents.

BARKAI (SCHUTZSCHRIFT) (Hebrew). Pp. 56. Price 75 cents.

BARKAI (MORGENBLITZE) (Hebrew). Royal 8vo, pp. 68. Price \$1.00.

DER SCHULCHAN ARUCH UND SEINE BEZIEHUNGEN ZU DEN JUDEN UND NICHTJUDEN (German). Royal 8vo, pp. x + 68. Price \$1.50.

DIE BIOGRAPHIE DES GRÜNDER'S DES CHASSIDISMUS, ISRAEL BAAL SHEM TOB (Hebrew). Pp. xl + 144. Price \$2.00.

DIE BIOGRAPHIE DES CHABAD RABBINER'S SCHNEOR SALMAN AUS LADI (Hebrew). Pp. xii + 112. Price \$1.50.

NEW TALMUD PUBLISHING CO.

1332 FIFTH AVE., NEW YORK



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

KG
6386



KG 6386

~~H557~~



HARVARD UNIVERSITY

LIBRARY OF THE

Semitic Department

Gift of Isidor Straus.
11 Feb. 1901.

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and
Translated into English

BY
MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACT BABA METZIA
(MIDDLE GATE, PART I.)

Volume III. (XI.)

NEW YORK
NEW TALMUD PUBLISHING COMPANY
1332 FIFTH AVENUE

1900

KG 6386

1901, Feb. 11.
Gemara Library
Gift of Isidor Straus.

#557



EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.
2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.
3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waibayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.
4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.
5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.

COPYRIGHT, 1900, BY
MICHAEL L. RODKINSON.

CONTENTS.*

	PAGE
SYNOPSIS OF SUBJECTS OF TRACT BABA KAMA (THE FIRST GATE)	iv

CHAPTER IX.

THE LAWS RELATING TO THE CHANGE OF THE NAME AND NATURE OF STOLEN ARTICLES, AND WHEN AN ARTICLE BECOMES USELESS. ABOUT SKILFUL MECHANICS WHO SPOIL WORK INTRUSTED TO THEM, AND AS TO THE PLACE TO WHICH A STOLEN ARTICLE MUST BE RETURNED . . .	211
--	-----

CHAPTER X.

REGULATIONS REGARDING ROBBED ARTICLES WHICH REMAIN AFTER THE DEATH OF THE ROBBER.—IF ONE RECOGNIZES HIS STOLEN ARTICLES AT THE PREMISES OF SOME ONE.—REGARDING ROBBED ESTATES, AFTERWARDS THE GOVERNMENT TOOK IT AWAY, ETC.	251
---	-----

* Continuation of previous volume.

SYNOPSIS OF SUBJECTS

OF

TRACT BABA KAMA (THE FIRST GATE).*

CHAPTER IX.

MISHNAS I. TO III. If a change on the face of an article gives title to the possessor and if it is biblically? Would all the above-mentioned Tanaim trouble themselves to teach us a Halakha of the Beth Shammai? Robbers and usurers, if they make a restitution of their own accord, it should not be accepted, etc. There are three cases in which the increase is appraised and the payment is with money. I and the King Sabura are brothers in regard to court cases. (See foot-note.) Did not I tell you, You shall not change names? R. Joseph bar Hama used to compel slaves of his debtors to labor for him, etc. What were the coins of Jerusalem and what were the coins of Abraham the patriarch? Labor which cannot be recognized on the body of the animal as damaging, the civil court cannot make him liable for. Is a germon considered a direct pecuniary loss? May the court decide a case of a goring ox in its absence? If a specialist took a thing to repair it and he spoiled it. A builder who undertook to take apart a wall, and he broke the stones or bricks. A butcher specialist, if he has spoiled the meat he is a tortfeasor, and is also considered wilful, etc. Why so many reasons? "I think your brain is not in regular order." "Rabh did two good things regarding you. He prevented you from using a doubtful thing, and also restrained you from possible robbery." There was a woman who showed a coin to R. Hyya, etc. Resh Lakish showed a dinar to R. Elazar, and he told him it was a good one. He said then: "See, I rely upon you," etc., 211-228

MISHNAS IV. TO VII. If one gave wool to the dyer, and it was spoiled. To be dyed red, and it is dyed black, or conversely. To make a chair of it, and he has made a bench. Is the color of the dyes to be considered as existing upon the wool or not? In one tract is the order of the Mishna not to be taken in consideration, but in two different tracts it must be considered? The whole of Section Damages is considered as one tract. If one has given money to his messenger to buy wheat, and he buys barley. If one buys a field in the name of his neighbor. Kahana paid money for flax. In the mean time

* Continuation of previous volume.

SYNOPSIS OF SUBJECTS.

v

the flax became dearer and the seller sold it (for Kahana's benefit). One who has stolen the value of a coin swears falsely and afterwards confesses. The same is the case in a deposit. If one has robbed one of five persons, and he does not know which of them. It happened with one pious man who bought of one of two persons, and he did not know from which of them. A messenger must not be made in his absence. It happened with R. Abba, who was the creditor of R. Joseph bar Hama, and the former asked R. Safra to bring, etc. "My master, do you mean to deduce from this Scripture that it must be paid, or you say it is common?" If one has robbed two bunches of the value of a parutha and had returned one of them, how is the law? He who denies a deposit is considered as a robber. As soon as the owner has taken an oath, he has not to pay. One who claims "stolen" on a deposit, or of a lost article he has found, must pay double, etc. The three oaths—first, that I have done all my duty in taking care of it; second, that I did not make use of it; and third, that it is not under my control. If a gratuitous bailee swore it was stolen, and, nevertheless, he paid: and then the thief was found. Where is my bailment? Lost! Do you swear by God? Amen. Witnesses testified that he himself had stolen it. If one robbed his father and swore falsely, and after his death he confessed. "I swear you shall have not any benefit from my estate." If one robbed a proselyte and swore, and afterwards the proselyte died. The priests who receive the robbery of the proselyte, are they considered heirs, or only receivers of a donation? 228-250

CHAPTER X.

MISHNAS *I. TO VII.* If one left money made by usury for his heirs, although they know of it, they are not obliged to return it. The brother-in-law of R. Jeremiah, who was a minor, shut the door in his face, etc. The testimony of witnesses can be taken even in the absence of the parties. May a document be approved even not in the presence of the party, or it must not? It is an obligation on the court to give notice to the defendant that his property will be sold. A messenger of the court should be trusted as two witnesses, etc. One must not be summoned by the court on the eve of a Sabbath. Money must not be changed from the treasury of duties, etc. Why contractors of duty are counted among murderers. R. Ashi happened to be on the road, and saw a vineyard in which some grapes were ripe, etc. A contractor of the government has the right to pledge a fellow-citizen for the duty of another citizen of the same city, etc. If the contractors returned him instead of his ass another one, etc. If one saved an estate from the stream or from robbers, etc. Are a woman and a minor qualified to be witnesses? A child was telling: It happened that my mother and I were prisoners among the heathens, and I did not turn away my eyes from my mother, etc., 250-262

MISHNAS *IV. TO VI.* If one recognizes his utensils or books by another. If a thief has sold out his stolen articles, and later it was recognized that he is the thief. If the thief was a notorious one. If one destroys his own goods for the sake of saving the goods of his neighbors. The redemption money of a caravan in a desert is to be charged proportionately to the amount each of

them possesses, etc. If a robbed field was taken away by land robbers. There was a man who showed to the contractor a heap of wheat belonging to the Exilarch. There was a man by whom a silver goblet was deposited, he presented it when he was attacked by robbers, 262-270

MISHNAS VII. TO XIII. If a stream has overflowed the robbed field. If one says, I have robbed you, and I don't know if I have returned it to you. One must not buy from the shepherds kids of goats, etc. And not fruits from the watchman. One who robs his neighbor, even the value of a parutha, is considered as if he would take away his life. One shall not buy from the carder flocks, because they are not his property. What about the splinters which fall out by the carpenter? 270-277

CHAPTER IX.

THE LAWS RELATING TO THE CHANGE OF THE NAME AND NATURE OF STOLEN ARTICLES, AND WHEN AN ARTICLE BECOMES USELESS. ABOUT SKILFUL MECHANICS WHO SPOIL WORK INTRUSTED TO THEM, AND AS TO THE PLACE TO WHICH A STOLEN ARTICLE MUST BE RETURNED.

MISHNA I. : If one has stolen wood and made utensils of it, or wool and made garments of it, he must pay only for the cost of the material at the time it was stolen. If one stole a gravid cow and it brought forth young, or a sheep with its wool and he sheared it, he must pay the value of a gravid cow in its last month, or the value of a sheep ready to be sheared; if, however, the cow became gravid or the sheep grew its wool after the robbery, their value at the time they were stolen is to be paid. This is the rule: All robbers must repay the value of the article as it was at the time of the robbery.

GEMARA: The Mishna states: *Utensils* of wood or garments of wool, from which it is to be inferred that when the utensils were not as yet made, but only planned, or the garments not yet bleached, the law is otherwise. Then there is a contradiction in the following Boraitha: "If one has stolen wood and planed it, stones and cut them, wool and bleached it, flax and cleansed it, the payment for it is to be taxed as when stolen"? Said Abayi: "The Tana of our Mishna states that not only an irremediable change makes the robber the owner of it so that he must not return the same, but the value of the material when it was stolen, which is biblical; but even a removable change, *e.g.*, planed wood of which he made utensils that can be taken apart in such a way that the wood may remain in the same condition as when stolen, or spun wool, which can also be taken apart, etc., which change is only rabbinical. The Mishna comes to teach us, that even in such a case the robber acquires title by the change and must pay only the value of the material." R. Ashi, however, said: "The Tana of our Mishna speaks also of a change that is biblical. For instance, by uten-

sils is meant even a planer with which he has only planed the wood, and by garments is meant unbleached felt-spreadings (which he has only bleached) which change is irremediable." If bleaching is considered an irremediable change, it would be contradictory of the following Mishna, which states: "If one had no time to give it to the priest until it was dyed, then he is free; but when it was only bleached, he must give it to the priest"? Said Abayi: "This presents no difficulty, as our Mishna is in accord with R. Simeon, and the other with the rabbis of the following Boraitha: If he has the wool from five sheep, a quantity of about a pound and a half, a part of it would go to the priests. If some of this quantity was already woven, it does not count. If, however, some of it was only bleached, according to the sages it counts, and according to R. Simeon it does not." Rabha said: "Both statements may be explained in accordance with R. Simeon, and there is no difficulty, as one of them speaks of it when it was only scattered, and the other one speaks of it when it was combed before bleaching." R. Hyya bar Abin said: "The one speaks when it was only bleached and the other when it was sulphurated." Now, then, how can bleaching be considered a biblical change, when even dyeing is not considered a change, according to R. Simeon; as is stated in the Boraitha concerning the gift of the first shearing to the priest, in the case mentioned above: "Do not exclude from the quantity even wool that was already dyed"? Said Abayi: "This presents no difficulty. The statement of R. Simeon, given by R. Simeon ben Jehudah in his name, that dyeing wool counts, is opposed to the rabbis, who declare that R. Simeon said it does not count (consequently, one Boraitha is in accord with R. Simeon ben Jehudah's statement and the other is in accord with the declaration of the rabbis)." Rabha, however, said: "It is not necessary to say that the rabbis oppose R. Simeon ben Jehudah, for dyeing is different, because it can be removed by *σαπων*, and the above statement, that when it was dyed he is free, speaks when it was dyed by *σαπων*, which is not irremediable."

Said Abayi: All the following Tanaim agree with R. Simeon's statement explained above, that a change does not give title: Namely, Beth Shammai, as stated above (Ch. VII. p. 150). R. Eliezer ben Jacob of the following Boraitha: R. Eliezer ben Jacob said: If one had stolen a saah of wheat and had ground, kneaded, and baked it, and separated the heave of it, how can

he make a benediction; it would be not a benediction but a blasphemy, as it is written [Psalm, x. 3]: "The robber blesses . . . despises the Lord." Simeon b. Eliezer, of the following Boraitha, declares the following rule: Every increase that was made by the robber is subject to his disposal: He may keep it for himself, or return it to its owner, saying: Here is your property. How is this to be understood? (If he may say to the one robbed, "Here is yours," then it belongs to the owner—how, then, is it at the robber's disposal?) Said R. Shesheth: He means to say, if there is an increase the robber may retain it; but if there is a decrease, he can say to the one robbed, "It is yours," because a change in the property does not give title. If so, why not the same when there is an increase? This is only an enactment of the sages for the benefit of those who repent. R. Ishmael, of the following Boraitha: The positive commandment to separate the corner tithe is to be performed by putting aside from the standing corn; if that has not been done, he may put aside from the sheaves; if he had neglected also from this, he may do it in the granary before the corn was threshed; but afterwards he separates first the Levitical tithe and then the corner tithe. In the name of R. Ishmael, however, it was said: "He may separate the corner tithe and give it to the poor even from the dough."

Said R. Papa to Abayi: "Would all the above-mentioned Tana'im trouble themselves to teach us a Halakha of the Beth Shammai (which does not prevail?), and he answered: "All they mean to say, is that Beth Shammai and Beth Hillel do not differ in this regard." Said Rabha: Why, then, (what compels you to teach that all the Tana'im hold that a change is of no avail)? Perhaps R. Simeon ben Jehudah's statement has reference only to a case of dyeing, as the color can be removed as stated above; and the Beth Shammai, because it is not clean enough for the altar, and R. Eliezer ben Jacob could not accept it to pronounce a benediction upon it, as such a meritorious act should not be caused by a transgression; and R. Simeon ben Elazar also, because it can again become fat; and, finally, R. Ishmael's statement was made only on the corner tithe as there is a superfluous word in the expression "Thou shalt leave it" (but in any other case they all may agree that a change is of value). And lest one say, that it can be inferred from this for all the other cases, it would not be correct, because charity affairs are different, as R. Jonathan questioned: "What is the

reason of it?" Shall we assume that R. Ishmael's theory is correct, because he holds that a change does not give title, or perhaps he holds it here only to be in accord with the superfluous word stated above, which must be only for the purpose that this rule applies only here as there is not known any other purpose for it? And he questioned also, What will the rabbis who opposed R. Ishmael say in regard to the superfluous expression in question? It can be said, It is needed; for we have learned in the following Boraitha: If one has renounced his ownership of a vineyard, and then in the morning he plucked the grapes, he is exempt from cleaning the vineyard and gathering every grape, forgotten sheaf, and corner tithe (because of the above-mentioned expression or something similar to it being applicable to all these gifts). It is, however, exempt from tithe. Said R. Jehudah in the name of Samuel: "The Halakha prevails in accord with R. Simeon ben Elazar." Abayi taught the same as follows: R. Jehudah said in the name of Samuel: It was said that the Halakha prevails according to R. Simeon b. Elazar, but he did not accept it.

R. Hyya bar Abba said in the name of R. Johanan: According to the Scripture a stolen thing is to be returned whatever its condition (although it is changed), as it is written [Lev. v. 23]: "He shall restore what he has taken away violently," no matter how it is now; and there is no wonder at the statement of our Mishna, for it is only for the benefit of those who repent. The rabbis taught: Robbers and usurers, if they make restitution of their own accord, it should not be accepted; and he who does accept it, acts contrary to the sages. Said R. Johanan: This Mishna was taught in the time of Rabbi, as we have learned in the following Boraitha: It happened that one intended to repent, but his wife told him, "If thou wilt do so, then even thy girdle will not belong to thee," and so he was kept back from repenting. At this time the statement of the above Mishna was made. Come and hear: "The repentance of shepherds, commissioners, and the contractors of duties is hard (because they do not know to whom to return the stolen goods); and when they nevertheless do repent, they have to return to those whom they know. (Hence we see that they must return?) We can say: Yea, they must return, but it should not be accepted. Then what is the use of their returning? To satisfy the Heavenly Will. If so, in what point is the difficulty of their repentance? And also, how would the last part of this

Boraitha be understood: "And the remainder, which they do not know to whom to return, shall be used by them in providing for the needs of the community"? And R. Hisda explained it that it means, *e.g.*, wells, excavations, etc. Hence we see that it should be accepted? Therefore we must say: The above Boraitha was taught before the above-mentioned enactment of the sages was made. According to R. Na'hman, however, who said that this enactment was made in reference to stolen articles which no longer exist, it may be explained that both Boraithas were taught after the enactment, and there is no contradiction, as one speaks of stolen articles that exist, and the other of such stolen articles as no longer exist. But was, then, not the above-mentioned enactment made in reference to the statement about the girdle, although it was in existence? Nay, it must not be taken literally. It means the value of the girdle. But was not the enactment made even in reference to an article that exists; for there is a Mishna that when a stolen beam was used for the building of a house, the one robbed could collect its value only, for the benefit of him who repented, although the beam still exists? This case is different, as the robber would suffer great damage by taking it out, and therefore the rabbis consider it as if it did not exist at all.

"*If one has stolen a gravid cow,*" etc. The rabbis taught: If one had stolen a sheep and he had shorn it, or a cow and she brought forth, he must pay for the animal itself, and also for the wool or the young. This is the decree of R. Meir. R. Jehudah said: "A stolen thing must be returned as it is" (and the value of the wool or the young as they were, at the time of the robbery, but not the increase during the time they were under his control). R. Simeon, however, said: The value of the stolen article in money when it was robbed must always be considered. The schoolmen propounded a question: What is R. Meir's reason? Does he hold that a change is never of any avail, or, in other cases, agree that a change gives title, but here it is only a fine which should be inflicted on the robber, and the difference (between the two suppositions would be) when the cow becomes thin (in the house of the robber)? Come and hear: If one has given wool to dye it red, and it was dyed black, or *vice versa*, said R. Meir: He must pay him the value of the wool. Hence only the "value of the wool," but not for the increase? Now, if R. Meir is of the opinion that a change does not give title, the value of the wool and the increase

should be paid? Hence it is to be inferred that he holds that everywhere a change acquires title, and here is only a fine for the robber. According to others, the schoolmen did not propound the above question, because Rabh has changed the names in the following Mishna. If one has stolen a cow or slaves, and they become old while under his control, he must pay according to their value when they were stolen. This is the decree of R. Meir. The sages, however, say as to slaves, he may say: "Yours is before you." Hence we see that, according to R. Meir, a change gives title, and here is only a fine, and if there was any question by the schoolmen it was this: Is the fine only for an intentional act or only for an unintentional? Come and hear the Mishna mentioned above concerning the dyeing of wool, that he must pay only for the wool and not for the increase, because there was no intention, from which it is to be inferred that without intention there is no fine. "R. Jehudah said the stolen property," etc. What is the difference between R. Jehudah's and R. Simeon's statement? Said R. Zbid: They differ when the increase is still in the stolen thing. According to R. Jehudah, it belongs to the one robbed, and according to R. Simeon to the robber. R. Papa said: Both agree that such an increase belongs to the robber (as even R. Jehudah meant only it should be returned as it was at the time it was stolen), and the case here held when it was customary in the country to take cattle for improvement for the reward of half, third, or a quarter. According to R. Simeon, the robber gets only the customary reward, but according to R. Jehudah the whole improvement belongs to him. There is a Boraitha which states plainly as R. Papa explained. Said R. Ashi: When we were in the college of R. Kahana, we were in doubt regarding R. Simeon's theory as to the payment of half, etc., for improvement, whether he shall be paid in money or with its meat? Afterwards we concluded from R. Na'hman's statement in the name of Samuel that it means in money: There are three cases in which the increase is appraised and the payment is with money, and they are: A first-born pays the increase after the death of his father to the other brothers; the same the creditor to the buyer, or to the heirs (for the increase after the time the estates were bought or after the death of the lender). Said Rabbina to R. Ashi: How could Samuel here state that the creditor must pay to the buyer for the increase? Did he not say that the creditor collects even the increase? And he an-

swered: This presents no difficulty, when we take into consideration that there is a difference between an increase which is not yet ripe (that in such a case a creditor collects it) and an increase which is already ripe for harvest (which a creditor cannot collect). He objected: But was it not a fact that Samuel's court collected every day even from crops that were ripe for harvest? He answered: This also presents no difficulty when the claim is equal to the amount of the field together with the increase (then the creditor collects the increase also). When the claim is, however, only for the value of the estate (then the creditor must pay for the increase). Rejoined the former: This is right according to him who holds that even when the buyer has money he cannot pay the creditor with money; but according to him who holds that when the buyer has money, he can pay the creditor with money (why is it stated that the creditor pays with money for the increase?) why should not the buyer (have the right to) say: If I had money, I would make you leave the estate entirely. Now, when you take it for your debt, you have the right to take it for your debt only; but as for the increase, would it not be right to leave for me a part of the estate? And he answered: The case was when the field was hypothecated to the creditor, *i.e.*, when the loan was issued, he told him: You have to collect your debt from this estate only.

Rabha said: If one has stolen an article, and after improving it sells or bequeaths it, the sale or the bequest is valid for the improvement. He questioned, however, in case it was improved by the buyer, How is the law? After he questioned it, he decided: What else, then, had the first sold to the other, if not every right that he might have in this estate (so that the buyer has the same share of the improvement as the seller himself).

R. Papa said: He who stole a date tree and cut it down, did not acquire title, although he removed it to his own field. Why so? Because it has even then the same name as before—date tree. It is the same if he cut it in pieces, for they are still called pieces of a date tree. If, however, he has stolen pieces and made beams of them, title is acquired; if he has stolen beams and made short ones of them, title is not acquired; but if he has made boards of them, title is acquired.

Rabha said: If one stole a palm branch and has torn it in single leaves, title is acquired, because it is no more called palm,

but leaves; for the same reason, title is acquired when he has stolen leaves and made a broom of them. If, however, he has stolen a broom and made a rope, title is not acquired, because it can be taken apart and a broom again made of it. R. Papa questioned: If the double leaf of the same was divided (so that it cannot be restored), how is the law? Come and hear: R. Mathun said in the name of R. Jehoshua ben Levi: If the double leaf is divided, it is considered as if taken away, and it is invalid (for use of that day). Infer from this that such a change gives title.

R. Papa said: "If one has stolen clay and made bricks of it, title is not acquired, because it can be reduced again to clay; conversely, however, title is acquired, because, even if he will again convert it into bricks, it will have another appearance and will be no more the same as it was before. The same is the case if he has robbed bullion and coined it into money. If, however, he stole old coins and had cleaned them that they look like new ones, title is not acquired; but conversely it is, because, even should he clean them again, they will still be recognized as the old ones.

"*This is the rule*," etc. What does it mean to add? Such a case as that of which R. Ilai said: "When one has stolen a sheep and it becomes a ram, or a calf and it becomes an ox, the change is considered as being made while in the possession of the thief, and title is acquired so that, if he has slaughtered or sold it, it is considered he has done it with his own. It happened that one had stolen a pair of oxen, and he ploughed and sowed his field with them. Finally, he returned them. When the case came before R. Na'hman, he said: Go and appraise the increase he has made with them. Said Rabha to him: Is the increase of the field caused only by the oxen, and not by the field also? And he answered: Did I say the whole increase shall be collected? I mean half of it only. And he rejoined: After all, it is no more than a robbery of which the rule is, "It shall be returned as it is." He answered again: Did I not tell you that when I am sitting in the court you shall say nothing to me; for Huna, my colleague, has said that I and the King Sabura are brothers in regard to court cases.* This man is known as an old robber and I want to fine him.

* Rashi says: "It means Samuel, who was the greatest authority in court cases." Abraham Krochmal, however, maintains that R. Na'hman meant to say that Huna the Exilarch had granted him the power to impose fines as he thought necessary,

MISHNA II: If one has stolen cattle or slaves, and they become old, he must pay their value at the time stolen. R. Meir, however, says: Concerning slaves he may say: "Yours are before you." If he has stolen a coin and it broke, fruits and they became rotten, wine and it became sour, it is to be paid as at the time robbed; a coin which afterward became invalid, heave-offering and it became unclean,* or leaven which was in the hand of the one robbed during Passover, a cow and it was used for sodomy, or it became invalid for the altar or it was condemned to be stoned, he may say: "Yours is before you."

GEMARA: Said R. Papa: It means not only when it became old, but even when it becomes thin. But is it not stated plainly old? This expression is used to teach that only when it is incurable, as in the weakness of old age. Said Mar, the older son of R. Hisda, to R. Ashi: It was said in the name of R. Johanan that when one steals a sheep and it becomes a ram, or a calf and it becomes an ox, such a change gives title; and if he slaughters or sells it, it is considered as his own. And he answered: Did not I tell you, you shall not change names? This was said not in the name of R. Johanan, but of R. Ilai. "*R. Meir said*," etc. R. Hanina bar Abdimi said in the name of Rabh: The Halakha prevails according to R. Meir. But why did Rabh desert the majority in this decision? The reason is because in the Boraitha the names are changed. Why, then, has Rabh given preference to the Boraitha, and not to the Mishna, which ought to be better authority? Yea, when there is one Mishna against one Boraitha; but there are two Boraithas against one Mishna (and therefore he prefers to change the names in our Mishna, that it shall correspond with them). The other Boraitha is as follows: If one has exchanged a cow for an ass, and the cow has brought forth young; or if one has sold a female slave and she has given birth (to a child), and one of the parties said it was born when it was in his control, and the other keeps silent, the first acquired title to it; when each of them says he does not know, then the value is to be divided.

just as could be done by the king; and it seems to be so, because R. Na'hman did not claim that he had done it according to the law, but only as a fine; and if this Seburmalka meant Samuel, then it shows nothing. See Krochmal's remarks on the Talmud (p. 263).

* Which, according to the law, has no more any value. See Appendix to Tract Sabbath.

But if each of them claims that it occurred when it was under his control, then the seller has to take an oath that it was born while under his control (and not the buyer, as there is a rule that all those to whom a biblical oath is applied, they swear and do not pay). So is the decree of R. Meir. The sages, however, say: There is no oath, as an oath is not to be ordered in cases of slaves or real estate. Hence, here also, is the opinion of R. Meir that slaves are not considered real estate. But if he changes the names in the Mishna, his statement ought to be that the Halakha prevails according to the rabbis? He meant to say so: According to you who have changed the names, the Halakha prevails as R. Meir. But how could Rabh state that a slave is considered real estate? Did not R. Daniel bar R. Ktina say in his name: If one has compelled a slave of his neighbor to do labor for him, he is free from charges? Now, if you bear in mind that a slave is considered real estate, why shall he not be charged? Is not the slave yet under the control of his owner? The case was when not in time of labor (that one has the benefit when the other loses nothing, and there is a decision above that in such a case he is free from charges). But would the owner of the slave be satisfied that his slave should become tired, so that it would do harm to his usual work? It can be explained (that his owner has no work for his slave), and so it is agreeable for him that his slave shall not become used to idleness. R. Joseph bar Hama used to compel slaves of his debtors to labor for him. Said Rabha, his son, to him: Why does the Master so? And he answered him: Because R. Na'hman said that the labor of a slave is not worth even the food he consumes. Said Rabha: R. Na'hman said so because of his slave Daru, who was dallying about the shops and doing nothing, but not of slaves who are working. And he answered: I hold with the statement made by R. Daniel, who in the name of Rabh stated above. And his son said again: This is said in case the compeller has not any claims against the owners of the slaves; but you, Master, who claim money from their owners, it looks like usury, as R. Joseph bar Miniumi said in the name of R. Na'hman: Although it is said of one who lives on the property of another without his knowledge is not obliged to pay rent therefor, but when he has lent money to the owner of the property he must pay him rent (that it shall not be considered as usury). Rejoined his father: (You are right.) I will not do it again.

It was taught: If one takes possession of another's ship and makes use of it. Said Rabh: The owner may collect either the usual price of loaning it, or, if it was damaged and the amount of repairing surpasses the amount of hiring, he may collect even this. Samuel, however, said: If the amount of the hiring surpasses the amount of the repairing, he takes only the latter. Said R. Papa: They do not differ. Rabh speaks of a case where the intention of the sailor was to pay the value of the ship, and Samuel speaks of a case where the intention was to steal (and a stolen article is to be returned as it was when stolen, without any increase, for the benefit of those who repent). "If one has stolen a coin," etc. Said R. Huna: The expression "broke" is to be taken literally; the expression "it became invalid" means that the government abolished it. R. Jehudah, however, said: It would be the same as if broken, but the expression "invalid" means that it became invalid in *this country*, but has still a value in another one. Said R. Hisda to R. Huna: According to your theory, it was abolished by the government. Is that not equivalent to those who stole fruits which became rotten or wine which became sour, for which the value at the time it was stolen is to be paid? And he answered: There is a change in taste and smell, which is not the case here. Said Rabba to R. Jehudah: According to your theory abolished by the government is the same as broken. Is that not equivalent to the case of heave-offering, of which it is stated that he may say: "Yours is before you"? And he answered: Nay, it cannot be equivalent; for in the case of the heave-offering, it remains the same as it was before, and no one can recognize any change in it; but here every one can recognize that the coin is of no value. It was taught: If one has given credit, to be repaid with coin which had the full value at that time, and afterwards this coin was abolished? Rabh said: He must pay him with coin of the time of payment. Samuel, however, said: The debtor can say, "I give you the coin according to our agreement, and you must take the trouble to use it in the city of Mishon, where it has a value. Said R. Na'hman: It seems that Samuel's theory can be applied in the case of a creditor, who intends to go to that place, but not otherwise. Rabha objected to R. Na'hman, from the following Boraitha: The second tithe cannot be changed with coins which are not circulating in the market, as the coins of Cachba, or of the government of Jerusalem, or of the kings of the ancient times. As

the expression, "kings of the ancient times," does not imply the coins of the later kings, which have not any value here, but still have a value in other countries, they may be changed (although the changer has not any intention to go there, as he has to take this money for use in Jerusalem)? And he rejoined: The case was when the governments were not particular when foreign coins were used. According to you (said Rabha again), Samuel means to say that even when the governments are particular; but if they are, how can he bring the coins there? It can be explained that they can be smuggled in, as the government does not search for them, but if found they confiscate them.

The rabbis taught: What were the coins of Jerusalem? David and Solomon were engraved on one side, and Jerusalem the holy city on the other side; and what were the coins of Abraham the patriarch? An old man and woman on one side and a young man and woman on the other side. Rabha questioned R. Hisda: If one has given credit, to be paid with a certain coin, and in the mean time the coins increased in weight, what is the law? And he answered: He must give him coins which are used at the time of payment. And he questioned again: Even if there is a large increase in size and weight? * And he said: Yea. But on account of the larger coins, the fruits become cheaper (as we get more produce for a larger coin than a smaller one, and so it would look like usury). Said R. Ashi: It must be discovered whether the fruits become cheaper on account of increase of the coins in question, then the payment is to be reduced accordingly. But if the fruits become cheap on account of great production, then no reduction is to be made. But (even in the latter case), at any rate, is there not then an increase in the metal of the coin which looks like usury? Therefore the question must be decided in accordance with the following act of Papa and R. Huna the son of R. Joshua, who have in such a case examined the different coins of the merchant Argdimus, and have found that eight of the new

* The text reads "Khi Naphia" and "Khi Tratia." The dictionaries translate the former expression as "a sieve" and the second as "a third of the weight or size." It seems to us, however, that the translation of the former is not correct, as the spelling of Nopha (a sieve) is always with an *h* and not with an *i*; and aside from this, the text shows that "tratia" was still larger than Naphia, and according to the dictionaries the first would be larger than the second. We have therefore given the real meaning, omitting the Chaldean expressions, which are not known to us.

ones are equal to ten of the old ones (and then they decided that the borrower must pay accordingly). Rabha said: If it happened that one had pushed another's hand, and a coin fell down from his hand into the sea, he is free, as he may say: I did it unintentionally, and the coin is before you; you may take it. This is the case only when the water is so clear that the coin is to be seen, but not otherwise.* Rabha objected from the following Mishna: The second tithe cannot be charged upon money which is not under one's control at the time, *e.g.*, when he placed his money in custody or in the king's treasury (which he cannot reach without great difficulty), or when the purse with money fell into the sea, so that the tithe cannot be charged on such money. (Hence we see that such money is not considered under his control.) And Rabha answered: This case is different, as the verse plainly states "and bind up the money in thy hand." And Rabha said again: If one has defaced coins belonging to others, he is free, because he did not take away anything, and it is considered as if he had done nothing. This is only by striking with a mortar upon the effigy (so that it disappears), but not when he has filed it, as then the weight of it is lessened. And Rabha said again: If one cuts off the ear of his neighbor's cow, which by such an act becomes unfit for the altar, he is free, because the cow is afterwards as good as before and he has done nothing, as not all cattle are prepared for the altar. Rabha objected from the following Boraitha: "If one has labored with the red cow or with its ashes, he is free from the lower court, but he is nevertheless responsible in the divine court." We see then that labor which cannot be recognized on the body of the animal as damaging, the civil court cannot make him liable for; but by taking off the ear, which is recognized on the body, he should be responsible even before the civil court? Nay, the case is the same, and the above Boraitha comes to teach us that even in a case where the change is not to be recognized on the body, he is nevertheless responsible before the divine court. The same said again: If one has burnt a note of his neighbor, he is free, because he can say, "I have only burned a piece of paper." Rami bar Hama opposed: Let us see. If there are witnesses who know what

* All this applies when the coin was dropped from the owner's hand by one unintentionally pushing the same; but if he took it out of his own hand and dropped it, it is a robbery, and must be returned.

was written in the note, let them draw another good note for him (and there would be no damage at all); and if there are no witnesses, how can we know the amount of the note? Said Rabha: The rabbis' decision may hold even when the burner trusts the owner of the note as to its amount. R. Dimi bar Hanina said: The above statement of Rabha is discussed by R. Simeon and the rabbis, namely: According to R. Simeon, who holds that a germon is considered a direct pecuniary loss, then in the case of Rabha there is a liability; but to the rabbis, who hold that a germon is not considered such, then in the case of Rabha there is no liability. R. Huna, the son of R. Joshua, however, opposed: You have heard R. Simeon so declaring only in a case where the origin was money, *e.g.*, in the following case stated by Rabha: If one has stolen leavened bread before passover, and another has burned it in the middle days of the feast, he is free, because there is an obligation on every Israelite to destroy it. If the case occurs after passover, there is a difference of opinion; according to R. Simeon, by whom it is held a germon for a direct pecuniary damage, there is liability, and according to his opponents there is not; but in a case where the origin is not money, did you hear them differ? Said Amemar: In the courts where they summon for causing damage by germon, the full value of the note is to be collected from the destroyer. In the courts, however, where they do not, in such cases there is to be collected only the value of the piece of paper. Such a case happened, and Raphram compelled R. Ashi to pay from his best estates.

"Leavened bread," etc., *"he can say, 'Yours is before you.'"* Who is the Tana who holds that in prohibited things, from which no benefit is to be derived, one may nevertheless say: "Yours is before you." Said R. Hisda: It is R. Jacob of the Boraitha stated above (p. 103). R. Jacob said: Even when it is already decided that the ox shall be killed, and the bailee has returned it to its owner, the act is valid, and we must assume the point of their difference is this: R. Jacob holds that of things from which no benefit is to be derived he may nevertheless say: "Yours is before you," and the rabbis hold that such is not the case? Said Rabha to him: Nay, all agree, in the case stated above, that one may say, "Yours is before you." For if such is not the case, let them differ also in case of leaven on passover (stated above). The point of their difference here, however, is this: Whether the court may decide the

case of the goring ox in its absence. The rabbis hold that the decision must be in the presence of the ox, and therefore the owner can claim that if it should be returned to him before the decision of the court, he could drive it away to a meadow, but after the decision he could do nothing; so that no decision could be rendered; and R. Jacob holds that the presence of the ox is not necessary, and the bailee can say to the owner: "What is the difference, when the ox would be returned to you; the court would decide the case in any event, and as the ox is yours, I have nothing to do with it."

"*Fruits, and they became rotten*," etc. But we have learned in a Mishna that in such a case one must pay their value at the time they were stolen? Said R. Papa: The Mishna just quoted speaks of a case when all the fruit had become rotten, and our Mishna speaks when only a part of them had become so.

MISHNA III.: If a specialist took a thing to repair it and he spoiled it, he must pay. The same is the case if a carpenter took a box, a trunk, or a cage to repair and he has spoiled it—he must pay. A builder who undertook to take apart a wall, and he broke the stones or bricks, or spoiled them, he must pay. If, however, by taking it apart from one side, it fell down from another side, he is free; provided, however, it did not fall down by reason of the stroke.

GEMARA: Said R. Asi: The Mishna speaks only when the things were given solely for repairing, *e.g.*, to put nails on it; but if wood were given to one to make the above articles new ones and he broke them, he has to pay only for the wood, and not for the vessels, because the carpenter acquires title in the increase of the wood by having made a vessel of it. There is an objection from our Mishna: If a specialist took something to repair it, he is liable. Shall we not assume that he took wood? Nay, it means when he took vessels. But does not the second part speak of vessels, of which it is to be inferred that the first part speaks of wood? Nay, the Mishna itself explains in the latter part the meaning of the first part, and it is to be read thus: If he has spoiled. How so? If he has given it to specialists for repairing, and they have spoiled it, they are responsible; *e.g.*, if he gives to a carpenter a trunk, etc. And it seems also that the latter part is only an explanation. Then (if such is not the case) the latter case would be entirely superfluous, as it is stated already in the first part that, even if he took wood he must pay; it is self-evident, when he took ves-

sels and spoiled them? (Says the Gemara:) This conclusion is not strong enough, as it can be said that the statement of the second part was necessary to declare the meaning of the first part, lest one say that the first part treats of vessels, but with wood the case would be different, it expresses in the second part the different vessels, to infer from it that the first part treats of wood, and, nevertheless, he is responsible. There is another objection from the following Mishna: Come and hear: If a specialist took a garment and made it ready, and informed the owner he should take it and the owner did not care to do so, the negative commandment of Lev. xix. 13, "There shall not abide," etc., does not apply here. If, however, he has delivered it to him in the middle of the day, and it is not paid by sunset, the above commandment is applied. Now, if some would bear in mind that the master acquires title on the increase, then why should the above commandment be applied? Must not the garment be considered as the property of the master? Said R. Mori the son of R. Kahana: This Mishna speaks of an old garment that was given to be cleaned and to comb the wool, where there is no increase. But, finally, if given to him to put in order, *e.g.*, to make it soft, or to clean it so that it shall look like a new one—is this not to be considered an increase? The case was that he hired him on time, then he must pay him for his time and not for the garment, and, therefore, if he had not paid him, the above passage applies. Samuel said: A butcher (even), a specialist, if he has spoiled the meat (by slaughtering the cattle not in accordance with the law) he must pay, he is a tort-feasor, and is also considered wilful in doing this damage, as he has slaughtered it not in the place where it ought to have been done, and his mission of slaughtering is not fulfilled. Why so many reasons? If it stated a tort-feasor only, one may say that the case is only when he was hired to slaughter, but if he has done it gratuitously he should be free; therefore the addition.

"His act is considered wilful." R. Hama bar Guria objects from the following Boraitha: If one has given his cattle for slaughter and they are spoiled so that they become (unfit for eating), if the butcher was a specialist, there is no liability; but if he was a layman, there is. Both, however, if they were hired, then are they liable. Samuel's answer was: I think your brain is not in regular order. The same objection was raised to it by another of the rabbis, and Samuel said to him: (Stop object-

ing,) as thou wilt receive the same answer as thy colleague. I taught this in accord with R. Meir, and you questioned me in accordance with his opponents. Why did not you give a careful consideration to my statement? Did I not say he is a tortfeasor, and considered wilful, etc., and whose theory is it that such a consideration should apply in such cases? There is only R. Meir. [Where did R. Meir state this?] In the following Mishna: If one's jug was broken (in the public street), and he did not remove it, or his camel fell down and he did not raise it (and damage was caused), R. Meir said: He must pay. The rabbis, however, say: This damage cannot be collected by the civil court; the divine court, however, makes him responsible for it. And it is declared that they differ in the case of stumbling, whether it is considered wilfulness or not. Rabba bar Hana in the name of R. Johanan said: A professional slaughterer is always responsible for his act, and even if he were expert as they of Ziphrus. Did R. Johanan, indeed, say so? Did not Rabba bar Hana himself say that such a case happened for R. Johanan in the congregation of Moun, and R. Johanan said to him: "Go and bring witnesses that you are a specialist in slaughtering cocks, and I will take off the responsibility from you"? This presents no difficulty. The latter was a gratuitous act, and the first case speaks of hire. As R. Sera used to say: One who likes to be sure of the responsibility of his slaughterer, he shall advance him a dinar. It happened that a case of *egressum* (in slaughtering) came before Rabh, and he declared it unlawful for use, and at the same time he absolved the slaughterer from payment. When R. Kahana and R. Asi met the owner of the cattle, they said to him: Rabh did two good things regarding you. He prevented you from using a doubtful thing, and also restrained you from possible robbery (as, if he had made the butcher pay, it would have been a robbery). It was taught: Suppose one gave a coin to a banker for examination, which was approved by him, and afterwards it was found to be of no value? If he was a specialist, he is free; but if a layman, he is responsible. So is the statement of one Boraitha. Another one, however, states that in any case the banker is responsible. Said R. Papa: The statement that he is free speaks of experts like Danki and Esau, who do not need any more experience, but they erred in the picture of the coin, which was a new one in this country, and they took it for an old one of another country, and they did not know that in this

country such a coin was just made. There was a woman who showed a coin to R. Hyya, and he told her: It is a good one. The next day she came and told him that when she showed it to other people she was told it was of no value, and she could not give it out. Then R. Hyya said to Rabh: Give her a good dinar, and write in my account book that this was a bad business (to lose money for nothing, as I should not have given a decision upon it). But why—was not R. Hyya an expert in such cases, as Danki and Esau mentioned above, of whom it was said they had not to pay for their error? R. Hyya did not go to the extreme of the law, but acted on the teaching that a generous man should always moderate the law when it is against poor people (as will be explained in the Second Gate (Chap. II.) by R. Joseph). Resh Lakish showed a dinar to R. Elazar, and he told him: It is a good one. He said then: I rely upon you. And the former rejoined: What do you mean by relying upon me—that if it will be found of no value I should change it? Are not you he who said that the decision of this Halakha is in accordance with R. Meir, who decided that laws of germon (damages which are done indirectly) shall be put in practice? Consequently the Halakha does not so prevail. "Nay," rejoined Resh Lakish, "I meant that it is according to him, and so the Halakha prevails." [And where did R. Meir state it? In the following Boraitha. The name of R. Meir is not mentioned here, and Tosphatt declares that it was known to the Gemara that this is his decision.] "If the partition which was placed between the vineyard and corn was broken, the court has to order him twice to repair it. If he, however, did not care to fulfil the order, then the products are prohibited, and the owner of the partition has to suffer the damage."

MISHNA IV.: If one gave wool to the dyer, and it was spoiled in the kettle, the value of the wool is to be paid. If it was poorly dyed, by reason of the kettle not being clean, if the increase in value of the wool is more than the expense, then he pays the expense only; and conversely, the increase only. If one has given wool to be dyed red, and it is dyed black, or conversely, R. Meir says: The value of the wool is to be paid. R. Jehudah says: It must be seen which was greater, the increase or the expense.

GEMARA: The rabbis taught: If one has given wood to the carpenter to make a chair of it, and he has made a bench, or conversely, the value of the wood is to be paid. So is the

decree of R. Meir. R. Jehudah says: "If the increase is more than the expense," etc. (as stated in the Mishna). R. Meir, however, agrees that such a decision applies if the agreement was to make a nice one and he made it unsightly. The schoolmen propounded a question: Is the color of the dyes to be considered as existing upon the wool, or not? How is it to be understood if one has stolen the wool and the dyes of the same man, and has dyed the wool with the same, and then returns the wool? Now, if it is considered as existing, then he has returned all he has stolen from him; and if not, he has returned him only the wool? But even suppose not, is not the price of the wool increased by that? Nay! The case was that the dyed wool became cheaper after it was stolen. Rabbina said: The question is in case the wool belongs to one and the dyes to another, and a monkey came and dyed this wool with these dyes. Shall we then assume that the dyes are considered as existing upon the wool, and the owner of the dyes can say: "Pay me for my dyes which are upon your wool"? Or, perhaps can the other say: "There is nothing that belongs to you, as the color of your dyes is not taken into consideration." Come and hear: A garment which is dyed with the rinds of fruits grown in the sabbatic year must be burned. Hence it is to be inferred that the color of dyes is considered as existing? There is a difference, as the Scripture uses the expression, "It shall be," which means: It shall always be considered as existing.

"*R. Jehudah says,*" etc. R. Joseph was sitting behind R. Abba, before R. Huna, and R. Huna said: The Halakha prevails in accord with R. Joshua ben Karcha and also with R. Jehudah. R. Joseph then turned his face, and said: It is necessary to say that the Halakha prevails in accord with R. Joshua ben Karcha, lest one say that, as there is a rule where an individual and the majority differ, the Halakha prevails as the majority; therefore he comes to teach us that here the Halakha prevails according to the individual. [What is the case of R. Joshua ben Karcha? The case of the following Boraitha, where it is said that before the pagans' holidays there should be collected from them only such debts as are not known by any writing; but if there is a note, it must not be collected.] But for what purpose was it necessary to state: The Halakha prevails according to R. Jehudah? Is this not self-evident? Is there not an anonymous Mishna after the Mishna in which they differ,

and there is a rule that in such a case the Halakha prevails in accordance with the anonymous Mishna—namely, in this First Gate, R. Meir and R. Jehudah differ in our Mishna stated above, and in the Second Gate there is an anonymous Mishna that he who has changed the order must suffer the damages, which is certainly in accordance with R. Jehudah's theory? [Said the Gemara:] R. Huna holds that his statement was necessary, because at a first glance one may say that the order of the Mishnayoth is not to be taken into consideration; and, consequently, there is not an anonymous Mishna after the Mishna which was discussed. If so, what, then, is the rule? R. Joseph may say: We can say to every anonymous Mishna which comes after a discussion that there is no order in the Mishnayoth. And what would R. Huna say to this? He might say that only in one tract is the order of the Mishna not to be taken into consideration, but in two different tracts it must be considered. And R. Joseph? He maintains that the whole of Section Damages is considered as one tract. And if you prefer, it may be said that, even to him who does not consider the whole section as one tract, the anonymous Mishna in the Second Gate, which is placed among decided Halakhas without any change, prevails.

The rabbis taught: If one has given money to his messenger to buy wheat and he buys barley, or *vice versa*, there was taught in one Boraitha that the decrease as well as increase is accounted to the messenger; and in another one, the decrease only, but the increase must be divided. Said R. Johanan: The different opinions of the Boraithas present no difficulty: one is in accordance with R. Meir, who holds that change gives title, and the other one is in accord with R. Jehudah, who holds it does not. R. Elazar opposed: How can we infer that according to R. Meir even the increase belongs to the messenger? Perhaps R. Meir spoke only of an article that one needs for his own use, but not for the market (as there is a difference which article he buys as soon as there is profit on it). And, therefore, said R. Elazar, both Boraithas are in accord with R. Meir, and present, nevertheless, no difficulty. The first means when it was bought for eating, and the other for the market. In the West they ridiculed Johanan's explanation according to R. Jehudah, for who had informed the man of the wheat that he shall pass title to the man of the money (and why should the sender get a share of the increase)? R. Samuel bar Sasarti thus opposed this: If it is so, then even when the messenger has bought the same

article he was ordered to buy, then the profit should not belong to the sender? Said R. Abuhi: Then there is a difference, because the messenger fulfilled what he was ordered, and he is considered as the owner himself.

The rabbis taught: One who buys a field in the name of his neighbor, he for whom it was bought, is not to be compelled to sell it; but if he bought it under this condition, then he may be compelled. How is this to be understood? Said R. Shesheth: It means to say the following: If, *e.g.*, one has bought a field in the name of the Exilarch, the Exilarch cannot be compelled to sell it again; but if he bought it under this condition that the Exilarch shall transfer it, he may be. Now we see that he acquires title in any case. Shall we assume that this Boraitha differs with those of the West, which said above, that title without information cannot be acquired? This question could be answered that the buyer has informed the seller, and the witnesses also, that he buys it for himself; but the latter part, which stated that the Exilarch may be compelled to sell it again, presents a difficulty. Why should not the Exilarch say: I do not want to be honored (by you in buying things in my name), and to be despised afterwards (in making me a seller of property). Therefore, said Abayi, it means thus: If one buys a field in the name of his neighbor, the seller is not compelled to write him another bill of sale upon his own name unless he bought it under this condition; but is it, then, necessary for the Boraitha to state that the seller has not to give two bills of sale in two different names—is it not self-evident? Lest one say, the buyer could claim that the seller was well informed that the bill of sale in the other's name was only a *πικρατος* ("for fear that my creditors shall not claim this estate"); and certainly, as I would not give money for nothing, it was with the intention I should get another bill of sale in my name." He comes, therefore, to teach us that the seller can say to the buyer: "Go and get your bill of sale from him in whose name you have bought." But where is the need of the latter part, "if he bought it under this condition," etc.? Is this not self-evident? The case was when the buyer said to the witnesses in the presence of the seller: "Observe that I want to get another bill of sale." Lest one say, the seller could claim: "I meant another bill of sale from him in whose name it was bought"; he comes, therefore, to teach us that the buyer may claim that, only for the purpose of getting another bill of sale from the seller, he

informed him in the presence of witnesses; as if not, there would not be any necessity for the seller to know this. R. Kahana paid money for flax. In the meantime the flax became dearer and the seller sold it (for R. Kahana's benefit). Then R. Kahana questioned Rabh if he had a right to take the money. And he answered: If in selling the flax it was said that it is Kahana's flax, go and take it; but not otherwise. Now, Rabh's decision is in accordance with the theory of the rabbis of the West, stated above. But did, then, R. Kahana give four (with the intention to get) eight? The flax was his, and it became dearer by itself, so that the seller who had sold it without the knowledge of R. Kahana is to be considered as a robber, of whom it is stated in the Mishna: He must pay the value when it was stolen, and the flax was already dearer. The case was that R. Kahana had not given to the man flax at all, but money to buy it at the lowest price, and he had confidence in him; and when the seller did not mention that he sold the flax of R. Kahana, the increased price of the flax, which was not as yet the property of Kahana, if he had taken it, was to be considered as usury. Rabh, however, in his decision is in accord with his theory that a trust may be made for fruit, to pay for it now and to get it when it will be dearer. He must, however, take the fruit itself, but not the money for it (as it would be like usury).

MISHNA V.: One who has stolen the value of a coin, even the smallest in the country, and he swears falsely that he did not take it, and afterwards confesses, he shall return it to the owner where he is to be found, even when he is in Madai. He cannot return it to his son or a messenger. He may, however, return it to the messenger of the court. In case the one robbed is dead, he may return it to his heirs. If he has returned the principal amount, but not the fifth part (that he must add) [see Lev. v.], or if the one robbed had renounced the principal amount but not the fifth part, or he had renounced both except the value of less than a *parutha* of the principal amount, he is no more obliged to go to him (for the sake of returning the part he still owes him). If, however, the fifth part only is paid or renounced, or even when both are renounced less than a *parutha* of the principal amount itself, he must go to him to return it. If he has paid the principal amount, and he took an oath that he had returned him the fifth part also, and then he confesses, he must then add a fifth part to the fifth, etc., till the part sworn off will be less than a *parutha*. The same is the case in

a deposit, as it is said [Lev. v. 21-24]: "If any person sin and commits a trespass against the Lord; if he, namely, lie unto his neighbor in that which was delivered to him to keep, or in a loan, or in a thing taken away by violence, or if he has withheld the wages of his neighbor, or if he has found something which was lost and lies concerning it and swears falsely in any one of all these which a man can do to sin thereby. Then shall it be when he has sinned and is conscious of his guilt, that he shall restore what has been violently taken away, or the wages which he has withheld, or that which was delivered to him to keep, or the lost thing which he has found, or any one thing about which he may have sworn falsely, and he shall restore it, in its principal, and the fifth part thereof shall be added thereto: unto him to whom it appertains shall he give it on the day when he confesses his trespass."

GEMARA: (If he has sworn) but how is it when he has not sworn—he must not pay? then the Mishna is not in accord with R. Tarphon nor with R. Aqiba of the following Mishna: "If one has robbed one of five persons, and he does not know which of them, and each of them says he was robbed, he shall place the robbed amount among them and he is free, so is the decree of R. Tarphon." R. Aqiba, however, says: "Such is not the way to prevent one from sinning, and he is not free unless he pays the amount to each of them." Now, according to R. Tarphon, even when he swears, he may nevertheless get free by placing the robbed amount among them; and according to R. Aqiba, even when there was no oath he must pay to each of them? Our Mishna can be explained in accord with R. Aqiba and his statement, he shall pay to each of them is only in case he has sworn, because it is said [Lev. v.]: ["Unto him to whom it appertains shall he give it on the day when he confesses his trespass."] R. Tarphon, however, maintains: "The rabbis have made an enactment even in case there was an oath, as stated in the following Boraitha: R. Elazar b. Zadok says: There was a great enactment by the rabbis that in case the travelling expenses for returning it should exceed the robbed amount, he may pay the principal amount and a fifth part of it to the court, and he may bring the trespass offering and an atonement will be made for him. Concerning this statement R. Aqiba may say that such enactment applies only when he knows whom he has robbed; but in our case, where he does not know who of the five was robbed by him (so that he cannot

return the robbed article to the right owner), the above enactment does not apply." Rabha objected from the following: "It happened with one pious man who bought of one of two persons, and he did not know from which of them, when he then came before R. Tarphon, he told him to place among them the value of the goods bought and he will then be free. When he came to R. Aqiba he told him: 'You cannot make good this act unless you will pay to each of them the full amount.'" Now if you bear in mind that R. Aqiba's statement is only when he has sworn falsely—would then a pious man swear falsely? And if one may say, that this person has become pious after he has sworn falsely—is there not a rule that everywhere the expression, "It happened with a pious one," etc., is used, it means always R. Jehudah ben Rabba or Jehudah b. Ilai, and both were always pious? Therefore said Rabha: The case in our Mishna is entirely different, it was known to him whom he has robbed, and he has confessed to him, and because at the time of the confession the robbed one did not demand he shall return him the robbed articles immediately, it is considered as if he would say, "Keep it for me," and this can only be when he has not sworn and did not need any atonement; but when he has sworn, although the robbed one would say to him plainly, "Keep it for me," he still needs an atonement, and this cannot take place until the robbed articles are returned in the hands of the robbed one.

"*He cannot give it,*" etc. It was taught, a messenger who was instructed by the creditor in the presence of witnesses. R. Hisda said: "He is considered a good messenger, so that if an accident happens to him after he received the money, it is to be charged on account of the creditor and not of the debtor, for the reason that the creditor took the trouble to appoint this messenger in the presence of witnesses, so that as soon as the messenger receives the money the debtor shall be acquitted." Rabba, however, said: "The creditor has only introduced the messenger as a man who is worthy to be trusted, and if you wish, you can send with him, but I am not responsible until the money reaches me." An objection was raised from our Mishna: "He shall not give it to his messenger." What kind of a messenger is meant? If he was not instructed before witnesses, how do we know that he is a messenger? Hence, we must say that he was nominated in the presence of witnesses (and nevertheless it is said he shall not give it to him)? R. Hisda explained that

the Mishna speaks of the robbed one's employee. But how, if the same would be appointed to receive this thing in the presence of witnesses—may then the robber give it to him? Then why does not the Mishna make this distinction, instead of the statement that he can give it to the messenger of the court? It may be said that the Mishna prefers to speak of a messenger who is to be respected at any rate, no matter through whose influence appointed, whether of the robbed one or of the robber, which is not the case with a private messenger. And with this statement the Mishna also intends to contradict R. Simeon ben Elazar of the following Boraitha, who said: A messenger of the court when nominated by the robbed one without the consent of the robber, or when even by the robber, and the robbed one has sent another messenger and took the robbed article, and before it was returned to the robbed one an accident happened, the robber has done his duty. R. Johanan and R. Elazar both said that a messenger appointed in the presence of witnesses is a good messenger, and regarding the above stated objection from our Mishna, we may say: Our Mishna speaks of a case where the robbed one has only advised a man to tell the robber that he can give him the articles robbed to deliver; for he thought that the robber had nobody to send him.

R. Jehudah, in the name of Samuel, said: "A messenger must not be made in his absence, namely: If the creditor writes to the debtor, 'Send me the money through so and so, and I take the responsibility for it'—even when he had signed this letter with his signature and with witnesses it is of no value." R. Johanan, however, said: "If it was signed and witnessed, the order may be executed."

But what is to be done according to Samuel's theory? The creditor shall pass the title of the money to the messenger, and the messenger shall be able to give a receipt in his own name; as it happened with R. Abba, who was the creditor of R. Joseph bar Hama, and the former asked R. Safra to bring it when he returned. And when R. Safra demanded the money, said Rabba the son of R. Joseph to him: "Did R. Abba give you a receipt for the amount?" and he answered, "No." Then he said: "Go and take from him a receipt first." Finally, after reconsidering, he said to him: "Even if you would have a receipt, I would not give you the money, for the reason that perhaps until you will reach him, he will be dead, and this money will belong to his orphans, so that the receipt of R. Abba would be

of no value." And when R. Safra questioned what then should be done, he replied: "Let him rather assign the amount to you with real estate, and you will give us a receipt," in your own name; as it happened that R. Papa had to collect twelve thousand zuz from one in the city of Husai, and he assigned them to R. Samuel bar Abba with the threshold of his house, and when the latter returned, R. Papa went forth to meet him even to the city of Toach.

"*If he has paid*," etc. From this is to be inferred that the fifth part is not considered a fine, but an addition to the principal; and if the robbed one dies, it must be paid to his heirs; and so it seems from the latter part of our Mishna: "He has to add a fifth part to the fifth part." And so also it is plainly stated in the following Boraitha: "If one has robbed and has sworn falsely and then he dies, the heir must pay the principal amount and the fifth part, but they are free from the trespass offering." So we see, then, that the heirs are subject to the payment of the fifth part for their father. Is there not a contradiction from the following Boraitha: "It is written 'which *he* robbed,' which signifies that only of *his* robbery a fifth must be added, but not of that of his father's"? And in addition to this, the Boraitha states: "Still one may say that so it is when neither the father nor the son has sworn falsely; but if both or one of them has sworn, the fifth must be paid. Therefore it is written [Lev. v. 23]: 'What he has taken violently away, or the wages which he has withheld'; and here the son did nothing of the kind." (Hence we see that the fifth part is considered a fine for the false oath, and not an addition to the amount? Said R. Na'hman: "This presents no difficulty. Our Mishna speaks of a father who confessed the robbery, and the Boraitha speaks when he did not." If he did not confess, then the principal amount also should not be paid? And lest one say it is indeed so, why then speak about the fifth part only? from which it is to be inferred that the principal part is to be paid, and aside of this the Boraitha cited above states: "And still one may say, the son has to pay the principal amount for the father's robbery only when both the son and father have sworn. Where we know, however, that the same is the case, when both or one of them did not swear? From the four distinct expressions of robbery, wages, lost things, and deposit from which we deduce it?" [When R. Huna had repeated this Halakha in the presence of his son Rabba, the latter

questioned: "My master, do you mean to deduce from this scripture that it must be paid, or you say is it common?" And he answered: "I said it is to be deduced from the above expressions mentioned in the scripture.] But let us see what did R. Na'hman mean by his expression, "he has not confessed"? "That the father had not confessed, but the son did; then that the son pay the fifth part for his own guilt." It may be said that the robbed article is no more in existence, and in such a case the son is no more obliged to pay even the principal amount (explained further on in Chap. X.). If so, even the principal amount should not be paid? The case was there one of real estate left by the father.) But even then this is only a loan without a note, which is not to be collected, either from the buyers or heirs? It may be said that the case was after it was already in the court. If so, even the fifth part should be paid? Said R. Huna, the son of R. Joshua: "It is because the money in question is not to be paid upon a disavowal which is to be collected from real estate only." Rabha said: "The case was that the robbed article was deposited somewhere of which the son had no knowledge when he swore. The principal is to be paid because it is still in existence; the fifth part, however, he must not pay, because the oath was not false, as he was not aware of it."

"*Except less than the value of a parutha.*" Said R. Papa: "There is no difference if the robbed article exists or not; he is not obliged to travel after him for the purpose of returning, as the fear that it may become dearer is not to be taken into consideration." Rabha said: If one has robbed three bunches of the value of three *paruthas*, and then the bunches became cheaper, three for two, even when he had returned two bunches to him, he must return the third also; and this can be proved from our Mishna where it is stated, that when he robbed leavened bread before passover, etc., he may say: "Yours is before you." From which it is to be inferred that it is so only when the robbed article exists still in the same form as it was before; but if it does not exist, he would be obliged to pay him the full amount, although it is now of no value at all. The same is the case here; although it has now no more the value of a *parutha*, he must nevertheless pay for it because it had this value before. He was in doubt, however, in the following case: If one has robbed two bunches of the value of a *parutha*, and had returned one of them, how is the

law? Shall we say: There it is no robbery, or perhaps because he has not returned all he has robbed, he must return it? Afterwards he decided that although it is not considered robbery any more, the commandment to return it is not yet fulfilled. (He must therefore return it.) Rabha was still in doubt in the following case: Where one robbing leaven before pass-over, etc., our Mishna states that he may say: "Yours is before you." How is now the law, when the robber, after the leaven became prohibited, has sworn that he does not possess it, and that he did not rob it; and after he confesses? Shall we assume that in case the leaven should be stolen, he would be obliged to pay for it, although in that time it was of no value? Consequently he has denied a case of money, and therefore he must repay. Or as the article is still in existence and of no value whatever, his denial is not to be considered a false one. (Said the Gemara:) This Halakha in which Rabha was doubtful to Rabba was certain, for he said elsewhere: If the plaintiff claims the defendant has stolen an ox from him and he denies it, and on the question, how then is the ox in your house, he answers: "I am a gratuitous bailee of it," and afterwards he confessed he is liable because this oath would make him free in case it would be stolen or lost; the same is the case when he swore that he was a bailee for hire, because it would make him free in case the ox should break a leg or die; and, finally, the same is the case when he swore that he had borrowed it to do labor with it, as this oath would make him free in case it should die while laboring. Hence we see that, although the article is before us, it is considered as if he had denied money, because so would be the case should it be stolen. The same is also here with the leaven. Although it is now only dust, it is nevertheless considered as money for the reason stated above. When Rabha was repeating the above stated Halakha, Amram objected from the following Boraitha: It is written [Lev. v. 22]: "And he lies concerning it," it meant to exclude, if he confesses the principal amount. How so? If the plaintiff claims you have stolen my ox, and the defendant denies, and on the question, "How, then, is my ox on your premises?" he answered: "You sold it, you have given it to me as a present, or your father sold or gave it to me as a present, or the ox ran after my cow, came by itself, or I found it wandering on the way, or I am a gratuitous, or bailee for hire, or I have borrowed it;" and he swore so, and after confessed; lest one say he

is liable for a trespass offering; therefore the above-cited verse. Hence the Boraitha contradicts Rabba's statement, and he answered: *Tardus*. This Boraitha speaks of a case that he said, "Here it is, take it." It had reference to a case that the ox was still in the meadow. The Boraitha states: "Thou hast sold it." What confession of the principal claim is then to be found in such an answer or in the answer of the defendant, "You or your father gave it to me as a present"? In case of selling he told him at the same time that he bought it and did not yet pay, or "that you or your father gave it to me under the condition I should do something for him, which I did not do, and therefore take your ox and go." But what answer is this to "I have found it wandering on the way"? should not the plaintiff claim, "If so, was not your obligation to return it to me?" Said the father of Samuel: "The answer was, I swear that I have found it as a lost thing, and I did not know it is yours."

We have learned in a Boraitha: Ben Azai said: "There are three different oaths concerning the testimony of a witness regarding a lost thing; namely, (a) I knew that it was a lost thing, but I do not know who found it; He knew the finder; (b) I know the finder some, but I do not know what he found; and (c) I know the finder and the article lost." To what purpose did Ben Azai state it? R. Ami in the name of R. Hanina said: "He said it to make the witness free from a trespass offering." Samuel, however, said: "To make him liable." And these two Amoraim differ in the same as the Tanaim of a Boraitha elsewhere differ, and the point of their difference is whether a germon is to be considered as pecuniary damage or not. (Explained above, p. 224.)

R. Shesheth says: "One who denies a deposit trusted to him is considered as a robber of it, and is liable even for an accident." And this can be proved from the following Boraitha: "And lie concerning," etc. In that passage we read of the punishment of telling a lie, but where is the warning against it? Therefore it is written [ibid., ibid. xx. 21]: "Neither shall he deny." Is it not to be assumed that the punishment is for the denying, even without an oath? Nay, the punishment is for false swearing. But if so, how is it to be understood the later part of the same Boraitha? It is written [ibid. v. 21]: "And swear falsely." In this passage we read the punishment, but where is the warning? Therefore it is written [v. 22]: "Nor

lie." Now as the later part speaks of swearing, is it not to be inferred that the first part speaks without swearing? It may be said in the first part also, an oath is meant which was found false by witnesses, and in such a case he is liable even for an accident; the later part, however, speaks when it was found to be false by his own confession, and in such a case he must add the fifth part to the principal amount and a trespass offering.

R. Huna said in the name of Rabh: "If the plaintiff claims a hundred zuz, and the defendant denies and takes an oath, he is free even when witnesses testify against him, because it is written [Ex. xxii. 20]: "And the owner of it shall accept this, and he shall not make it good." From this it is deduced that as soon as the owner has taken an oath, he has not to pay any more money. Said Rabha: "Rabh's theory seems to be correct in the case of a loan, as the money was taken for spending; but in the case of a deposit which ought to be returned as it was, it is still considered under the control of the owner, wherever it is." In reality, however, Rabh had said this even in case of a deposit, as the verse of the Scripture refers to such a case. R. Na'hman was sitting and repeating this Halakha. R. A'ha bar Minyumi, from R. Na'hman, objected to it from the following Boraitha: "Where is my deposit?" and the other answered: "It is lost," and the first said: "Do you swear (and so may God help you)?" And he answered: "Amen." Witnesses testified, however, that he had consumed it, he must pay its value only; but if he himself confessed, he must add a fifth part and a trespass offering. (Hence there is a payment after swearing?) And R. Na'hman answered: "The case was when the oath was taken out of court, which is not considered legal." Said the former again: "If it is so, how is the later part of the same Boraitha to be understood: 'Where is my deposit?'" And he answered: "It is stolen; do you swear," etc., and he said "Amen." And witnesses testified that he himself had stolen it, he must pay double; if, however, he confessed, he must add only a fifth part, etc., to the principal and a trespass offering. Now if it is as you say that the oath took place out of the court, can there be a double payment without the court? And R. Na'hman rejoined: "I could explain to you that the first part speaks of an oath without and the later in the presence of the court. I don't like, however, to give you an incomprehensible explanation. It may be explained that the oath was taken in the court, and it presents

nevertheless no difficulty, as the Boraitha speaks of a case when the defendant took the oath of his own volition (before he was ordered by the court to do so, in which case the oath does not make him free from payment). And Rabh speaks when the defendant took the oath by the order of the court." Said Rami bar Hama to R. Na'hman: "Let us see; the theory of Rabh seems to be not acceptable to you, why then the trouble to explain the Boraitha in accord with his theory?" And he answered: "It is only to interpret Rabh as he would explain the Boraitha." But did not Rabh deduce his theory from the above verse? It may be said, this verse is needed, that all those who must take an oath biblically swear and do not pay; and the verse is to be interpreted thus: He who has to pay, must swear, and the plaintiff must accept it. Rabha objected from the following Boraitha: "If one declares that the deposit confined to his care was stolen, and he had sworn falsely, and then he confessed and witnesses testified also against him; if his confession was before the testimony of the witnesses, he must add a fifth part and a trespass offering, but if the witnesses testified first, the double amount must be paid and an offering. Now, either explanations of an oath out of the court or without the order of it, cannot apply here because of a double payment which cannot be paid without a legal oath, and yet he must pay." Rabha therefore said: "In case of a confession, no matter if he claims it was lost or stolen, he must always add the fifth part and trespass offering, even in accord with Rabh, for he cannot deny the verse. 'And he confessed * what he has sinned' [Lev. v. 5]; and also if he claims it was stolen, and witnesses are against him, he must pay the double amount even in accord with Rabh, as this is also written plainly in the Scripture. His theory, then, is only when he claims 'lost' and swears, and witnesses testify against him without a confession on his part."

R. Hyya bar Abba, in the name of R. Johanan, said: "One who claims 'stolen' on a deposit, or of a lost article he has found, must pay double, and if he has slaughtered or sold must pay four and five fold; because he is considered as if he himself had stolen." He himself, however, objected to it from the following Boraitha: "Where is my ox?" and he answered, "Stolen." "Do you swear by God?" and he said, "Amen." Witnesses, however, testified that he consumed it; then he pays double. Now, could he then eat meat with-

* Leeser translates "he shall confess"; the Talmud, however, takes it literally.

out previous slaughtering it and nevertheless he pays only double, but not four and five fold only." It may be said that he had eaten it when it was a carcass (*i.e.*, it was killed by another one). The same said again in the name of the same authority: "If one claims stolen of a lost article which he found, he must pay double. Why so? Because it is written [Ex. xxii. 8]: 'Or for any manner of lost things, of which he can say,' etc." He said again in the name of R. Johanan: That he who claims "stolen" on a deposit is not liable for a biblical oath until he admits a part of it. Why so? Because it is written [ibid., ibid.]: "This it is," which means that a part of it is admitted; and he differs with R. Hyya bar Joseph, who says that the verse applies to the case of a creditor, and was inserted here through an error. Rami bar Hama taught: The four bailees—a gratuitous, a borrower, a bailee for hire, and a hirer—are not liable to a biblical oath until they admit a part. Said Rabha: "His reason is because in the case of a gratuitous bailee, it is plainly written [ibid.]: 'Thus it is,' and for a bailee for hire there is an analogy of expression, 'giving,' which reads in both cases. A borrower is also included in the word [ibid., ibid. 13] 'and,' which means that this case shall be equal to the former. And concerning a hirer, according to him who declares him equal to a gratuitous bailee, then the law of latter applies to him also, and the same is the case with him who declares him a bailee for hire." Said R. Abbin, in the name of R. Elia, quoting R. Johanan: "If one has claimed that a bailment is lost and swears afterwards he claimed it was stolen, and swears again, he is free from the double amount, even when witnesses testify against him; because the first oath makes him free towards the owner (and the second oath, which would not be ordered by the court, must not be taken into consideration)." R. Shesheth said: If one claims of a bailment "stolen," as soon as he has made use of it, he is free; and the reason is because the Scripture reads [Ex. xxii. 2]: "Then shall the master of the house be brought unto the judges (to swear) that he had not stretched out his hand"; from which it is to be deduced that if he *had made* use of it, he is free (from the double amount).^{*} Said R. Na'hman to him: "Is not the three oaths: first, that I have done all my duty in taking care of it; second, that I did not make use of it; and third, that it is not under my control? Now, is it not to be assumed

^{*} Because he is guilty of a falsehood.

that the second oath is equal to the third? As by the third, when thereafter it was known that it is under his control he must pay, the same is the case when it was known that he had made use of it?" And he answered: "Nay, the second is equal to the first, as by the first he is free from the double amount, when it was found that he was careless with it; so is the same in the case when he had made use of it."

Rami bar Hama questioned: "Is it the payment of the double amount that makes him free from the fifth part, or is it the oath which makes him liable for the double amount that frees from the same payment?" What should be the difference (between both suppositions) thus, *e.g.*, if one claims "stolen," and swears falsely, and thereafter he claims on the same "lost," and swears again and witnesses testify regarding the theft and he himself confesses regarding it, "lost"? Now, if the claim "theft," which causes the double amount, makes him free from the fifth part, in that case he was already liable for the double amount; and if the oath that causes the double amount absolves him from the fifth part, then the second oath, which did not cause the double payment, should make him liable for the fifth part? Said Rabha: Come and hear: "If one said to somebody in the market: 'Where is my ox which you have stolen?' and he says: 'I have not'; 'Do you swear,' etc., and he says, 'Amen,' and witnesses testify that he did steal, he must pay the double amount; if, however, he has confessed without witnesses, he pays the principal and the fifth part and an offering. Now, in this case the witnesses are the cause of the double amount, and if he should confess after the witnesses appear, he would not be absolved from the double payment, but from the fifth part. Now, if the oath which causes the double payment absolves him from the fifth part, why is he absolved from it even if he has confessed after the witnesses appear? Let us see. The last oath was not the cause of double payment; let it make him liable for the fifth part; we must therefore say that the money which causes the double amount makes him free from the fifth part." Infer from this.

Rabbina questioned: "If there is a case of the fifth part and the double amount with two different persons in the very same case, *e.g.*, one has given his ox for care to two persons and both claimed 'stolen,' one has sworn and thereafter confessed; and one has sworn and was denied by witnesses. How is it? Shall we assume that with one person is the Scrip-

ture particular that both the fifth part and the double amount shall not come together; but with two persons one shall pay the double amount and one the fifth part, or the law is particular that in one and the same case the above both fines shall not occur?" This question remains unanswered. R. Papa questioned: "If there is a case of two-fifths part or two double amounts with one man, how is it?" *E.g.*, if the claim was "lost," and he swore and confessed and then he repeated again the claim "lost," and swore and confessed again, in which case, according to the law, he should be liable for two fifth parts and one principal amount, and the same question is, if the claim was "stolen"; he was denied by witnesses after he swore and this was done twice. Shall we assume that the Scripture is particular only that two different kinds of fines should not be paid in one and the same case, and here it is only one kind; or perhaps the Scripture is particular that no two fines shall take place in the case? Come and hear. Rabha said [Lev. v.]: "And the fifth parts thereof." * Hence we see that the Scripture has added many fifth parts to one principal. Infer from this.

"If a gratuitous bailee swore it was 'stolen,' and nevertheless he paid the full amount and then the thief was found, to whom is the double amount to be paid?" Abayi said: "To the owner, because, as the bailee did not pay until he was summoned and ordered by the court to pay or swear, although he did both, the owner did not pass the title of the double amount to him." Rabha, however, says: "To the bailee who has paid the amount, no matter before or after swearing." † If the bailee was summoned, and he has sworn and then the thief was found, and when he was asked by the bailee he confessed; when, however, the thief was summoned by the owner he denied, but witnesses testified to the theft. Should the thief be absolved from the double payment on account of his confession to the bailee or not (because at that time the bailee had nothing more to do with this)? Said Rabha: "If the bailee has sworn to the truth, it is to believe that the owner has confidence in him still, and it is considered that the ox is still under his control, and therefore the confession of the thief to the bailee is to be taken in

* In the Bible it is written in the plural, which the Talmud takes literally.

† The Gemara explains that both Amaraïm made their conclusion from a Mishna in the Middle Gate, which each of them explains according to his theory, one of the first part of the Mishna and one of the second part, and as it is both too complicated and not of great importance, we have omitted it.

consideration. But if he has sworn falsely (the consequence of which is that the owner loses confidence in him), then the confession of the thief to the bailee is of no value." It was taught: "If the bailee claims the article was stolen by accident and then the thief was found." Said Abayi: "If he was a gratuitous bailee, the chance is given to him either to swear or to pay. If it was accidentally and the owner collects the double amount from the thief, or he (the bailee) pays the principal, the double amount shall belong to him, and if he is a bailee for hire, he must pay to the owner, and the trouble with the thief he must take upon himself." Rabba, however, says: "There is no difference what kind of a bailee he was. The prosecution of the thief is always upon the bailee (and for his trouble he collects the double amount, but no oath is to be ordered)."

Rabba Zuti * questioned thus: "If it was stolen by accident and the thief had returned it to the bailee, and then it dies in his house by negligence, what is the law? Shall we assume that from the moment it was stolen by accident he ceased to be the bailee of it (and so he is no more responsible), or perhaps he became its bailee again as soon as it is returned to him." This question remains unanswered.

MISHNA VII.: "Where is my bailment?" And he answers *lost!* Do you swear by God? etc., and he says "Amen." Witnesses testified that he had consumed it, and he must pay the amount. [If, however, he has confessed without witnesses, he must add a fifth part and an offering.] Where is my bailment? "It was stolen." "Do you swear?" and he says "Amen." Witnesses testified that he himself had stolen it, he pays the double amount. By self-confession, however, he must add a fifth part to the principal amount, and bring a trespass offering. If one robbed his father and swore falsely, and after his death he confessed and desired to return the robbed articles, he pays the principal and the fifth part to his brothers or to his father's brothers. If he does not want to pay his share, or he has not with what he may borrow from his friends, and the creditors will collect it from his part of the estate; *e.g.*, if there are three brothers, they collect from the estate a third

* He was a contemporary of R. Ashi, many generations after Abba bar Na'hmany, who is generally named "Rabba." The name, however, of the former is unknown. Some maintain that his name was Zuti, and Rabba was only his title, and some say that Zuti means "little," and he was so named to distinguish him from the former.

part of the robbed articles and the remainder from himself. If one says to his son: "I swear you shall not have any benefit from my estate"; if he dies, he may inherit; if the oath was neither in his lifetime nor after his death, then he does not inherit. He may, however, transfer his part to his sons or brothers, but if he has nothing to eat, he may borrow from his friends, and they will collect it from the inheritance.

GEMARA: * Whence do we deduce all this? From what the rabbis taught. It is written [Ex. xxii. 6]: "If the thief be found." The verse here treats of one who claims that it was stolen from him. Thou sayest so, but perhaps the verse treats of the thief himself? From the fact that the verse states further [ibid. 7]: "If the thief be *not* found," it is to be inferred that that verse treats of one who claims that it was stolen. We have learned in another Boraitha: It is written: "If the thief be found," the verse treats of the thief himself. Thou sayest so, but perhaps it treats of one who claims that it was stolen? If it states further on, "If the thief be not found," which plainly means one who claims that it was stolen, how then is the verse, "If the thief be found," to be construed? hence it refers to the thief himself.

Now, then, all agree that the verse, "If the thief be not found," refers to one who claims that it was stolen. Whence is this deduced? Said Rabha: The verse is to be interpreted thus: "If it should be found out that it is not as he claimed (that it was stolen by somebody else), but that he himself stole it, then he shall pay double."

Whence do we deduce that it is so only when he was put under oath? From what we learned in the following Boraitha. It is written [ibid., ibid. 7]: "Then shall the master of the house be brought to the judges"; that means, to put him under oath. Thou sayest so, but perhaps it means only for payment? It states further on [ibid. 10] "that he have not stretched out his hand," and it states the same thing above [ibid. 7], as there it means under oath (for it states so plainly), so also here it means under oath. It would be right according to the Tana who says that one verse treats of the thief himself and the other one treats of one who claims that it was stolen; therefore it is necessary to have two verses; but according to the Tana who holds that both verses treat of one who claimed

* Transferred from the seventh chapter of this tract from the Gemara belonging to the First Mishna there. The proper place is, however, here.

that it was stolen, why *two* verses? It may be said that one is to exclude, when he claimed that it was lost. But according to the Tana who says that one treats of the thief himself and the other of one who claims that it was stolen; and therefore both verses were necessary. Whence does he deduce as to the claim of having been lost? From the fact that it states "*the* thief" instead of "thief."

"*If one robs his father,*" etc. Said R. Joseph: "In case there are no heirs but him, he must give it for charity." Said R. Papa: "He must mention (in returning it) that this is the money he robbed from his father." Let us see (in case there are no heirs but him) why he shall not be allowed to relinquish the property to himself. Did not we learn in the Mishna stated above: "If he has relinquished the principal amount, but not the fifth part," of which it is to be inferred that it can be relinquished? Said R. Johanan: "This presents no difficulty, as the cited Mishna is in accord with R. Jose the Galilean, and our Mishna is in accord with R. Aqiba of the following Boraitha: 'It is written [Numb. v.]: But if the man has no kinsmen to whom restitution could be made for the trespass.' Could there be an Israelite that has no relatives or kinsmen? We must therefore say that the Scripture speaks of a proselyte who was robbed by an Israelite. If one robbed a proselyte and swore falsely and afterwards he repented, having heard that the proselyte was dead, he was about to bring the money and trespass offering to Jerusalem (according to the law), where he met the proselyte, who was still alive, and settled with him to keep the robbery as a loan, and afterwards the proselyte died, he acquires title on what he holds in his hands." This is the decree of R. Jose the Galilean. R. Aqiba, however, says: "There is no remedy for him (until the robbed article is out of his hand)." According to R. Jose the Galilean, he may relinquish to others as well as to himself; and according to R. Aqiba, however, neither to others nor to himself. And in the above illustration, where the robber had settled with the proselyte to count it as a loan is used only to make known the strength of R. Aqiba's theory, that even if the robbed one himself permits the robber to keep it as a loan, nevertheless he has no remedy until the robbery is out of his hand. Rabha, however, maintains that both Boraithas are in accordance with R. Aqiba's statement, that a relinquishment cannot be made when it concerns only himself, as illustrated above, but to others he may. [Said the

Gemara:] "Let us see: in accordance to both R. Johanan and Rabba, the theory of R. Jose the Galilean is that he may relinquish even for himself. If so, how would be the case in the robbery of a proselyte [Numb. v. 8] (which, as explained above, means of a proselyte), which must be returned to the priest? How can it be found?" Said Rabha: "It may be that the confession was after the proselyte's death, and this confession passes title of the robbery to the priest (when he confesses, however, when the proselyte is still alive, the robbery remains a loan as long as the proselyte is alive, and therefore after his death he may excuse it to himself)." Rabbina questioned: "If a female proselyte was robbed, how is it? It is written 'a man'; should a woman be excluded, or is it only the custom of the verse to mention a man, and the same is the case with a woman?" Said R. Aaron to Rabbina: "Come and hear the following Boraitha: It is written a man, where do we know that the same is with a woman? As it is written further (to whom restitution . . . which is restored, etc.) there are two restitutions, to include a woman (or a minor). Why, then, is mentioned a man? to teach that if it was a man one must investigate if he has some kinsman, but if a minor the investigation is not necessary (because it is self-evident that a minor, who is a proselyte, has no kinsman)."

MISHNA VII.: If one robbed a proselyte and swore, and afterward the proselyte died, he must add a fifth part to the principal for the priest, and a trespass offering to the altar, as it is written: (But if the man have no kinsman, etc., as quoted above [Numb. v. 8]). If, however, while bringing the money and the trespass offering to Jerusalem the robber dies, the money may be transferred to his children, and the trespass offering shall be fed until it gets a blemish, and then it shall be sold, and the money shall be used for a voluntary offering. If, however, he dies after the money was transferred to the priest of that week, his heirs cannot collect it from them, as it is written [ibid., ibid. 10]: "Whatsoever any man gives to the priest shall belong to him." If he has given the money to the department of Jehayary, and the offering to that of Jadaiah in the next week, he has fulfilled his duty. If, however, he has transferred the trespass offering first, and the next week he has given the money to the other department, if the consecrated animal is still in existence the priest of the second week may offer it; and if not, he has to bring another trespass offering, as the law

is that if he had returned the robbery before the trespass offering he has done his duty, but not otherwise. If he has returned the principal only without the fifth part, the latter does not prevent the offering of the trespass offering (but he must afterwards add the fifth part).

GEMARA: The rabbis taught: It is written "Asham" (the debt), it means the principal amount; "which is restored" means the fifth part. (But perhaps the word "Asham" means the ram [What is the difference? To exclude Rabha's theory, who said elsewhere: The robbery of a proselyte, when it was restored in the night-time or it was returned in halves, the duty is not fulfilled. Why so? Because the Scripture names it "*Asham*," and as an Asham cannot be brought during night-time, or in halves, for the same is the case with the returned robbery.] of the offering, as it is frequently so called. As at the end of the same verse it is written: "Beside the ram of the atonement," etc., hence the former word must be explained (the amount) as stated above.)

Rabha said again: "The robbery of a proselyte which contains not the value of a *parutha* to every priest who is in divine service at that week, the duty is not fulfilled." Why so? Because it is written [ibid., ibid.]: "The Asham which is restored," of which is to be inferred that a restore of any value may be made to each priest. He said again: (If there were two robberies of two proselytes, which were restored to the priests) they have no right to say: "A part of us will take the one restored robbery against the other restored robbery. *You* may take." Because in the Scripture it is called *Asham*, it cannot be divided.

Rabha questioned: "The priests who receive the robbery of the proselyte, are they considered heirs or only receivers of a donation?" What is the difference? If one has robbed leaven of which the passover was passed (which has no legal value), if they are considered heirs, then they must take it as their inheritance; but if they are only receivers of a donation, this cannot be called a donation, as it has no value and they must not receive it. Come and hear: "There are twenty-four gifts of the priesthood given to Aaron and his sons (this Mishna will be translated in Tract Hulin), and then the robbery of a proselyte is mentioned, hence it is considered a donation."

"If, however, he dies after the money was delivered," etc. Said Abayi: "Infer from this that the robbed money when returned atones for the half, because if this would not be the

case, it would state that the money must be returned to the heirs. Why so? Because when he has returned the money, he has not had in mind to leave it there without offering the trespass offering." "If so, let a sin-offering, which remains after its owner is dead, be considered as a common animal, because when he has separated it for a sin-offering, he did not bear in mind that he will die before offering it." (This is no question) as there is a tradition that when the owner dies after separating a sin-offering, the animal is to be put to death; and the same tradition is in case of a trespass offering, that when a sin-offering is put to death, the trespass offering is to be fed until it becomes a blemish.

APPENDIX TO PAGE 253.

"*R. Ashi the first.*" There is a mark in the text by Boaz: "Perhaps R. Ashi the first or the expression 'R. Johanan was astonished' was said by R. Ashi himself." The second supposition, however, does not hold good, as farther on the Gemara adds: "R. Jose b. Hanina accepted," etc.; and the latter, who was a Tana, was certainly many generations before author of this paragraph, unless this also would be the continuation of the author's declaration; but then he would add: "*and R. Jose,*" etc. Hence the *first* is correct.

CHAPTER X.

REGULATIONS REGARDING ROBBED ARTICLES WHICH REMAIN AFTER THE DEATH OF THE ROBBER.—IF ONE RECOGNIZES HIS STOLEN ARTICLES AT THE PREMISES OF SOME ONE.—REGARDING ROBBED ESTATES, AFTERWARDS THE GOVERNMENT TOOK IT AWAY, ETC.

MISHNA I.: If one has robbed an edible article and used it for his family, or he left the article as it was, his heirs are free from payment. If, however, it was an article of responsibility, they are obliged to pay. (The Gemara will explain the meaning.)

GEMARA: Said R. Hisda: "If one has robbed an article of which the owner did not renounce the hope of gaining it, and another one came and took it away from him, the owner may collect it from any one of them he chooses. Why so? Because as long as the owners did not renounce their hope, it is considered as it were still under their control." [And our Mishna, which states that the heirs are free from payment, is in case that the hope of regaining was already renounced.]

"*Or he left the article,*" etc. Said Rami bar Hama: "From this statement is to be inferred that the control of an heir is the same as the control of a buyer (*i.e.*, as the Mishna speaks of a case where the hope of regaining it is renounced, the change of control gives title, and the control of the heirs after the death of the robber is also considered a change as if it would be bought by somebody else)." R. Rabha, however, said: "It is not so, and our Mishna, which makes them free, treats of a case where the heirs have already consumed the article after the death of their father." But from the latter part of our Mishna, which states that "if there was a responsibility," etc., it must be said that the first part treats of the robbed article still in existence. Said Rabha: "When I will die, R. Oshiah will come to thank me, for I always try the Mishnayoths (edited by Rabh) with the Boraithas taught by him, and our Mishna also is in accordance with the following Boraitha of R. Ashiah: "If one has robbed and used the article for his family, the heirs are free from payment. If, however, the article remains, they have

to return it; if the article is no more in existence—*i.e.*, they have consumed it—they are free, unless their father left them real estate, in which case they must pay at any rate." R. Ada bar Ahaba taught: The difference of opinion between Rami bar Hama and Rabha in connection with the following Boraitha: "If one left money made by usury for his heirs, although they know of the case, they are not obliged to return it." And the above statement of Rami bar Hama was deduced from this. But Rabha is of the opinion that nothing is to be inferred from this case, which is entirely different, as the verse reads: "*Thou shalt not take of him any usury or increase.*" The Torah advises him he shall return the usury to him for the purpose he shall stand in favor with him, and this is only said to the usurer himself, but not to his children.

One who taught the statement of Rami bar Hama and Rabha in connection with this Boraitha, the same is to apply furthermore in connection with our Mishna, and according to them who taught it in connection with our Mishna, it can be said that in the case mentioned in the Boraitha Rami bar Hama agrees with Rabha.

The rabbis taught: "If one robbed an edible article and he used it for his children, the children are free from payment; if, however, the article is yet in existence after the death of the robber, and the children are grown up, they must pay; but if they are still minors, they are free; and even when they are grown up, if they say: 'We know the accounts of our father with you, and he owes you nothing,' they are free." (This Boraitha was corrected so by Rabha.) We have learned in another Boraitha: "The children are free only when the robber used it for his family; but if a robbed edible article is in existence, his heirs, whether grown up or minors, are obliged to return it." Rabha said: "If their father left for them a cow borrowed for labor, they may use her for the time she was borrowed; if she dies even by an accident (and not while laboring), they are free. If they thought that she was the property of their father, and they slaughtered and consumed her, they have to pay the value of her meat in low prices. If, however, their father left real estate, they have to pay anyhow."

The rabbis taught: It is written [Lev. v. 23]: "He shall restore the robbed article which he has robbed."* Why the repetition "which he has robbed"? To teach that he shall

* Leesser translates the sense of it. The Talmud, however, takes it literally.

restore it in the same manner it was robbed; and from this the sages said: "When he has robbed an edible article, and he makes use of it for his family, they are free from payment; but if still in existence, grown up as well as minors are obliged to return it." In the name of Symmachos, however, it was said that if the heirs were still minors, they are free.

The brother-in-law of R. Jeremiah (who was a minor) shut the door in the face of R. Jeremiah (who wanted to inherit it for himself). When the case came before R. Abbin, he declared that the minor has a right to do so, because he demands *his* property. Rejoined R. Jeremiah: "But I have witnesses that I have used this room while my father-in-law was yet alive, as he had transferred it to me." Rejoined R. Abbin: "But can, then, the testimony of witnesses be taken in the absence of the other party (your opponent is yet a minor)?" And R. Jeremiah said again: "But have we not learned that minors as well as grown up, etc., must return?" And he rejoined again: "Is not Symmachos, who said that minors are free, your opponent?" R. Jeremiah objected, saying: "Are you ignoring the opinion of the sages, and agree with Symmachos only for the purpose that I shall lose my case?" This case was talked about by the people until it came to the ears of R. Abuhu, who said: Did you not hear what R. Joseph bar Hama declared in the name of R. Ashiah: "If a minor compelled his slaves to take away a field from another, claiming it belongs to him, we must not wait until he will be of age to sue him, but immediately the field must be returned, and when he will be of age he shall then bring evidence"? (Said the judge:) "What comparison is this to our case? There the minor was the plaintiff and took possession of an estate against the law, but here the minor is the defendant, and he is in the right possession of his estate which was occupied by his father."

R. Ashi the first said in the name of R. Shabathai: "The testimony of witnesses can be taken even in the absence of the parties." R. Johanan (when he heard this) was astonished, saying: "How is it possible to accept witnesses not in the presence of the parties?" R. Jose bar Hanina, however (his disciple, who was a judge), had accepted this theory in case one of the parties or witnesses was sick, or the witnesses had to go to the sea-countries, or it was sent by the court after him and he did not appear. R. Jehudah said in the name of Samuel: "Witnesses may be accepted even not in the presence of the

parties." Said Mar Ukba: "Samuel explained it to me that this is in case issue was already joined for the hearing of the case, and he was sent for and he did not appear; but if he was only summoned by the court and his case was not yet opened, he may say: 'I will go to the Supreme Court (in Jerusalem).' But if such a claim be listened to he may claim it even when the court was opened for his case?" Said Rabbina: "It means when an order from the Supreme Court was already issued that this case should be decided by the Supreme Court."

Rabh said: "A document may be approved even not in the presence of the party." R. Johanan, however, says: "It must not." Said R. Shesheth to R. Jose bar Abuhu: "I may explain to you the reason for R. Johanan's statement as follows: It is written [Ex. xxi.]: *And warning has been given to his owner, and he has not kept him in.* The Scripture means that the owner of the ox must come to the court and be present when his ox will be judged." Rabha, however, says: "The Halakha prevails, that a document may be approved even in the absence of the party, and even if he is objecting, but if he asks to suspend the case for a certain time, that he should be able to bring evidence against the document, the court may allow it. If he appears in time, then it is good; if not, the court suspends it for the three next sittings; and if he does not appear, the court shall give him ninety days' time before his estate shall be sold for this debt. The first thirty days we do not sell his estate, to give him time to get cash. The second thirty days we give him time to sell his goods himself, and the third thirty days also when he claims that he has a buyer for his estate, but the buyer is not yet ready with cash. After the above time a warrant is to be given to the plaintiff, that he may sell the estate of the defendant. All this is done only when the defendant desires time, but if he says, 'I will not go to the court any more,' a warrant is given immediately. And this is only by a creditor, but in case of a deposit, a warrant is issued immediately, but only when the debtor possesses real estate, not upon personal property; and the reason is, if the creditor would have a right to take the personal property immediately under his control, he may sell it, so that in case the defendant afterwards will bring evidence that the document was of no value, his property could not be returned to him in case the creditor does not possess real estate; but if he does, a warrant may be issued even in this case." (Says the Gemara:) "In practice it is not so; a

judgment is not issued on personal property, even when the creditor possesses real estate, as in the meantime he can sell his real estate, as it will go down in price."

It is also an obligation on the court to give notice to the defendant that his property will be sold, if he is near by; but not if he is far away and there are no relatives; but if there are, or there is a caravan by whom he can be notified, he is notified that this will occur after twelve months, until the caravan should make its tour and return. As Rabbina did in case of Mar Aha, where he postponed the selling for twelve months, the time which it takes for the caravan to tour and retour from the country of Husia. [Also this was not produced] as the above case is different; the defendant was a mighty man, and if the warrant would appear before him, it could not be collected from him, and therefore he was only notified that a warrant would be issued (and it was issued in such a moment that he could do nothing); but in another case the warrant was to be suspended only until a messenger had time to return with the answer of the defendant, about three or four days.

Rabbina said: "A messenger of the court should be trusted as two witnesses in case of putting a man under the ban; but if he testifies, in such a case where the man must be notified that, if he will not follow the order, he will be put under the ban, he may not be listened to unless the scribe is paid for issuing it."

Rabbina said again: "If a summons was sent with a woman or with his neighbor, who are going to the city where the defendant resides, and he does not appear, he may be put under the ban (as generally the above have fulfilled their promise to bring him the summons). But this is only when he lives out of the town; but if he is in the city, he is not to be put under the ban, because the former, through whom the summons was sent, may rely upon the court that it will send its own messenger, unless he was summoned by the messenger of the court."

Rabha said: "If one was notified that he will be put under the ban if he will not appear before the court, this writing must not be destroyed until he appears (even if he says *he will do so*), and if such was issued for not obeying the order of the court, it shall not be destroyed until he follows the order." [The latter case is not practised, but it is destroyed as soon as he promises to follow the order.]

R. Hisda says: "A note concerning putting under ban is to be used only when he was summoned for the three days when

the court was sitting (Monday, Thursday, and Monday again), and only the following Thursday to be issued."

R. Asi happened to be in the court of R. Kahana, and saw that a woman was summoned in the afternoon, and on the morrow, when she did not appear, he issued a notification that she would be put under the ban. Said the former to him: "Does not the master hold the decision of R. Hisda stated above?" And he answered: "This was said only when the man is not in the city, but for this woman, who is sure to be in the city and summoned, it is a contempt of the court and must be punished." R. Jehudah said: "One must not be summoned by the court on the eve of a Sabbath or a festival (or when he is a student), not in the days of the months Nison and Tishri (as then the college examination took place), but a summons may be issued in these days to appear after the above months. On the eves of Sabbaths and festivals, however, even to appear after Sabbath or festival is not to be issued, because he is then busy to prepare for the following day and the summons may escape his mind." R. Na'hman said: "One must not be summoned verbally to appear on Monday, on the Sabbath before it when he comes to hear the lecture, and also on the day when he comes to hear the lecture of the coming festival. (It was usually lectured thirty days before each festival.) He shall appear on some day afterwards (for fear they will restrain from coming to the lecture). When people used to come to R. Na'hman in the days mentioned above with claims against some of the assembled people, he used to say to them: "Did I assemble them for your benefit?" [Said the Gemara: "Now when the time is changed and swindle is used, no attention may be given to all the terms said above."]

"If, however, it was an article of responsibility," etc. Rabbi taught his son Simeon: "Not only real estate, but even an animal which they use for labor, they are obliged to return for the honor of their father." R. Kahana questioned Rabh: "How is it with a bed or a table which they are using?" And he answered [Prov. ix. 9]: "Give to the wise (instruction) and he will become yet wiser." (It means the same is the case with all other things.)

MISHNA II.: Money must not be changed from the treasury of duties, and not from the treasury of the treasurers for charity, and also charity must not be taken from them; it may, however, be done with the private money of the above treasurers, or when it is in market charity may be accepted.

GEMARA: A Boraitha, an addition to the above statement, teaches: "He may take change from a dinar if he has to pay a part of it." "Treasury of duties." Why not? Did not Samuel say: "The law of the government must be respected as the law of the Torah." Hence the duties must not be considered robbery? Said R. Hanina bar Kahana in the name of Samuel: "The Mishna treats of a contractor who paid the government the duties of the inhabitants, and he collects from them as much as he desires, and in such a case it is considered robbery." The disciples of R. Janai say: "The Mishna treats of a duty not established by the government (but by some mighty people of the city)." According to others, the above statements of Samuel and R. Janai were delivered in connection with the following Boraitha: "Vows may be made before murderers or contractors of duty concerning the heave-offering or concerning the royal treasure (*i.e.*, if one vows it shall be forbidden to consume any fruits, if these fruits do not belong to one of the above-mentioned)." And when it was questioned: "Why the contractor of duty is counted among murderers," etc., the above explanations of Samuel and Janai were given. R. Simeon said: "R. Aqiba when he came from Zefiru lectured as follows: "Whence do we deduce that the robbery of a heathen is prohibited?" It is written [Lev. xv. 48]: "After he has sold himself, shall he have the right of redemption" (the verse treats when a Jew has sold himself for a slave to a heathen), which means that even when the Jewish court has the might to get him free without money, they must not do so unless the heathen is paid the full amount, as it is written [*ibid.*, *ibid.* 50]: "And he shall reckon with him that bought him," etc.

R. Ashi happened to be on the road and saw a vineyard in which some grapes were ripe, and he said to his servant: "Go and see, if it belongs to a heathen, bring me some; and if it belongs to a Jew, do not." The owner of this vineyard, who was a heathen, heard this, and questioned him: "Are the goods of a heathen allowed to be robbed?" And he answered: "I meant, if the owner is a heathen, he will take money for it, but a Jew would not take money from me; and I do not want to have it for nothing." The text states: Samuel said: "The law of the government is to be respected," etc.

Said Rabha: "This is proved by the fact that we pass the bridges which the government made, although they take beams of the estate belonging to private estates." Said Abayi to him:

"Perhaps we do so because the owners of the beams in question have renounced their hope to regain it." And he answered: "If the law of the government should not be respected as the law of the Torah, why should the owners of the beams renounce their hope? The officers of the government do not usually do as they are ordered. The order is, they shall cut off trees of all the *pagus* (e.g., one owner shall not suffer too much and the other nothing), and the officers cut off from one *pagu* which is more prehensible to them. All beams they need, and nevertheless we pass the bridges which were made of such beams; and this is because the officers of the government are considered as the government itself, which needs not to take the trouble searching any other *pagus*, where the beams in question are to be found, and it is only the fault of the citizens, who have not prepared the necessary material for the bridges from the *pagus* where such material can be obtained, and take money for it from the government."

Rabha said again: "If there were four partners to a barn, three of them took out the grain of it, and when the collector of duties came he found only the share of the fourth partner. He may take from it for all the four partners, and it is not considered robbery, even if the collector was a contractor of the government. The case, however, is when they were partners; but if some of them were only gardeners, who took for their trouble a share of the grain, the collector has not to take the duties for them who are absent, because the gardeners only took what belonged to themselves."

The same said again: "A contractor of the government has the right to pledge a fellow-citizen for the duty of another citizen of the same city (who stands with him in business connections), as so the law of the government is in case it is a duty from the fruits of the land or from this year; if, however, it is from the last year, for which the contractor has paid already to the government, he must not do so." The same said again: "Heathens who live in the limit of a Techum* of the city, who possess cattle and they are hired to dung the fields, one may not buy an animal from them, for fear it may be Jewish cattle, as they usually feed the Jewish cattle together; but if they live out of the limit of the Techum, it is allowed." Said Rabbina: "If some Jews of the city are claiming that their cattle are among the cattle of the heathens, even out of the limit, is also

* Sabbath limit. See Erubin, page 100.

prohibited." Rabha, according to others R. Huna, publicly announced: "It shall be known to all who are going down to Babylon or going up to Palestine that an Israelite who is testifying for the sake of a heathen, without being invited as a witness, when the defendant is an Israelite he may be put under the ban. Why so? Because the heathen collects money by the testimony of one witness (and the Scripture requires two witnesses). This is only in case when he is the only witness; but if there are two, they must testify even when they are not called up; and this is also only when the case is brought up in a court of violence, but in the court of a *Dower* (a Persian prince) they may testify, as they also in such a case order only an oath." Said R. Ashi: "When I was in the court of R. Kahana * we were questioned: "A respectable man upon whom the above court would rely, as upon the testimony of two, and he is the only witness, should he not testify, because the money would be collected upon his testimony, or because he is a respectable man it would be against his conscience if he does so? This question remained unanswered.

MISHNA III.: If the contractors took away his ass, (and after complaining) they returned him instead of his another one, or he was robbed of a garment, and another one was returned to him instead by the robbers, he may take it, as usually in such cases the owners renounced the hope of regaining it. If one saved an estate from the stream or from robbers, if the owners of it have renounced the hope, he may keep it. The same is the case also with a swarm of bees. R. Johanan ben Broka, however, says: "A woman or a minor is trusted when they show the place whence this swarm was coming. One may also run through the field of his neighbor to save the above; if, however, he causes damage, he must pay; but one has no right to cut up a branch of a tree, although he pays for it." R. Ishmael his son, however, allows even this.

GEMARA: A Boraitha, however, states (that if he takes a stranger's ass from the contractor, and he is afraid it may be considered robbery, he has to return it to the first owner and not to the contractor, although the title is acquired as soon as the hope of regaining is renounced; here with a contractor it is different (and the title does not pass to the contractor).

Said R. Assi: "The statement of the Mishna applied only when the robber was a heathen, but not if he were an Israelite,

* The text reads Huna, but by the correction of Asher it is Kahana.

because he thinks of summoning him to the court." R. Joseph opposed: "It seems to be, on the contrary, that as the heathen courts are very powerful, they do not renounce their hope because they think of summoning him." But if the robber were an Israelite, whose courts are not so powerful, he usually renounces hope. Therefore if this statement was made by R. Assi, it was on the latter part of the Mishna: "If they renounced their hope, it is his." Upon this it was that R. Assi said: "This applies only to a heathen. But if the robber were an Israelite the same is the case even if it were not certain that they had renounced their hope."

There is a Mishna [Kelim, xxvi. 8] about skins when they were stolen or robbed. In the first case the intention of the thief is not to be considered, because in such a case usually the owners do not renounce their hope; and R. Simeon is of the opinion that in case of a theft the owners do renounce their hope, but not in the case of a robbery; and Ula said that they differ when there is a supposition only, but if it is *certain* that the owners have renounced, all agree that title is acquired.

Rabba, however, says that they differ even when it is certain. Said Abayi to Rabba: "You may not differ with Ula in this case, because the quoted Mishna which states 'that usually the owners do not renounce their hope, of which it is to be inferred that only when it is supposed so, but if it is certain that they have renounced their hope, title is acquired.'" And he answered: "We read in the above quoted Mishna not as stated, but 'because the renunciation of hope is of no avail.'" There is an objection from our Mishna if the contractor took his ass, etc., which states *he may keep it because usually the owners renounce their hope*. Now, according to whom should be our Mishna? If in accordance with the opponents of R. Simeon, then the robbery mentioned in the quoted Mishna would be a difficulty; and if in accordance with R. Simeon, the theft mentioned there would be a difficulty, too. Still it would be correct in accordance with Ula's theory, who says that when it is certain all agree, etc., then our Mishna could be explained that it means when it was certain; but according to Rabba's theory, in accordance with whom is our Mishna? Our Mishna can be explained that it treats when the robber was armed, and in accordance with R. Simeon. But is this not the same robbery as by a contractor? The Mishna mentions two cases of robbery, one who is protected by the government, and one who is

persecuted by the government. Come and hear: "A thief, a robber, and an oppressor (who takes an article and pays for it against the will of the owner), if they have consecrated the article in question, or if they have separated heave-offering from the robbed grain, it remains so. Now, according to whom would be this Boraitha: "If with the rabbis, robbery would be a difficulty," etc? This Boraitha is in accordance with Rabbai, who says elsewhere that there is no difference between a thief and a robber, and it is explained further on that Rabbai means the kind of a robber mentioned by R. Simeon, who acquires title, and not of the robbers who do not. "A swarm of bees," etc. What means the Mishna with the expression "also"? It means to say that although a swarm of bees is only an enactment of the rabbis, that one can claim he is the owner of it, to prevent quarrels, and one may say that while it belongs to him only rabbinically, he renounces his hope immediately; it comes to teach us that the same is the case here also.

"Said R. Johanan ben Broka," etc. Are, then, a woman and a minor qualified to be witnesses? Said R. Jehudah in the name of Samuel: "This case was when they ran after it, and the two in question had showed him the place whence the swarm of bees was coming, but they were not called as witnesses." R. Ashi, however, said: "One who relates a thing without intention of testifying has a value only in case of a widow, who needs evidence that her husband is dead." Said Rabbina to him: "Is it not just mentioned that such a relation is valued also in the case mentioned above?" And he answered: "A swarm of bees is different, as the owner of it is only made rabbinically." [And in case where it is biblically, is it not valid?] Did not R. Jehudah say in the name of Samuel: "It happened with a man who was talking without any intention as follows: I recollect when I was a child, upon the shoulders of my father I was taken from the school, and they dressed me and put me in a legal bath, so that I should be able to partake of heave-offering at the night meal." And R. Hanina added this tale: "My comrades reported themselves from me and called me Johanan the eater of cakes." And Rabbi established him as a priest for this tale. In the time of Rabbi (after the destruction of the temple) heave-offering was only rabbinical. And still in a biblical case such is not valid? Did not R. Dimi say in the name of R. Hana or Aha of Carthage: "It happened in the court of R. Joshua ben Levi, according to

others in the court of Rabbi, with a child who was telling: 'It happened that my mother and I were prisoners among the heathens, and I did not turn away my eyes from my mother. When I was going to draw water, or to gather some wood, I did not stop thinking of her,' and upon this telling Rabbi married her to a priest (to whom it is prohibited to marry a suspicious woman). In the case of a woman prisoner they dealt leniently."

"*He shall not cut up a branch,*" etc. We have learned in a Boraitha R. Ishmael ben R. Johanan ben Broka said: "It was decided by the court that one may descend in his neighbor's field, or cut up a branch of his neighbor's tree, for the purpose to save his or somebody else's swarm of bees, and the value of the branch shall be paid from the swarm of bees; and there was also another decision of the court, that if for the purpose of saving one's honey he must spill out his own wine, he must do so, and the value of his wine he shall collect from the honey he has saved; and the same is the case when he has wood on his wagon and he sees that one's flax is in danger, he must throw off his wood to place the flax instead, and the value of the wood he may collect from the flax, because under this condition Joshua to our ancestors inherited the land."

MISHNA IV.: If one recognizes his utensils or hooks by another, and it was announced that such things were stolen, the defendant must swear how much he has paid and collect it by returning the articles. If, however, it was not announced that such articles were stolen, he is not trusted to say so, as it can happen that he himself sold it, and the buyer sold it again to the defendant.

GEMARA: And even when it was announced that there was a theft, what is it? There may be still a suspicion that he sold it and then he announced it was stolen. Said R. Jehudah in the name of Rabh: "The case was that in the same night, when the theft happened, visitors were coming to him and found him crying that his articles were stolen. But still (if he is a suspicious man) it can be said that seeing that men are coming to him, he began to claim of the recent theft." R. Kohana completed the above statement of Rabh, that the case was that men who were staying over night in his house, it was found afterwards they were robbers, and they took with them packages with utensils, and it was murmured that his articles were stolen. Said Rabba: "All what is said above is to be feared in

case the plaintiff was known that he used to sell his utensils, but not otherwise. But cannot it happen that even when it was not his custom to sell out when he was in need, he nevertheless did sell all his articles?" Said R. Ashi: "Therefore the Mishna states that it was known in the city that his utensils were stolen."

It was taught: "If a thief has sold out the stolen articles and after it was recognized that he is the thief, Rabh in the name of R. Hyya said that the plaintiff may deal with the thief only." And R. Johanan in the name of R. Janai said that he may deal with the buyer only (*i.e.*, he can take the stolen things without any payment). Said R. Jose: "They do not differ: the one who says that he has to do with the buyer means, in case he bought it before the owner of the article has renounced his hope of regaining it, and the one who says that he has to do with the thief only, means that the sale was after the hope was renounced, and both agree with the theory of R. Hisda" (*supra*, p. 251). Abayi, however, said: "They do differ, as we find elsewhere concerning the gifts of cattle belonging to the priest, which must be considered always that the hope of regaining is not renounced, and they differ there also." But what is the point of their difference? They differ about the statement of R. Hisda just quoted. R. Zebid, however, said: "The point of their difference is this: In case the hope of regaining was renounced when it was already in the hand of the buyer, one holds that when the hope was renounced after the control was changed it does not give title, and the other one holds that it is no difference." R. Papa says: "All agree that the articles must be returned to the owner, and they also agree with R. Hisda, that the plaintiff may summon him who is more convenient for him, and the point of their difference is, if the enactment which is made for the benefit of one who buys a thing publicly in the market, without knowing that it is a stolen article, shall come to his money if the article is found to be a stolen one. According to Rabh this enactment does not apply here, and the buyer must look for his money from the thief; and his above statement, *he has to do with the thief*, means the buyer and not the owner. And R. Johanan holds the above enactment applies here, and he may look for his money from the owner. Is Rabh, then, of the opinion that this enactment does not apply here? Did not R. Huna, who was the disciple of Rabh, say to the plaintiff who claimed the article from the buyer

who bought it from Hanan the bad, who stole it, Go and redeem it? With Hanan the bad it is different; as he possessed nothing, it is considered as if the thief would not be recognized at all."

Rabba said: "If the thief was a notorious one, the above enactment does not apply." But was not the above Hanan the bad a known one, and nevertheless the same enactment was enforced? He was known for a bad one, but not for a thief. It was taught: "If a thief has paid his debt with a stolen article the above enactment does not apply, because the creditor did not give him the money with the intention of collecting it from such articles. When, however, he lends upon this article to the half of its value, the above enactment may apply; when, however, he lent the full value, Amemar said: "The enactment in question does not apply." Mar Zutra said: "It does." If he has sold it for the full value, the enactment applies; if for half the value, R. Shesheth maintains: "It does not"; and Rabha maintains: "It applies." And the Halakha prevails, that in all cases the same enactment is to be practised, except when the thief pays his debt with it. One man lent four zuz from Abimi bar Nazi, the father-in-law of Rabbina; afterwards he stole a garment and brought it to his creditor, and he lent him four more zuz; finally it was recognized that the garment was stolen, and Abimi came to ask the law of Rabbina, and he said: "The first four zuz he cannot collect, as you have collected it already from the stolen garment (for which no enactment is made). The latter four zuz, however, you may collect, and return the garment." R. Kahen opposed: "Why shall we not assume that the first four zuz he had collected from the garment, which are not to be returned, and the last four zuz he (Abimi) trusted the thief without any pledge as he did before?" The case was not decided until it came before R. Abuhu, and he decided that the Halakha prevails in accordance with R. Kahen. One of the city Narsha stole a book and sold it to a citizen of Pepunian for eighty zuz; the latter sold it to a citizen of Mehuza for a hundred and twenty zuz. Said Abayi: "The owner of the book shall pay eighty zuz to the Mehuzan man and shall take his book, and the forty remainder the Mehuzan man shall collect of the Pepunian." Rabha opposed: "When the enactment was made, even when he bought from the thief himself, shall it not apply to him who bought it from the buyer?" Therefore he decided that the owner shall pay to the Mehuzan one hundred

and twenty, and he shall take his book, and then he shall collect the eighty from the Narshian and forty from the Pepunian.

MISHNA V.: If one has emptied his barrel which was filled with wine, and saved in it the honey of his neighbor's broken barrel, he receives only the value of his barrel and for the labor he has done; if, however, he told the man of the honey, "I will save yours in case you will pay me for my wine," he must do so. The same is the case when a stream has overflowed two asses, one of one hundred and one of two hundred, and the owner of the one hundred saved the two hundred one, he has to be paid for his trouble only, unless he has made this condition with his neighbor before saving.

GEMARA: But why so? Let him (the man of the wine) say: "Was not your honey at the time I saved it ownerless? If I had not saved it, it all would be lost, consequently I may take at least for my wine." The case was when the owner of the honey could save it only with great trouble.

"If, however, he told," etc. But cannot the man of honey say, I was only jesting? Is not the case similar to the case of the following Boraitha: "If one runs away from prison and he says to the boatman, 'I will give you a dinar if you will pass me,' he shall pay him only what is due to him"; hence he can say, what I said a dinar was only jesting, why not the same in our case? Our case is to be compared with the later part of the same Boraitha; namely, "If, however, he says: Here is a dinar, take it and pass me, he may keep the whole dinar for his job" (and so in our case when he gives him the honey for the purpose of saving it, it is considered as if he had paid him in advance). But what is the reason for this statement? Said Rami bar Hama: "The case is when the man of the boat has caught fish at the same time he was waiting for passengers, and he may claim that he could make the same money catching fish."

"With a stream," etc. And both cases were necessary to teach; namely, if the first only would be stated, one may say, because it was so spoken of, that he shall lose his own wine for the purpose of saving the other's honey. But in the other case, which was accidental, it is not so; and if the latter only would be stated, one may say because it was an accident he gets only for his trouble when it was not arranged otherwise; but in the first case, when he has destroyed his property for the benefit of the other he must be paid, even when it was not spoken of; therefore both are stated. R. Kahana questioned Rabh: "If

the condition was made, he shall save the two hundred one, and for his one hundred ass, which would be lost, he shall be paid; and he descended and did so, and in the meantime it happened that his own ass was saved by itself, what is the law?" And Rabh answered: "The agreement shall be fulfilled nevertheless, and the saving of his ass is heavenly favor. As it happened with R. Safra, who was going with a caravan and a lion had followed them, and every night the caravan used to throw an ass for the lion; when the time arrived that R. Safra should throw his ass he did so, but the lion did not touch it, and on the morrow he took it back and acquired title of it." R. Aha of Difti questioned Rabbina: "Why was it necessary for R. Safra to acquire title to it? It is true he renounced his ownership of it, but it was done only for the sake of the lion, but not for the sake of others." R. Safra did so to prevent murmur of those who are not thoroughly acquainted with the law.

Rabh questioned Rabbi: "What is the law when upon the above condition he descended to save the ass, but did not succeed?" And he answered: "Is this a question? Certainly his trouble only is to be paid." Rabh objected from the following Boraitha: "If one was hired to deliver some medicine to a sick one, and he finds him dead or cured, the messenger gets his full payment?" And Rabbi answered: "What comparison is this? There the messenger has fulfilled his mission, but here he did not."

The rabbis taught: "A caravan in the desert which was in danger of being destroyed by robbers, and they paid for their redemption, the sum must not be collected equally from each person, but proportionately to the amount each of them possessed. If, however, they have hired a guide, each of them should pay his share equally. At any rate, it must be done according to the custom of the caravan. The drivers are allowed to make a condition with the proprietors, that in case an ass will be lost, they shall furnish them another ass. If, however, the ass was lost by wilful negligence, they are free. But if he says: "Give me the money for the lost one and I will buy me another one myself," he is not to be listened to (because he may not buy, and will neglect to take care of the other asses). Is this not self-evident? The case is even so when he has another ass. Lest one say he will not neglect to take care of the asses of the caravan, as his own ass is among them; he comes to teach us that the taking care of one is not equal to that of two.

The rabbis taught: If a ship upon the open sea, when it was necessary to decrease the weight, the weight of the loading must be counted (*i.e.*, to throw away the same weight of the loading of each passenger without any consideration of the value); however, the law of the ship must be observed. The owners of the ship (who are sailing together) may make a condition among themselves, that if one ship will be lost another shall be furnished. If there were wilful carelessness, however, or he departed himself and sailed on a place where the other ships usually did not go, the conditions are of no avail. "Is this not self-evident?" It means even when usually in the month of Nissan they go the distance of one cord, and in the month of Tishri *on* the distance of two cords, and the ships in question did go in Nissan, when they usually go in Tishri. Lest one say that this is not to be considered wilfulness, he comes to teach us that it is not so.

The rabbis taught: "A caravan that was attacked by robbers, and one of them succeeds in saving some goods from them, this must be divided among the passengers; if, however, he said to them, 'I will try to save for myself,' it is of avail." Let us see how was the case. If each of them could do the same, but he preceded them even if he has said, "I will save for myself," he must not do so. (It is not of avail because all of them have not renounced the hope of regaining it.) And, on the other hand, if it was impossible for them to save their goods, and the one succeeded nevertheless in saving some, why must he divide among the caravan? (They have already renounced their hope of regaining.) Said Rami bar Hama: "It means when they were partners, and in such a case a partner may separate himself against the will of his partner; therefore if he said, *I will do so*, he is separated; but not if he did it silently." R. Ashi, however, says: "The case was that they could save only with great trouble. If he did it silently, he must divide; but if he said, *I will take the trouble on myself*, it is of avail."

MISHNA VI.: If one has robbed a field and it was taken away from him by land robbers, when the land robbers were a plague of this country, the robber may say: The land is in the same place, and take it if you can; if, however, it was robbed because of the robbers, he must buy another field for him.

GEMARA: "*Because of the robber.*" How was the case? If it was taken only from him and not from others, this is already stated in the first part. "If it was a plague of the

country," etc. The case was that the government compelled him to show such land of which they could take possession, and he was going and showed it to them, it is considered as if it was robbed by himself. There was a man that in such a case showed to the contractor a heap of wheat belonging to the Exilarch, and when the case came before R. Na'hman, he made him pay for the same. At the same time R. Joseph was sitting behind R. Huna bar Hyya, and the latter behind R. Na'hman and questioned him: "If the decision was in accordance with the law, or is it only a fine?" And he answered: "This is in accordance with our Mishna, which states: *If because of the robbers*, etc., and it was explained that it means that he has showed," etc. When R. Na'hman went out, said R. Joseph to the above R. Huna: "What difference was it to you if it is law or fine?" And he answered: "If it is a law, then we will take the same for practice; and if a fine, we will not." R. Huna bar Jehudah happened to be in the house of Ebioni (the debate house of the apostate Jews), when after he came to tell Rabba of his misfortune, he asked him: "Do you feel some wrong action you have done?" And he said: "There was a case when one Israelite compelled by the heathen showed them the property of his neighbor and I made him responsible." And he said to him: "Go and fix your wrong act, as we have learned in the following Boraitha: An Israelite who was compelled by heathens and showed the property of his neighbor, he is not responsible, unless he took it with his own hands and gave it to the heathens." Said Rabba: "If, however, he showed it to them without having been compelled to this, it is to be considered as if he took it with his own hands." There was a man whom the heathens compelled, and he showed them the ass of R. Mary ben R. Pinchas ben R. Hisda. The heathens said to him, Take the ass and follow us, and he did so. Afterwards he was summoned before R. Ashi, and he acquitted him. Said the rabbis to R. Ashi: "Have we not learned in the above Boraitha: 'That when he took it with his hands he is responsible'?" And he answered: "The Boraitha means when he was not told to take it with his hand, but here he was compelled to do so by their command." R. Abuhu objected to R. Ashi from the following: "If a mighty man (of whom one is in fear) says to one, 'See that this branch of grapes or a bunch of grain shall reach me,' and he did so, he is responsible for it." And he answered: "It means that they were standing on either side of a stream."

[And it seems to be so, as the Boraitha states: See it shall reach me, and not Give it to me.] There were two men who had quarrelled about a net, each of them saying, "It belongs to me." One of them then took it and delivered it to an officer of the government. Said Abayi: "He may say, 'It was mine, and I could do with it what I pleased.'" Said Rabha to him: Must he then be trusted? he ought to be put under the ban until he gets it back, and then to leave it to the court to decide to whom it belongs. It happened that a man showed to the government the *μεταξα* of R. Aba. R. Abuhu, R. Hanina bar Papi, and R. Itz'hak of Naf'ha were discussing what should be done with him. R. Ilai, who was sitting among them, said to them: "So said Rabh, that he is responsible only when he himself took it and gave it to the government." They said to him: "Go to R. Simeon ben Elyakim and R. Elazar ben Pdoth, in whose courts cases of germon are tried." He did so, and they made the man responsible on the basis stated in our Mishna: "If because of the robber and it was explained when he showed it."

There was a man by whom a silver goblet was deposited, then when robbers attacked him he presented them with the goblet, and they left him alone. When the case came before Rabha, he made him free. Said Abayi to him: "Has not the man saved himself with the property of his neighbor?" Therefore said R. Ashi: "Such a case must be investigated. If he is a wealthy man, the robbers were coming to rob him because of his own wealth; and if he is not wealthy, they came only because of the deposited silver." It happened also with a man to whom the treasury for redeeming prisoners was deposited, and when robbers attacked him he presented it to them. When the case came before Rabha, he made him free; when Abayi remarked to him the same as he has remarked before to Rabha, Rabha answered: "There is not a greater redeeming of prisoners than this case itself. There was a man who led his ass to a boat before men came in; after it was crowded, it was too heavy and it was dangerous, lest the boat sink, and one of the passengers pushed the ass into the river, and it was drowned; after which Rabba made him also free." Abayi remarked to him as above, and he said: "It was only self-defence, then if not for the ass he himself would drown." This decision of Rabba is according to his theory elsewhere, that one who runs after a man to kill him, and on the way he breaks vessels, no difference if they belong to the

persecuted man or to others, he is free from payment, because he is guilty of a capital crime; and the persecuted one, if he breaks the vessels of the persecutor, is free, because the property of his persecutor must not be dearer to him than his own body. And if, however, they belong to others, he is responsible, as it is not allowed to save himself with the goods of his neighbor. But if one was going after the persecutor to save the persecuted man, and while running he breaks vessels, he is free no matter to whom they belong. This is not because the law is so, but if he should be responsible, no one would be willing to save a man from persecution.

MISHNA VII.: If a stream has overflowed the robbed field, he may say to him: "Yours is before you."

GEMARA: The rabbis taught: "One who robbed a field and it overflowed, must deliver up another. So is the decree of R. Elazar." The sages, however, maintain: "He may say to him: 'Yours is before you.'" What is the point of their difference? R. Elazar based his theory upon the exclusions and inclusions of the verse [Lev. v. 21]: "If he namely lie unto his neighbor," which includes everything. "That which was delivered to him to keep," it excludes other things; and further on [ibid., ibid.]: "Or any one thing about which he may have sworn falsely." It is again an inclusion of everything, and there is a rule that when the Scripture includes, excludes, and again includes, everything is included. The rabbis, however, do not consider this as inclusions and exclusions, but as a general and special. "If he namely lie" is general; "Which was trusted to him" is special; and "Or any one thing" is again general, and there is a rule that when there is a special between two generals, it must be judged similar to the special only; namely, as the special is a movable thing and it has a value in money, so all articles which are movable and have a value, excluding real estate, which is immovable, and bondsmen, who are compared to real estate, and also documents, although they are movable, they themselves have no value of money. But have we not learned in another Boraitha: "The very same is the case with the robbed cow, which was overflowed (which is a movable thing, and has a value of money)? He must furnish him with another cow, so is the decree of Elazar; the sages, however, say: He may say: 'Yours is before you.'" In what is the point of their difference then?" Said R. Papa: "It means in a case where the robbed cow was lying on the robbed field,

and it was overflowed with the field, (and the robber did not yet acquire title) on the robbed cow." R. Eliezar is so in accord with his theory and the rabbis with their theory.

MISHNA VIII.: If one robbed, borrowed, or deposited an article when they were in an inhabited land, he must not return it when he is in a desert, unless he took it for the purpose of going into a desert.

GEMARA: There is a contradiction: "A loan is payable everywhere, a bailment and a lost article are not to be delivered only in their right places (hence a loan may be returned at any place?)." Said Abayi: "The quoted one means this: A loan may be demanded at any place, but a lost thing and deposit are to be demanded at the right places only."

"*For the purpose to go,*" etc. If so was the condition, is it not self-evident? The case is, if he said, let be this bailment with you as I go to the desert, and the bailee said to him, I also intend to go there, and if my wishes will be to return it to you there, I may do so.

MISHNA IX.: If one says, I have robbed you, or borrowed from you, or you have deposited with me, and I don't know if I have returned it to you, he must pay; however, if he says, I am in doubt whether I have robbed, etc., he is free.

GEMARA: It was taught: If the plaintiff claims a mana (100 zuz), and the defendant says, I don't know; R. Huna and R. Jehudah say, "He must pay," because certainty has preference to uncertainty. R. Na'hman and R. Johanan say, "He is free," because they hold that the money in possession of the defendant must be considered his until evidence is brought. An objection was raised from our Mishna, which states that if he says, "I am in doubt if you have borrowed it to me, he is free." Now let us see how was the case. If there is no plaintiff, then even the first part in the case, "I am certain I have borrowed, but doubtful if it was returned," must also speak when there is no plaintiff; why, then, must he pay? We must, therefore, say that the whole Mishna treats when there is a plaintiff, and nevertheless in the second part it states he is free from payment. (And this is an objection to Huna and Jehudah.) Nay, the Mishna treats when there was no plaintiff, but the man likes to satisfy the heavenly will. (If he is certain that he has borrowed, it is the heavenly will he shall pay; but if he is in doubt whether he has borrowed, he is free at any rate.) It was taught also by R. Hyya bar Aba in the name of R. Jo-

hanan: "If one claims a mana and the defendant says, 'I don't know,' he is obliged to pay if he would satisfy the heavenly will."

MISHNA X: If one steals a sheep from the flock and returns it, and it dies or it was stolen again, he is responsible; if, however, the owner did not know either of the theft or of its returning, and when they came to number the flock they found it right (and after it died or was stolen), he is free.

GEMARA: Rabh said: "If the theft was known, the returning must also be announced (and if he did not so, he is still responsible for it, even after the owner had numbered the flock), and the numbering makes him free only when he did not have any knowledge of the theft." Samuel, however, said: "The numbering makes him free at any rate." As he explains it, the last sentence of the Mishna applies to the whole of it. R. Johanan said: "If they have knowledge of the theft, the numbering after it was returned makes him free; but if they have not any knowledge of the theft, the numbering does not matter at all, as he is free even without it." And he explains that the last sentence of the Mishna applies only to the first part of it. R. Hisda, however, said: "Only when they have knowledge does the numbering make him free; but if not, he is responsible even after the numbering. And the statement of our Mishna holds good only when they had knowledge of the theft also, and Rabha explained the reason of R. Hisda's statement thus: The theft accustomed the sheep to separate themselves from the flock, and it may do so again; but if he has notified the owner, he will take care of them. Did Rabha, indeed, say so? Has he not said: "If one has seen that a thief had picked up sheep of the flock with the intention of stealing them, and he alarmed him and the thief threw them away, and the man was not certain if the sheep were returned, and the sheep then died or are stolen, he is responsible. Is it not to assume that the thief is responsible even when the owner has numbered them? Nay, it means when it was not numbered. But did Rabh say as it is stated above? Did he not state: 'If he has returned it to another flock, which the same owner has on another place, he is free (and there was neither knowledge nor numbering)'?" Said R. Hanan bar Aba: Rabh agrees when the sheep were speckled, and in such a case the owner knows that it was stolen in his absence, and the shepherd recognizes it by the speckle. Shall we assume that the following Tanaim differ in this case: "If one has stolen a sheep from the flock or a coin from the

pocket, he has to return it to the same place he took it from"? So is the decree of Ishmael. R. Aqiba, however, says: "It is necessary that the owner know the facts in the case." The schoolmen thought that usually a man knows the amount in his pocket, and he counts it whenever he takes a coin out, so he has knowledge of the theft; and R. Ishmael holds that the numbering makes him free, and R. Aqiba that the numbering does not make him free, unless he was notified of the returning. (Hence R. Ishmael and R. Aqiba differ in both, a sheep when it was not notified, in which Rabh and Samuel differ, and also in the case in which R. Johanan and R. Hisda differ.) Said R. Zebid in the name of Rabha: "If a bailee has stolen from the premises of the owner, all agree with R. Hisda; but here they speak of a case where the bailee has stolen it from his own premises." R. Aqiba holds that his function as a bailee has ceased (and he must notify the owner of the theft and returning). R. Ishmael, however, holds: "He is still a bailee, and when he returns it to the place he took it from his own knowledge suffices."

MISHNA XI.: One must not buy from the shepherds kids of goats, wool, or milk, and not from fruit watchmen wood and fruits. One may, however, buy from the women of Jehudah woollen garments (which usually were manufactured by them), and flax garments from those of Galilee, and also calves from the women of the city of Sharon. If, however, the sailors like to do it secretly, it is prohibited. Eggs and poultry are allowed to be bought at any place.

GEMARA: The rabbis taught: "One must not buy from the shepherds goats, kids, sheared or plucked off; garments of wool, however, are excluded, because it belongs to them; milk and cheese may be bought in deserts, but not in inhabited places. Four or five sheep or fleeces of wool together may be bought, but not two." R. Jehudah said: "Domestic sheep (which are brought home at night-time) may be bought, but not of deserts." This is the rule concerning buying of shepherds, an article which the owner of it perceives may be bought, but not articles which are not.

"*The Master says, 'Four or five sheep,'*" etc. If four may be bought, so much the more five? Said R. Hisda: "Four from a small flock and five from a large one." But is not this text contradicting itself? It states four or five, from which it is to be inferred but not three; and immediately it states but not

two, from which one may infer that three is allowed. This presents no difficulty. If the three are of the best sheep, they may; and if from the lean ones, they *may not be bought*. The schoolmen propounded a question: "R. Jehudah, who says that domestic ones," etc., made his condition of the first part; namely, that for the four or five in question, and he is more rigorous than the first Tana of the above Boraitha, or his condition is for the second negative part, which states but not two sheep, and he, R. Jehudah, comes to teach that only from outside, but domestic, even two may be bought, and he is lenient. Come and hear the following Boraitha: R. Jehudah said: "Domestic ones may be bought of them, but not others; in any place, however, four or five sheep together may be bought." Hence his decision was lenient.

"*And not from the fruits watchmen,*" etc. Rabha bought a bunch of branches from an *ovpos* (a laborer who gets for his labor a part of the products). Said Abayi to him: "Did not our Mishna state 'Not from the fruit watchmen, wood or fruits.'" And he answered: "It means of a watchman who is hired for money, but of such who takes for his labor a part of the products, may be bought, as he usually sells his own part."

The rabbis taught: It may be bought from the fruit watchmen when they sell publicly and the scale is before them; if, however, they try to do it secretly, it is prohibited. It may be bought from them at the gate of the garden, but not at a place which is behind it.

It was taught: "When is allowed to buy from a robber?" Rabh holds: "When it is known that the greater part of the goods is his own." Samuel, however, maintains that even when the smaller part only is known to be his own. R. Jehudah's decision to Ada Daila was in accordance with Samuel's theory.

Property which belongs to a denouncer, R. Huna and R. Jehudah differ; one says, "It may be destroyed intentionally," and the other says, "It may not." The one who says, "It may," speaks thus because his money must not be dearer than his body. And the one who says, "It may not," speaks thus because, perhaps, he will have good children, and it is written [Job, xxvii. 17]: "He may prepare, but the righteous will clothe himself (therewith)." R. Hisda had an *ovpos* who used to take exactly the half of the products for himself. Thereupon R. Hisda discharged him, and read with reference to himself the

verse [Prov. xiii. 22]: "But the wealth of the sinner is treasured up for the righteous."

R. Johanan said: One who robs his neighbor even the value of a *parutha* (half a cent) is considered as if he would take away his life; as it is written [Prov. i. 19]: "So is the path of every one that is greedy after (unlawful) gain; it takes away the life of those that own it." And also [Jeremiah, v. 17]: "And they shall consume thy harvest and thy bread; they shall consume thy sons and thy daughters." And also [Joel, iv. 19]: "Because of the violence against the children of Judah." And also [II Samuel, xxi. 1]: "On account of Saul and on account of the house of blood, this because he has slain the Gibeonites." To what purpose is the second verse cited? One may say that it speaks only of his life, but not of the life of his children; hence the other verse. And still one may say that it treats only of a robber who does not pay for the robbery, but not if he does; hence the third verse, which treats of violence, which is even when he gives money. And, finally, one may say: It is only when he did it with his hands, but not when he was only a germon; hence the last verse, which reads, "Who has slain the Gibeonites"; and where is it to be found that Saul had slain them? We must say, therefore, that he was a germon because he had slain Nob the city of the priests, the supporters of the Gibeonites, who lost their lives by the death of their supporters. And the Scripture considers Saul as he himself had slain them.

"*But it may be bought from the women,*" etc. The rabbis taught: "It may be bought from woman (the articles mentioned in the Mishna), but not wine, oil, or fine meal, and also not from slaves and not from minors." Aba Saul, however, said: "A woman may sell for four, five dinars for the purpose of buying a cap for herself." They all mentioned if they told the buyers to be careful about the bargain, then it is prohibited. Charity may be taken from them by the treasurers only a small quantity, but not a large one. From the women of the men who are engaged in the oil press may be bought a measure of olives or oil, but not small quantities. R. Simeon ben Gamaliel, however, said that in the upper Galilee even a small quantity may be bought (as this article is very dear there), and it may be the men are ashamed to sell small quantities in his house, and they give it to their wives to do so. Rabbina, who was a treasurer of charity, happened to be in the city of Mehuza, and the women gave him for charity golden chains and rings, and

he accepted. Said Rabba Tosphah to him: "Did not the Boraitha state that a large quantity must not be accepted from the women by the treasurers of charity?" And he answered: "For the Mezuzath this is considered a small quantity."

MISHNA XIII. : Flocks of wool which came out by washing belong to the washman, but what came out by the carder belongs to the owner. If three threads only come out by the washing, the washman may keep it; if more, he must not; if, however, there were black threads in a whole piece, he may keep all of them for himself. The remaining threads of sewing, and stuff of the size of three fingers square, belong to the owner, not to the tailor. The splinters which fall off from the carpenter's bench with the plane belong to him, but what with the hatchet are the owner's; if, however, he labored at the owner's house, even of the plane belongs to the owner.

GEMARA: The rabbis taught: "One may buy flocks from the washman, because it is his. The washman may take the two upper threads for himself. By stretching the garment out for combing he can stitch the loops on the garment only by three stitches. One shall not comb the garment to its shoot, but to its warp, and he shall cut up the fringes to its length but not to its width; if by completing it he has to cut up in the width also, he may do so, the size of a span." *

The rabbis taught: "One shall not buy from the carder flocks, because they are not his property, unless in such places where it is customary that the carder keeps it for himself. A cushion, however, or a pillow filled with this stuff may be bought from him at any place." Why so? Because the change gives title to him.

The rabbis taught: "One must not buy from a weaver (who is laboring for others) all the stuff in connection with the weaving; he may, however, buy from him a garment even made of different colors (although it is to be presumed that the different colors were the remainder of threads given to him for garments, and did not previously belong to him, as the weaving it to a garment is considered a change and title is acquired). The same is the case with a dyer: one must not buy from him stuffs in connection with dyeing, but a whole dyed garment, for the reason stated before."

* Here in the text comes a discussion, how many threads the laborer takes for himself, and then some Boraithas contradicting each other in this respect, questions which are not decided, and terms of laboring which cannot be understood now without the knowledge of the machinery of that time, and therefore we have omitted it.

The rabbis taught: "If a tanner takes skins to prepare them, the rubbish belongs to the owner; the wool, however, of the skins which was taken out from the water belongs to the tanner."

"*If they were black,*" etc. Said R. Jehudah: "If such was taken off by the washman, it counts for the size which is needed for putting zithzoths in it; however, my son Itzchak is particular with it and cuts it up."

"*But not the tailor.*" How much, however, may the tailor keep for himself? Said R. Assi: The size of a needle's square.

"*The splinters which fall out by the carpenter,*" etc. Is there not a contradiction from the following: "What the carpenter takes off with the hatchet and what is cut up with the saw belongs to the owner, but what falls off from the bore or plane or the splinter by the saw belongs to the carpenter"? Said Rabba: "There is no contradiction. At the place of our Tana there were two kinds of planes, a big one and a small one. The big one is called *ἀξίονη*, and the small one is called plane. The Tana of the Boraitha, however, had knowledge of the big one only, and named it also plane."

"*If, however, he was working at the owner's house,*" etc. The rabbis taught: The stone-cutters may keep the rubbish; branches, however, which fall off from the trees by fixing them, or of vineyards or other plants and herbs, if the owner is particular with them, it is considered a robbery when taken without permission, but not if they are not particular. Not any robbery applies to onycha and grass, unless the places where they are particular. So said R. Jehudah. Said Rabba: "The city of Sirian in Babylon is one of the places where they are particular with it."

END OF TRACT BABA KAMA.

TRACT BABA METZIA (MIDDLE GATE).

CONTENTS.

	PAGE
SYNOPSIS OF SUBJECTS OF TRACT BABA METZIA (MIDDLE GATE)	i

CHAPTER I.

RULES AND REGULATIONS REGARDING FOUND ARTICLES, DOCUMENTS, ANIMALS, AND IF ONE APPOINTS A MESSENGER TO PICK UP A FOUND ARTICLE	I
--	---

CHAPTER II.

LAWS RELATING TO FOUND ARTICLES, WHICH MAY OR MAY NOT BE KEPT WITHOUT PROCLAMATION, AND HOW FOUND ARTICLES SHALL BE CARED FOR, ETC.	44
---	----

CHAPTER III.

LAWS RELATING TO BAILMENTS, HIRERS, LOSSES ON DEPOSITED ARTICLE AS TO THEIR QUANTITY AND THEIR QUALITY, AS TO THE CARE TO BE BESTOWED ON DEPOSITED ARTICLES BY THE DEPOSITARY, AND OF MONEY WHETHER IT MAY BE USED	81
--	----

CHAPTER IV.

LAWS RELATING TO TITLE, REAL AND PERSONAL ; FRAUD, WHAT CONSTITUTES FRAUD AND THE CIRCUMSTANCES SURROUNDING FRAUDULENT TRANSACTIONS, ETC.	110
---	-----

978

SYNOPSIS OF SUBJECTS

OF

TRACT BABA METZIA (MIDDLE GATE).

CHAPTER I.

MISHNA I. Two persons who hold a garment, and each of them claims that he has found it. A biblical oath is given only when there is an admission in part from the defendant. If the plaintiff claims a hundred and the defendant says only fifty, and here they are. If one claims a hundred, and the other denies all, and there are witnesses for fifty, what shall the oath contain? When one of the two holders overcame the other and took it away, what is the law? There was a bath-house about which two parties quarrelled—one of them arose and consecrated it. When two hold a note, the lender claims the note is not yet paid, and the borrower says the note is paid. Where is "the theory of because" to be used? The law is that leading gives title. If one was found riding upon a found ass, and another was holding the bridle, 1-17

MISHNAS II. TO VI. If one sees an article on the road, and says to his neighbor, bring it to me. If one picks up an article for another, the latter does not acquire title. Why so? If one has seen an article, and he fell upon it. If one has seen people running after a lame stag on his field. It happened that R. Gamaliel said: "The tithe which I am going to measure should be delivered to Joshua." When one throws a purse of money through the open door. When a thing was found by one's minor son or daughter, or his Jewish man or maid servant, or his wife. When one has found a note which secures real estate. If Reuben sold a field to Simeon with security, and the creditor of Reuben came and took it away. Encumbered property is not liable either for the used fruits, etc., for the benefit of humanity. How a bill of sale must be written. If one buys an estate, knowing that the seller is not the real owner of it. If the robber after he has sold it bought it from the real owner. If one says that the estate which I am about buy now shall be transferred to you at the same time that I acquire title to it. When I was about six or seven years old, my father was among the scribes of Mar Samuel's court. If one claims a hundred zuz, and the other denies; afterwards he says, I have paid it. If one finds documents of divorce, of enfran-

chisement of a slave, of presents, etc. What is to be considered a will? documents signed by the court, documents of a claim, etc. What is meant by claiming documents? What is called a roll? When three borrowed from one, etc., 17-43

CHAPTER II.

MISHNAS I. TO VI. There are found articles which belong to the finder without any proclamation. If there is a change in the found article which usually ought not to be. The renouncing of hope in regaining a lost article whose loss is not yet certain. Amaimar, Mar Zutra, and R. Ashi happened to be in the garden of Mari bar Issak, and the gardener placed before them dates and pomegranates. The rule concerning a lost article is this. Whether a number is considered a distinguishing mark or not? The reason why the sages decided that the place is not to be considered a mark. If one finds a purse in the market, how is the law? The following articles he must proclaim. Three coins one upon the other, etc. (See foot-note, p. 55.) If one found, under a wooden wall, pigeons tied one to the other. If he found a covered vessel. If one found anything in a heap of rubbish. If one has seen money dropped on sand, and afterwards found and took it. If one found something in a store. If one found money in fruit sent to him, . 44-59

MISHNAS VI. TO XIII. The returning according to marks given is biblically or rabbinically? Until what time is he obliged to proclaim? R. Ami happened to find a purse with dinars in the presence of a Roman. If one identifies the article but not its marks. If the found article is of such a kind that it labors for its food. And if of such a kind that it does not labor. If one found books. If the article was a garment. Vessels of silver and copper. It is better to drink a goblet from the hand of a witch than to drink a goblet of lukewarm water. R. Ismael b. Jose was on the road, and met a man carrying a bundle of wood. What is to be considered a lost thing? If he returned it and it runs away again. What is to be deduced from the twofold expressions in many passages written in the Scripture? The loss of time must be appraised according to one's loss in his special trade. If he has found the animal in a stable, in a public thoroughfare. The commandment of the Scripture is for unloading, but not loading. How is this to be understood? If one lost a thing, as did his father before, etc. If his father and his master were overloaded. They who occupy themselves with the study of Scripture are not to be blamed, etc. See foot-note, p. 79, 59-80

CHAPTER III.

MISHNAS I. TO IV. A deposit stolen or lost, paid by the depository, of which thereafter the thief was found, to whom shall the double amount be paid? A gratuitous bailee, when he said, I have neglected my duty, etc. There was lost a deposited nose-jewel, and R. Na'hman made him pay by force. Finally the article was found, and was increased in value, etc. If an article was appraised for the sake of a creditor, and the latter appraised

it for his own creditor, may the returning take place or not? From what time may the creditor use the products of an appraised estate? If one has hired a cow and he loaned it to some one else. It can happen that the hirer has a right to require several cows from the owner of one cow. How so? A bailee who has transferred the bailment to another bailee, how is the law? The Halakha prevails, that a bailee who has transferred the bailment to another bailee of any kind is responsible. If doubtful money is to be collected or not (illustrated in Mishna III.)? Do you want to contradict a case of deposit with a case of robbery? A robber must be punished. If there was an uncertainty of both the plaintiff and the defendant, how is the law? If one deposits fruit at his neighbor's? If one becomes a prisoner, may his property be transferred to his nearest relatives or not? The difference between forsaken, abandoned, and a prisoner's properties. The estate of a prisoner must not be transferred to a minor relative, and not the estate of a minor to any relative. There was an old woman who had three daughters; together with one of them she was taken to prison, and of the remaining two one died and left a child. A brother of Mari b. Isk came to him and demanded a share of the inheritance, and he said, I do not know you,

81-97

MISHNAS V. TO XI. The quantity of usual losses one may count to deposited articles of grain and fruit? Losses of wine and oil depend upon the kind of barrels in which placed. If a barrel is deposited for safe-keeping, and the depository handled it, and it broke while yet under his hand. Peculiar is the stretching of hands which reads in regard to a bailee for hire, in connection from the same expression in the Scripture which reads in regard to a gratuitous bailee. If one has deposited money for safe-keeping, and the depository tied it and carried it on his shoulder, etc. Nothing is considered safety with money, unless it is hidden in the ground. It happened that one deposited money with his neighbor, and he gave it to his mother for safe-keeping, and it was stolen. Money deposited for safe-keeping with a money-changer. A depository who stretches his hand for the bailment. If one intends to use a bailment deposited in his control and says so, the liability follows immediately, 97-109

CHAPTER IV.

MISHNAS I. TO V. If one bought gold and silver coins together and made a drawing on the gold ones, title is also given to the silver ones, but not *vice versa*. Rabh borrowed dinars from the daughter of R. Hyya; thereafter the dinars increased in value. One holds that the law of exchange applies to a coin also, and another holds that it does not. If one were holding some coins in his hands and said: Sell me your articles for the money I have in my hand, and the other agrees. If one said: Sell me for this amount, title is acquired, and nevertheless the law of fraud applies. According to whom do we write in our legal papers, With an utensil which is fit to confirm with? Biblically, money paid gives title; why, then, was it said that drawing is needed? According to Abayi, he who retracts ought to be notified that he will be punished by Heaven, and according to Rabha he shall

be cursed. It happened that one gave money for poppy, meanwhile the poppy increased in price. Tabuth or Samuel b. Zutra was such kind of a man that he would not change his word, even if all the goods of the world were delivered to him, and he told : The above case of poppy happened to me. Cheating, which according to law makes the sale null and void, is in case where the sum of which he was cheated counts four silver dinars. Until what time the retraction may take place ? The law of fraud applies to the buyer as well as to the seller, to a private as well as to a merchant. There is no cheating concerning a specialist who knows the value. If one is doing business with his neighbor in trust. (See foot-note, p. 127). How much less of the quantity of a sala should be effaced, that the law of fraud could not be claimed ? The prescribed quantity for cheating is four silver dinars to each sala, 110-132

MISHNAS VII. TO X. There are five fifth parts which must be added to the principal amount. The things to which the law of cheating does not apply. Does the law of cheating apply to a hire ? The laws of usury and cheating apply only to commoners, not to the sanctuary. A gratuitous bailee does not swear. If one bought wheat and sowed it in the field, how is the law ? If there was fraud to more than a sixth of the value, how is the law ? As cheating is prohibited in buying or selling, so it is in words. Cheating in words is more rigorous than cheating in money. To what thing do the western people pay more attention ? One should always be careful with the honor of his wife. The noted legend of the oven of the Akhina. The law is not in the heavens. We do not care for a heavenly voice. Regarding cheating, there are three negative commandments. One must not mix together fruits from two separate fields. A merchant may buy grain from five barns, and place it in one storeroom. The embellishment of articles which are to be sold is forbidden, 132-144

TRACT BABA METZIA (MIDDLE GATE).

CHAPTER I.

RULES AND REGULATIONS REGARDING FOUND ARTICLES, DOCUMENTS, ANIMALS, AND IF ONE APPOINTS A MESSENGER TO PICK UP A FOUND ARTICLE.

MISHNA I.: Two persons, who hold a garment, and each of them claims that he has found it, or that the whole belongs to him, (in such a case) each of them shall take an oath that no less than a half belongs to him, and then its value shall be divided. If, however, one claims the whole and the other half of it, then the oath for the first must be for no less than three quarters, and for the second no less than a quarter, and it is to be divided accordingly. The same is the case with an animal, if both are riding; or, if one is riding and one leading, each of them must take an oath that no less than a half belongs to him, if both claim for the whole, and so they divide. If, however, there are witnesses, or they admit the fact, then it is to be divided without any oath.

GEMARA: Why is it stated: "Each of them claims he has found it, or the whole garment belongs to him"—is not one of them sufficient? R. Papa, according to others R. Shimi bar Ashi or Kadi, says: The first part speaks about a found article, and the last one about a transaction, and both cases are necessary. For when the case of a found only, only a found article should be stated, one may say that the rabbis ordered an oath, because it is only a found article, of which each of them may say: My neighbor would lose nothing even if I claim the whole and get half of it, which is not the case in a transaction (as the buyer paid for it, and if it would not be necessary for him he would not do so). On the other hand, if the last part only should be stated, one may say: "The rabbis have given an oath to both of them,

because each of them may say : As the same money my neighbor claims that he has given, I also have given, therefore I have a right to keep it for myself, and my neighbor shall go to the trouble to buy another, which is not the case with a found article, and therefore in the former case an oath would not be ordered." Hence both cases are necessary.

"Transaction !" Let us see from whom the money was taken. The case was, that both paid the money, one with the consent of the seller and the other against the seller's will, but the seller does not recollect to which of them he had given the consent (hence the order of the oaths).

Shall we assume that our Mishna is not in accord with Ben Nanas, who says : "An oath cannot be ordered to both, as one of them would surely swear falsely"? The Mishna can be explained even in accord with Ben Nanas, as he speaks of a case where one of them would surely swear falsely. Here, in case of a found article, it may happen that both of them has picked it up at the same time?

Shall we then assume that our Mishna is not in accord with Symmachus, who says : "That money which is doubtful is to be divided without an oath"? (See First Gate, page 3.) With whom, then, is the Mishna in accord? With the rabbis who are the opponents of Symmachus; do they not say that it is always incumbent on the plaintiff to bring evidence? What comparison is there? In the case where one of them is a plaintiff, and the other a defendant, the rabbis say that it is incumbent on the plaintiff to bring evidence. Here, however, when they both held a thing, they ordered an oath. But according to the theory of Symmachus, even in the case where there is a plaintiff and defendant, it is to be divided without an oath. Moreover, here, as both are holding it, it can be said that even Symmachus would agree with our Mishna, as the oath mentioned is rabbinical only, for R. Johanan says that the oath is an enactment of the sages to prevent one from going out and taking hold of his neighbor's property, claiming it as his.

At any rate, our Mishna is not in accord with R. Jose, who says (Chapter III., Mishna 106): "If so is the case, what can the defrauder lose? therefore, the whole amount must be deposited until there will be evidence." Let us then see if our Mishna can be explained in accord with the rabbis, the opponents of R. Jose, who say that the part in doubt should be deposited "until Elijah will come." Is not the case in our Mishna similar

to the case there, as both claims are doubtful? What comparison is it?

It does not belong to both parties, but to one of them; the rabbis ordered it should be deposited "until Elijah will come." Here, however, there is a possibility that the article belongs to both parties, so they ordered an oath; but R. Jose maintained that even where it is certain that both parties have a share in the money in question, he nevertheless decided that the money should be deposited "until Elijah will come." Moreover, here, it is probable that the article belongs to one party. (Therefore our Mishna is in accord with the rabbis and not with R. Jose.)

According to both the rabbis and R. Jose, how should the following Mishna be understood: "A storekeeper upon his credit-book (if it is found that he has given something by the order of the employer to his working-men, and they deny having received anything), both take an oath, and collect the money from the employer"? Now, one of them has surely sworn falsely; why should it not be here the same also, that the money should be collected from the employer and deposited "until Eijah will come," as one of them is surely a defrauder? It can be said there is another reason. The storekeeper may say to the employer: I have followed your order, and I have nothing to do with your working-men, whom I would not believe even with an oath, and it was your fault that you did not order me to give the goods only in the presence of witnesses or to take a receipt from him. The working-man can say to the employer: You must pay me for my work, and I have nothing to do with your storekeeper, whom I would not believe even with an oath; and therefore both collect the money from the employer after they have sworn.

R. Hyya taught: If the plaintiff says that the defendant owes him a hundred zuz and the defendant denies owing him anything, and witnesses, however, testify that they only know that he owes him fifty, he must give him fifty, and take an oath for the remainder. The reason is that the admission of the defendant himself shall not be stronger than the testimony of witnesses,* and this I have concluded by drawing an *a fortiori* conclusion, and also our Mishna supports me by its statement: "When two are holding a garment," etc. We are the witnesses

* The law is that if one denies all, there must be no oath, biblically; but if there is an admission in part, a biblical oath must be taken for the remainder. If, however, there are witnesses, although he denies, he must pay the full amount.

that each of them holds what he claims to be his, without any admission by his opponent, and, nevertheless, it is stated that each of them must take an oath.

Why was it necessary to draw an *a fortiori* conclusion for the above statement? Lest one say that a biblical oath is given only when there is an admission in part from the defendant, and the reason is, as Rabba declared elsewhere: "Why do the Scriptures decide that one who admits to a part of the claim must take an oath? Because usually one is not so bold as to deny the whole in the face of his creditor, and therefore he admits partly, even had he intended to do so before his creditor appeared, and therefore he only denies a part of it; and it may be that even their denial is only to gain time for the investigation, thinking that in the meantime he will get cash, and will pay the whole claim; and, therefore, the Scripture prescribes an oath in such a case, which is to be believed, that a man with such intention will refuse to swear falsely, and would rather admit the debt of the whole amount. But in case he denies, and witnesses testify against him, in which case the intention above cannot be supposed? No oath is prescribed, he must pay according to the testimony of the witnesses, and shall be acquitted. Therefore it was necessary for him (R. Hyya) to deduce it, by drawing an *a fortiori* conclusion, as follows:

The admission from his own mouth, which does not cause fine, nevertheless causes an oath; witnesses who cause fine, so much the more they should cause an oath.*

Let us see, then, what R. Hyya means in saying that he has support from our Mishna? How can the case in the Mishna be compared to his case? In the case of R. Hyya the creditor had witnesses, and the borrower had none at all; then if he would have witnesses who would testify that he owes him nothing, R. Hyya certainly would not order an oath. But in our Mishna, as *we* are witnesses for one party, we are also witnesses for the other party, and nevertheless an oath is ordered. (Consequently the Mishna orders an oath, not because of admission in part, in which case a biblical oath would be necessary, but only a rabbinical oath as stated above.) Therefore, if it was taught that R. Hyya had said he had a support from our Mishna, it was said in regard to

* The text here is very complicated, and Rashi and Tosphat with great difficulty interpret it differently. It seems to us, however, that our explanation is the exact sense of the text.

another statement of his as follows: "If the plaintiff claims a hundred and the defendant says only fifty, and here they are, he is, however, obliged to take an oath upon the remainder. Why so? Because "here they are" is considered an admission in part; that is, although "here they are" *means that "your claim is now settled*, and I owe you nothing," it is nevertheless considered an admission in part. And the support of the Mishna is this: As they both hold the garment, *we* are witnesses that each of them says, "Take what you hold, and the remainder is mine," and this is equal to the claim "here they are," and nevertheless an oath is ordered.

R. Shesheth, however, says: "When he says, 'here they are,' there is no oath. Why? Because 'here they are' is considered as if the money is already in the hands of the plaintiff. Consequently the claim for the other fifty is denied entirely without any admission." But according to R. Shesheth the decision of our Mishna would be embarrassing to him. He may say that the oath in our Mishna is only an enactment of the sages.

But does not R. Hyya also agree that so it is? Yea, but if "here they are" is equal as an admission in part, and the oath is ordered biblically, the rabbis have the right to order an oath similar to the biblical one. According to R. Shesheth's theory, however, that in such a case no biblical oath should be ordered at all, how could the rabbis arrange an oath which has no analogy in the Scripture?

An objection was raised from the following Boraitha: If there was a note for Sellahs or Dinars without number, the lender claims five and the borrower says three, there must be an oath, because the third one by the borrower is an admission in part. As he could say that the plurality in the note means only two, so is the decree of R. Simeon Elazar. R. Aqiba, however, says: "The admission of the third one is to be considered as if he had returned a lost thing, and he is acquitted. Now, how the case would be if he would say only two (which would not be denied after the note is recognized), an oath would be ordered, even according to R. Aqiba's theory. Is not the note (which can be collected from his real estate) considered as "here they are," and, nevertheless, an oath would be necessary? Infer then from this that such is the law with all claims which are defended with "here they are."

Nay, it can be said that even when he admits only two, there is no oath, and the expression "three" is mentioned only to

deny the theory of R. Simeon, who takes three for an admission in part, for which the law prescribes an oath. And so also seems to be common sense that, according to R. Aqiba, even if he would say only two, he is free from an oath. Then if not so, how can he make him free, when he admits three? It could be a trick on his part to admit three and to be free from any obligation, as he would know that when, if he should claim only two, an oath would be given to him. Infer from this, that so it is. But if it is so, then it contradicts R. Hyya, who says that "here they are" does not prevent an oath. Nay, here in our case of the note, "here they are" is not the reason, but because the note is a support to his assertion, or it can be explained the note implies a mortgage on real estate, and there is no oath in a case where real estate is claimed.

Come and hear (another objection): We learned that the father of R. Aputriki had taught in the first case of R. Hyya just the reverse of R. Hyya, viz.: "If one claims a hundred, and the other denies all, and there are witnesses for fifty, lest one say there should be given an oath, because the testimony of the witnesses should be considered as an admission in part; therefore it is written [Ex. xxii. 8]: 'For any manner of lost things, of which he can say, *this it is*,' which means the liability is only when he admits with his own mouth, but not by the testimony of witnesses." (Hence it contradicts R. Hyya.) How can you contradict R. Hyya with a Boraitha? R. Hyya is a Tana, who is authorized to differ with it. But is not the Boraitha supported by a verse of Scripture? R. Hyya may say that the verse in question is needed for the law of an admission in part. And the Tana of the above Boraitha may say that "*this it is*" has one word which is superfluous. We therefore deduce from both of them, viz.: that to an admission in part an oath is necessary, and that no oath is given when witnesses testify.

There was a shepherd to whom cattle was given always in the presence of witnesses. It happened, however, one day, that it was given to him without witnesses, and he denied, and witnesses testified that he had eaten two of them. Said R. Zera: "If it is to agree with the first case of R. Hyya, he must take an oath for the others." Said Abayi to him: "Even should we agree, could then an oath be given to him? Is he not a robber (to whom an oath is not given)?" Rejoined R. Zera: "I mean to say, that an oath should be given to the plaintiff that he had delivered to him such, and he may collect the money."

But even if we do not agree with R. Hyya's decision, we should nevertheless give him a rabbinical oath, according to R. Na'hman's enactment concerning the following Mishna: "When one claims hundred and the other denies, he is free." Said R. Na'hman: "He is free from a biblical oath, but he must take a rabbinical oath?" Nay, that an oath which cannot be given to the defendant the plaintiff shall swear, etc., is also only an enactment of the sages, and an enactment to an enactment cannot be made.

"Why," said Abaye, "he is a robber? Even if a shepherd only, an oath could not be given to him according to R. Jehudah, who says: 'A shepherd who is not known to be trustworthy, is unfit as a witness?'" This presents no difficulty. If the shepherd keeps his own cattle, he is not fit for an oath; but if he keeps the cattle of others, he is fit; because if it would not be so, how could we confide the cattle to a shepherd? Is it not written [Lev. xix. 14]: "Nor put a stumblingblock before the blind." But we go with the rule: A man will not sin for others' benefit.

"*Each of them swears,*" etc. What shall the oath contain? The part that he claims to have in it, and he swears that he has half of it, or he swears that he has not *less* than a half in it? (The difference between the two expressions is this. In case he swears to an affirmative statement, if he has not, he has sworn falsely. When, however, he swears to the negative statement, the oath is not false, even if he has nothing, as he only swears that he has *not* in it *less* than so and so, and in case he has nothing in it, he has not sworn falsely. The expression in the Mishna, however, is in the negative, and therefore the question.) Said R. Huna: "He swears both. 'I have some claim in it, and not less than a half.'" But why not in an affirmative manner: "I swear that I a half belongs to me"? Then he would contradict his claim that the whole garment belongs to him. And even in the negative manner, does he not contradict his claim? If he says: "According to my knowledge, the whole is mine, but at all events I swear that at least no less than a half belongs to me. But, after all, as they both hold the garment and the oath is ordered to both equally, why the oath at all? Let them divide without an oath?" Said R. Johanan: "This oath is not biblically at all, it is only an enactment of the sages, for the purpose that one shall not take possession of his neighbor's property, claiming that it is his, or he has a share in it; therefore the oath. But if he is suspected in the case of money, why should he be trusted in an oath?"

Nay, the "theory of because" (because he is suspected in the case of money, should he be also suspected in an oath?) we do not act upon. And a support to it we can find in the Scripture, which ordered an oath in an admission in part; and if it would be customary that whoever is suspected in a case of money, should be also suspected of swearing falsely, why then the oath? This above support, however, can be dismissed thus: In the case of an admission in part, there is no suspicion at all. The defendant merely had not the whole amount in cash, but only a part of it, and he taught: I will admit now only the part I have in cash, and the remainder I will give afterwards. And it is as Rabba stated before, p. 238. This can also be proved from the statement of R. Idi bar Abin in the name of Hisda: "One who denies falsely a money loan is nevertheless qualified to be a witness, but whoever denies a deposit (which was given to him only to take care of, and he falsely denies it) is disqualified to be a witness." But why shall we not say if he denies a deposit, that merely he could not find it then, and therefore he denies it, intending, however, to return it when it will be found? He is disqualified only in the case where there are witnesses that the deposit was in his house when he denied it, and he had knowledge of it, or the witnesses testified that he was holding it in his hand. But did not R. Shesheth say: "For the following three things: (a) That I have not neglected it, (b) I have not made use of it, and (c) I am positive it is not under my control, the oath was given"? (This is the case of a gratuitous bailee, who is not liable when it is stolen.) Now, why then should he be trusted with the oath? Let "the theory of because" he is suspected in a case of money, he should also be suspected in an oath, also be applied here. Say, then, that such a theory we do not practise. Abayi, however, says that the reason for the statement in our Mishna, to make them both swear, is not as R. Johanan explains, because in such a case an oath would not be trusted to him, but we suppose that his claim is because he has an old loan of money, which is forgotten by the other, and therefore he takes possession of the garment claiming it is his, because in reality all personal property is a security for the loan. If it is so, let them take the garment without an oath? We are not supposing a certain loan, but that he is in doubt about it. But when he is doubtful, and he nevertheless takes possession of his neighbor's property, let him be suspected, that he will also swear in such a case? Said R. Shesheth, the son of R. Idi: Usually men restrain themselves

from taking an oath on a doubtful thing, although they are not averse to taking possession of property doubtfully, because money can be returned, which is not the case with an oath.

R. Sera propounded a question: "When one of the two holders overcame the other and took it away, what is the law?" Let us see how was the case? If the other party keeps silence, then he admits; and if he objects, what more could he do, when his opponent is stronger than he? The case was, that previously he was silent, and afterwards he objected, and the question is: Shall we assume that because he was silent he has admitted, or perhaps the reason he kept silent previously was because it was done in the presence of the rabbis, who could testify in the case? Said R. Na'hman: Come and hear (in addition to our Mishna, there is a Boraitha, as follows): "All this is said only when both are holding the garment; but if only one holds it, and the other claims the ownership of it, the rule that the plaintiff is to bring evidence applies here also." Now, let us see; if one would claim ownership of personal property which is in the possession of another, the statement of the Boraitha would be entirely superfluous, as it is self-evident. We must say, then, that the case was as R. Zera stated it. Nay; this can be explained as follows: They appear before the court when one took possession of the whole garment, and the other put only his hand upon a small piece of it. In such a case an oath is necessary, even according to the theory of Symmachus, who says that doubtful money is to be divided without an oath; he would agree, however, in this case, because the laying of one's hand upon a piece of it counts for nothing.

If the law were that of one overcome, and took possession in the presence of the court, and the court decided that it should be taken away from him, and in the meantime he had consecrated it, there is no question but that such an act at that time cannot be considered. But if the court would decide to leave it in his possession, should he have overcome the other, and he as yet not taking possession of it, consecrated it, what is the law? Shall we say, because the master says elsewhere: "The consecration by word of mouth only is equivalent to delivering to a common person," in our case shall his mere word of mouth be considered as equivalent to his overcoming and taking it away (and then the thing is certainly consecrated), or perhaps it is not so, because it is not yet in his possession, and it is written [Lev. xxiv. 14]: "And if a man sanctify *his* house," of which it is to be inferred that, as his house is under his control, so he can consecrate it, so

everything which is under his control, but not otherwise, can be consecrated, and in our case it is not yet under his control? Come and hear: There was a bath-house about which two parties quarrelled, each of them claiming it was his property. Then one of them arose and consecrated it. And R. Hanania and R. Aushia and other rabbis did not use this bath any more. And R. Aushia said to Rabba: "When you go to see R. Hisda in Kopri, question him about this case." When Rabba went to Kopri, he passed by Sura, and he questioned R. Hamnuna, and the latter answered him thus: It is decided in a Mishna [Thaharoth, Chap. IV., 12], which states: "If there is a doubt about a first-born, be it of a human being or of an animal, clean ones (which are allowed to be eaten) or unclean ones, the rule that the plaintiff must bring evidence is applied to it." And a Boraitha, in an addition to this Mishna, states: "They are nevertheless prohibited from shearing their wool and to use them for labor." Now, it is certain that if the priest took it away, the court would not compel him to return it, because then he would be the defendant, and the other party must bring evidence. And still, even when the priest did not yet take it away, it is said that it must not be used for labor, as stated above. (Hence we see that even when it is doubtful, it is nevertheless consecrated.) Rejoined Rabba: "You compare this with the consecration of a first-born! There is a difference, as its consecration comes by itself without being consecrated by a human being, and therefore it must be used for labor, no matter under whose control it is."

But what is the law in the above case of the bath-house, after all? Come and hear: R. Hyya bar Abin said: "A similar case happened to R. Hisda, and he questioned R. Huna, and his decision was based upon R. Na'hman's following decision: That such property which must be replevined by the court, even if it is consecrated by one of the parties, it is not holy." But how is it if it could be replevined? The consecration would be valid, although he did not as yet take possession thereof. Did not R. Johanan say: "If one has robbed a thing, and the owner has not yet resigned the hope to regaining it, it cannot be consecrated by one of them? (See First Gate, page 155.) Do you think the bath-house in question was a movable property, to which the rule that the plaintiff must bring evidence applies? This was a real estate, that, if he can replevin it by the decision of the court, it is considered as if it were already under his control."

R. Thalifa of Palestine taught in the presence of R. Abbahu:

"If two appear before the court, both holding one garment, each of them gets the part he holds in his hand, and the remainder they divide equally." Remonstrated R. Abbahu: But not without an oath. (Asked the Gemara): If it is so, how is our Mishna to be explained, which states: It shall be divided, and it does not state that, 'only the part that he holds in his hand.' How is the case to be explained? Said R. Papa: When both hold only the *χερχοῆ* (the fringes). Said R. Mesharshias: "Infer from this that a *sudarium*, which usually the buyer must take in his hand when he wishes to consummate his agreement,* is enough when he takes in his hand the size of three fingers square, as this piece which he holds is considered as if cut off, and the expression [Ruth, iv. 7], "and gave it to the other," is applied.

Rabha said: "The case in our Mishna, even when the garment was covered with gold (on some places), it is nevertheless to be divided. Is this not self-evident? Rabha means to say that the gold cover was placed in the centre of the garment. But even this is self-evident? The case was that the gold covering was nearer to the hand of one of the parties. Lest one say, that the garment shall be divided so that the gold shall remain his share, he comes to teach us that the other party has the right to demand that the gold shall also be divided.

The rabbis taught: When two hold a note (the lender and the borrower), the lender claims: "The note is not yet paid, but I dropped it, and it was found by the borrower"; and the borrower says: "The note is paid, and it is mine now"; the note is still in force, if the signature is certified to by the court. So is the decree of Rabbi. R. Simeon ben Gamaliel, however, says: "The value of it must be divided." If, however, the note falls into the hands of the judge, nobody can compel him to give it away. R. Jose, however, says: "Even then the note is in full force."

The master says: "It is in force if the signature," etc. And what is then—does the lender collect the whole amount? which contradicts the statement of our Mishna. Said Rabba in the name of R. Na'hman: "If the note is approved by the court, all of them (the Tanaim who are named in the above Boraitha) agree

* In ancient times, and even now in our day in those places where the Jews use their own law, all transactions and even marriage contracts are conclusive only when the buyer or the husband takes in his hand a garment which belongs to the other party to the agreement. This is called *Kabboloth K'inyan*, which means the taking possession of what he has bought. And this is based upon the Scripture [Ruth, iv. 7].

that the value of it must be divided (because it is considered as money or a garment, the law of which is stated in our Mishna). They differ, however, when the note is not approved by the court. "Rabbi holds that even when the borrower admits that it is his note, it must be nevertheless approved by the court." If they do so, the value is divided; but if they do not, it is not to be divided. Why so? Because the note would not have any value whatever. Who then makes it a valid note? The borrower, by the admission of his signature, but in the same time he claims that the note is paid. R. Simeon ben Gamaliel, however, is of the opinion that when the signature is admitted, it need not be approved by the court, and therefore it has a positive value, which must be divided. The text above says: "If it falls in the hands of the judge," etc. Why? Is the judge not a human being as any other? Said Rabha: "It means thus: If a stranger has found a note, on which the certification of the court is to be seen, much less when there is no certification by the court, neither of the parties mentioned in the note can make use of it. (Therefore it must not be returned to any of them), for fear that either it was written by the borrower, and he has not received any money as yet, or (if it was certified to by the court) perhaps it was paid. But R. Jose holds that, so long as it is not marked that the note is paid, it is in force, and there is no fear that it is a paid note."

R. Elazar said: "R. Simeon ben Gamaliel and Rabbi differ when both parties hold the text of the note, or both hold the signatures of the witnesses or court; but when one holds the text and the other the signatures, each of them may keep what he holds." R. Johanan, however, said: "It makes no difference what they hold, it must always be divided." But is it not stated: "Each takes what he holds"? The case was, when the certification of the court or signatures to the note were in the centre of it. If it is so, what is there new in that he comes to tell us? The case was, that the signatures were nearer to one than to the other. (This is to be explained, as in the above case, when covered with gold.) Said R. Aha of Diftha to Rabbina: "According to R. Elazar, who says that one takes the text and one the signatures, for what purpose do the parties need it, to use it as a cover for a utensil?" Rejoined Rabbina: "It means its value, namely: The difference in value is to be appraised between the text and the signatures; and the explanation is thus: A note which is certified to by the court, and the date is stated, has more value, as such can be collected even from property that was mortgaged

after the date of certification, which is not the case with a note in which the date of certification is not stated. In this case the one who holds the certification gets the amount, which is as mortgaged after the date of certification. And also the case in which it must be divided, also means its value; because if not so, how would you explain the case in our Mishna, where the garment is to be divided? Should it be cut in pieces and damaged? Surely not, but it means the value of it should be divided, and the same is the case here." *

Rami bar Hama said: "From the decision of our Mishna (that when both claim to have found a garment, which means that both picked it up, both are entitled to it, and it is to be divided), it is to be inferred that if one sees an article upon the ground, and tells his companion to pick it up for him, the latter acquires the title. For if it could be borne in mind that it is not so, the case of our Mishna when both picked it up, for the purpose that they should get title to it, each half that belongs to one of them was also picked up by the other, and consequently both should not get title to it, and it should still be considered as it is still upon the ground, so that any other may take it out of their hands, and acquire title for himself. Infer from this, that so it is." Rabha, however, says: "This is no support at all. It may be said that one cannot get title to a found thing through another, even when the other does not intend to keep it for himself. The case in the Mishna, however, is different, because each of them intends to get title to it, and in the same time, when he gets title for himself, he acquires title to the other half for his companion. And a support to it is to be found in the following: If one commands his messenger he shall steal something, and he did so, the sender is free; but if they were partners and had stolen something together, both are liable. And why? Is it not because at the same time that he bears the guilt for himself, he bears it also for his neighbor?" Infer from this, that so it is.

The same said again: Now that we are coming to the conclusion that we can use "the theory of because," if a deaf and

* The text of this page is so complicated that it is difficult to explain its exact meaning, for we cannot understand the meaning of Rabbina's explanation, and also the difference between holding the text of a note, or the certification of the same, as the court certifies only that the text is legal. We could not find any one of the commentators who was able to interpret this clearly. Still, according to our method, we could not omit it, and, therefore, we have translated it almost literally.

healthy man picked up a found article together, neither of them gets title to it, because, as the deaf man cannot get title for himself, the healthy one cannot get title to it. And lest one say, why should the healthy one be considered worse off than if he too were deaf, for in such a case when both are deaf, both get title to it? The reason is, that in such a case it is only an enactment of the sages, that they shall not come to blows; but here, when the healthy one does not acquire title, the deaf one will say: "If the healthy one does not get title of it, how should I get title to it?"

"If two are riding." R. Joseph said: R. Jehudah told me as follows: "I have heard from Mar Samuel two things, in the case when one is riding and the other is leading. In one case he decided that he acquires title to it and in the other that he does not, and I cannot recollect in which case it is and in which not." Let us see what was the case! Shall we assume that if one was riding on a found animal and somebody came and took it away from him, and in the same way was the case with the leader, that one was leading a found animal and somebody took it away from him, is it possible that Samuel could declare in the latter case that the leader did not get title to it? (The law is that leading gives title.) Consequently if Samuel declared in one case that he had not, it is riding only.) And R. Jehudah would not doubt it.) When, however, he was in doubt, it must be the following case, when one was a-riding, and the other was the leader of the same animal, and in this case Samuel declared that one had acquired title to it and the other not; and his doubt was if the rider had the preference because he held the animal, or the leader because the animal was going by his leading? Said R. Joseph again: "R. Jehudah told me, let us find out the meaning of Samuel from the following Mishna: If one was sitting in a wagon of Kelaim and another was leading it, each of them gets the forty stripes. R. Meir, however, sets free the sitting one" [Kelaim, VIII., 4]. Samuel, however, changed the names and declared that the sages made him free, and this was because so the Halakha prevails.

Infer from this that, riding, one does not acquire title even when there is no leader, and much less when *there* is another one who leads it. Said Abayi to R. Joseph: "How can the master decide the case of riding from the case of sitting? The riding one holds the bridle, which is not the case with the sitting one." And he answered: "So taught Idi: A bridle does not give any title."

It was taught, also, by R. Helbou in the name of R. Huna, that a bridle gives title only when it is given hand to hand; a found animal, however, or if it was from the inheritance of a proselyte who dies without heirs, it does not. For what purpose is the bridle termed *Mussira*?* Said Rabha: "Idi explained to me that this expression was used because it contains in it delivery." And, therefore, if his neighbor delivers to him the bridle of the animal, he has bought it, and he acquires title. Of a found animal or of the inheritance stated above, in which there is no one who can deliver it to him, title cannot be acquired.

An objection was raised from our Mishna. "When two were riding upon an animal," etc., according to whom would be this statement? Certainly not according to R. Meir, who declared that even sitting gives title, so much the more riding. It must be, therefore, that it is according to the rabbis, from which it is to be inferred that riding gives title. Nay, the Mishna may treat of a case when the riding one leads the animal by striking her with his feet. But if it is so, he is the leader? Yea, there are two kinds of leaders. Lest one say, that the riding one has the preference, because he does both, holds and leads it, the Mishna therefore comes to teach us that both are equal.

(Another objection was raised.) Come and hear: "Two who were pulling a camel or leading an ass, or one of them was pulling and the other leading, by such an act the title is recognized." R. Jehudah, however, says: "Title is not recognized unless one is pulling a camel or leading an ass." We see, then, that the Boraitha states "pulling and leading" only, but not riding. The same is the case in riding, and when it states pulling and leading, it is only to deny the theory of R. Jehudah, who says that the title to a camel is acquired by pulling and an ass by leading, and it teaches that title is acquired even in the reverse. But if it is so, let the Boraitha teach both when two were pulling or leading either a camel or an ass? There is one who does not acquire title. Some say that pulling an ass and others say leading a camel. According to others, the objection was raised from the latter part: "By such an act," etc. Does not this expression mean to exclude riding? Nay, it means to exclude when the reverse was done. If so, it is only a repetition of R. Jehudah: "There is a difference between them, that with both mentioned animals

* "Mossar" in Hebrew means "deliver."

one of the two things in question does not give title; some say pulling an ass and others say leading a camel."

Come and hear: "If one was riding upon a found ass and another was holding the bridle, the former has acquired title of the ass, and the other one of the bridle. Hence we see that riding does give title? Here is also the case, when he leads it with the feet. If it is so, why does he not acquire title to the bridle also? Read: The riding one acquired title to the ass and half of the bridle, and the other to the other half of the bridle. This would be correct if the riding one does acquire title to the bridle by picking it up through an agent intentionally; but the one who was only holding it, why should he have any right? Read, then: The one has acquired title to the ass and the whole bridle, and the other only to the piece which he holds in his hand. What answer is this? Even if you would say that when an agent picks up a found article for his principal, the principal acquires title, this is only in the case when the agent was willing to do so; but here the holder of the bridle picked it up with the intention to keep it for himself, and when you say that he has not any right for himself, how should he acquire title for the other? Said R. Ashi: "The riding one has a right to the ass and the part of the bridle which is upon the head of the ass, and the holder of it the piece which he holds in his hand, and the remainder does not belong to either of them." Come and hear (again): R. Eliezer says that riding gives title in the field and leading in the city. (Hence we see that riding gives title?) Here is also meant when he leads it with the feet; then it is leading? There are two kinds of leading, as explained above. But if it is so, why does not riding give title even in the city? Said R. Kahna: "Because it is not customary for men to ride in the city." Said R. Ashi to him: "According to your theory, if one picked up a Persian coin on Sabbath, which is not the custom with Israelites on Sabbath, should he also not acquire title to it? You also admit that such an act is good enough to give title. The same should be the case with riding in the city?" Therefore we must say that R. Eliezer speaks not of a found article, but of a regular sale, at which the buyer was told: "Go and acquire title in it, as it is customary." If it was a public ground where men are usually riding, title is acquired; and if he was a respectable man who used to ride even in the city, the title is acquired. The same is the case when it was a woman. And (on the contrary, if he was a commoner, who is not ashamed to ride anywhere,) title is acquired. (And the title is not ac-

quired only by such people who are accustomed to riding in the city.)

R. Elazar questioned: "If one says to a person: Pull this animal and acquire title on the utensils which have been placed upon it, what is the law? Does the pulling of the cattle suffice to give title on the utensils or not?" Said Rabha: "Even if he should say to him, acquire title on both things in question, would it be sufficient for the utensils also? Is not the animal considered as a movable court, which does not give title in the utensils placed on it? And lest one say it means when the animal stops, is there not a rule that when the title is not acquired by moving, it does not even when it was standing or sitting?" The Hala-kha, however, prevails, that when the animal was tied. Said R. Papa and R. Huna the son of R. Joshua to Rabha: "According to your theory, if one was going in a boat and fish fell into the boat, would we also consider the boat as a moving court, that title in the fish would not be acquired?" And he answered: "The boat is resting, but the water is moving and bears it along."

MISHNA II.: If one rides on an animal and sees an article on the road, and says to his neighbor, Bring it to me, and the latter picks it up and says, I myself have acquired title to it, he has done right. If, however, after delivering it he says: I have acquired title to it first, his claim is not to be considered.

GEMARA: We have learned a Mishna [Peah, IV., 9]: If one has gathered the corner tithe, saying, I take it for a poor so and so, R. Eliezer says that the poor ones get title to it. The sages, however, say that he may give it to the first poor man he may meet. Said Ula in the name of R. Joshua b. Levy: "They differ only when the one who took it was not poor. R. Eliezer holds, that because he can renounce his ownership of all he possesses so that he himself would be poor, would be then entitled to it, the same is the case even if he had not done so. And "because" he himself is entitled to it, he may do so for any one else. The rabbis, however, hold, that the "theory of because" can be applied only *once*. In this case, however, "Because" is used twice, therefore their decision. If, however, the man in question was poor himself, all agree that he can take it for another poor man, as here only one "because" is to be used; namely, because he has a right to acquire it for himself, he may do the same for another. Said R. Na'hman to Ula: "Let the master say, that even if they were both poor, they still differ. As regarding a found article, all are considered as poor, and nevertheless our

Mishna stated that if the one who picked it up said: I myself have acquired title to it, his act is correct. Now if in the quoted Mishna they differ, in that one poor for another, our Mishna would be in accord with the rabbis." (That is, in the first part, "because" the one who picked it up was entitled to it for himself, he has also a right to transfer it to another although he was directed by the rider; and the latter part teaches us that, when he has not acquired title to it before he has given it to the rider, we do not apply the above "theory of because," if he want it for himself.) But if you will say that the recited Mishna speaks only of a rich for a poor, but when both were poor all agree that the title is acquired for the other, then our Mishna is neither in accord with the rabbis nor with R. Eliezer? And he answered: "The Mishna treats of a case when the man who picked it up says to the rider: Although you have seen it first, nevertheless by picking it up I intended to acquire it for myself." And it seems that this explanation is correct from the latter part, which states: "If he says I have acquired title on it first," etc., which is superfluous, as it is self-evident that he means at the time when he picked it up, which certainly he was the first, even if he would not assert it so plainly. Therefore, we must say that it comes to teach us that even in the first part his claim was that he acquired title *first*. R. Na'hman, however, may say that the expression "first," mentioned in the latter part, was with design to show that in the first part this word was not used.

R. Na'hman and R. Hisda both said: "If one picks up an article for another, the latter does not acquire title. Why so? Because this would be similar to one who takes possession, without any order, of goods or money of his neighbor for the purpose of settling his account with so and so, although the same is a debtor to other persons, which is certainly unlawful, and his act cannot be taken into consideration." Rabha objected to R. Na'hman's statement from the following: A thing found by an employee who was hired by the day, belongs to himself. When is this the case? When the employer has hired him to clean or plough the field; but if he was hired for any kind of work for the day, the found article belongs to the employer. (Hence we see that one can acquire title for another.) Said R. Na'hman: In the case of an employee is different, for his hand is considered as the hand of his employer for the whole day. But did not Rabh say that an employee can retire from his agreement in the middle of the day though he was hired for the whole day? And R.

Na'hman rejoined: "Yea, but so long as he has not retired, his hand is considered as the employer's hand." And the reason why an employee may retire from his agreement, even in the middle of the day, is because it is written: "For unto me are the children of Israel servants" [Lev. xxv. 55], which means my servants but not servants to other servants. (So one cannot make another one a slave even for one day.)

R. Hyya b. Aba, however, says in the name of R. Johanan, that "if one picked up an article for another, the latter acquires title; and if you should object to it from our Mishna, I would say that the Mishna speaks of a case when he said: 'Bring it to me and not acquire title for me.'"

MISHNA III.: If one has seen an article and he fell upon it, and at the same time another came and took hold of it, the latter has acquired title.

GEMARA: Said Resh Lakish in the name of Aba Kahna Bardala: "The four ells of a man gives title to him at every place. Why so? The rabbis made this enactment to prevent quarrels." (This sentence will be explained in the following discussion.) Said Abaye: R. Hyya bar Joseph objected to this from the following Mishna [Peah, IV., 3]: "If one took a part of the Peah and threw it on the remainder, he lost his share in it entirely." If one of the poor fall upon the Peah, or he spreads his garment upon it (with the intention of acquiring title to it), his act is ignored, and the garment must be removed. The same is the case with the forgotten sheaf [Peah, IV., 3]. Now if the statement of Resh Lakish is correct, why does he not acquire title to it with his "four ells" (when he has fallen upon it)?

The case was that he did not say: "I intend to acquire title to it." But if the above enactment of the sages exists, even if he did not say anything, what is it? With his falling he convinces us that only with this act he wishes to acquire title to it, but not with the four ells in question. R. Papa, however, said: The enactment of the sages regarding the four ells had reference only to a public place, but not on a private field; and although the Merciful One has privileged him to go in and to gather the Peah, he is entitled only to do that, but he is not privileged to consider it as his own property.

Said Rabha: "R. Jacob bar Idi objected the above saying of Resh Lakish from the Law of Damages stated in our Mishna: 'If one falls upon a found article and another took hold of it at the same time, the latter acquires title to it.' Now if Resh La-

kish's statement is correct, did not the former acquire title with his four ells?" This objection is answered in the very same manner as Abaye's objection. R. Shesheth, however, says: "The enactment of the sages is only in a *semita* (a kind of sidewalk where it is not so crowded), but not in the public street, where there is always a crowd and many have the same four ells." But did not Resh Lakish say: "In every place?" With this expression he means to include the sidewalks of the public streets.

Resh Lakish said again in the name of the same authority: "A minor female has not the right to acquire title in her property, and also the law of the four ells does not apply to her." R. Johanan, however, in the name of R. Janai said: That both of the above laws apply also to her. The two sages, however, do not differ—the former speaks of a divorce, the law of which will be explained in Tractate Gittin (Divorces); and the latter treats about a found article, which was in her four ells or on her property, she does acquire title.

MISHNA *IV.*: If one has seen people running after a found article which was on his field, or after a lame stag, or after unfledged pigeons, and he says: "My property shall give me title to it," his saying is correct. If, however, the stag was not lame, or the pigeons were fledged, his saying counts for nothing.

GEMARA: Said R. Jehudah in the name of Samuel: "The Mishna treats only of a case when he was standing upon his field." But let his property give him title, even if he was not standing upon it, did not R. Jose bar Hanina declare that the property of one gives title to him, even without his knowledge? Yea, but this is said only of a closed yard in which things are preserved; but in an open field, in which things are not, the title is acquired only when he is standing upon it, but not otherwise, as we learned in the following Boraitha: "If one was in the city and said: It is known to me that my employees have forgotten a sheaf in my field (I myself, however, did not forget it), it shall not be considered a forgetfulness as mentioned in the Scripture, lest one say it is not called forgotten; therefore it is written: 'And thou forgettest a sheaf in the field.' There it is considered a forgetfulness, but not if he has recollected it when he was already in the city." How shall the Boraitha be understood?

It is said, first: "Lest one say it is not called forgetfulness, by which we see that the Boraitha would state that it is considered as forgotten, and afterwards is proved the contrary, that it is not considered as forgotten."

We must, therefore, say that when he was still in the field it first escaped his mind, and then the minds of his employees ; but if he kept it in his mind, and the employees forgot it, it is not considered as forgetfulness. And why so ? Because when he was standing upon it, his property gives him title to it, even if afterwards it escaped his mind. But when he was in the city, even if he was aware of it, and afterwards it escaped his mind, it is called forgetfulness ; because he was not on his field, his property does not give him title. And so it is, as Ula and also Rabba bar Hana explained our Mishna, that the case was only when he was standing upon his field.

R. A'ha, however, objected to Ula's statement : " There is a Mishna (Maaser Sheni, V., 9) : It happened that Raban Gamaliel, with the Elders, were sailing on a boat, and R. Gamaliel said : The tithe, which I am going to measure, should be delivered to Joshu, and the place where it is now is leased to him. Another tithe for the poor should be delivered to Aqiba ben Joseph ; he should take possession of it for the poor, and the place where it is now found is also leased to him." Now, were then R. Joshua and R. Aqiba standing upon R. Gamaliel's field, and, nevertheless, we see that they acquired title to it ? And Ula answered him : This question fit coming from a man who never studied. When R. Abba came to Sura, he told the students of the college that so said Ula, and so I objected (and I did not get a satisfactory answer from Ula), said one of the students to him : " R. Gamaliel assigned to them movable property through real estate." R. Zera accepted this explanation. R. Abba did not. Said Rabba : " R. Abba is right in opposing it." Then was there not a *Sudarium*, through which usually title is acquired in consummating a sale ? But as the grain, which was already tithe, would not be considered as R. Gamaliel's property, and he had only the benefit of choosing the men whom he likes to give it, and such a benefit is not considered as money, that it shall be sold by *Sudarium*, the same is not considered as money to acquire it through real estate. (But R. Gamaliel renounced his ownership,) and to ownerless property every one can acquire title. And for this purpose, R. Gamaliel leased his property to them, that it should belong to them for a certain time. So it is considered their property, and they acquire title to it. (Said the Gemara :) In the reality it is not as Rabba said, because the gifts that belong to the priest, it is written, you shall give to him, and therefore title cannot be acquired through a *Sudarium*, which is only an act of buying and selling.

But to assign movable things as real estate, it can be called a valid gift.

R. Papa, however, said: "In the above case of R. Gamaliel the title was acquired through his property, and nevertheless there is no contradiction to Ula's theory, because in this case the things of tithe which were assigned to the two persons named were not ownerless, but belonged to R. Gamaliel, and he transferred them through his property, and this suffices even if they were not standing on the property assigned to them." Said R. Shimi to R. Papa: "Let us see the case of a divorce,* where also a third person transfers it to her, and nevertheless, said Ula, the divorce is valid only when the woman is standing upon her property." In a case of divorce it is different, as the laws permit that it be delivered to her against her will. R. Shesheth, the son of R. Idi, opposed: "Is this not an *a fortiori* conclusion? namely, a divorce which is permitted to be delivered to her against her will, nevertheless it is necessary that she should be standing upon her property; so much the more, a gift the title of which is acquired only by the acceptor's will, it should be necessary that he should stand upon property." Therefore said R. Assi: "The theory of the *a fortiori* conclusion would not be applied here, as the reason why the property gives title is because her property is considered as her hand, and cannot be less in value than her messenger, who acquires title of a gift for her, even when she did not appoint him to do so, for the reason that it is self-evident she would not refuse to accept a gift." In the case of a divorce, however, which is not for her benefit, a messenger without her consent cannot accept for her in a matter which is supposed to be against her will; and there is a rule that a messenger cannot accept anything which is not beneficial to his principal. And the same is the case with her yard.

"If we have seen them running," etc. Said R. Jeremiah in the name of R. Johanan: "The case is, when the owner was running after them, and overtook them." He, however, propounded a question, what would the law be in the case of a gift, and R. Aba bar Kohana received the decision afterwards, that even if he had not overtaken them, he acquired title, because a third person transferred it to him.

Rabha propounded a question: When one throws a purse of money through an open door, and (after passing through the

* The law of it is explained in Tractate Gittin.

house) it came out through another opening, what is the law—has the owner of the house acquired title to it or not? Shall we say that, although the purse did not rest in the house, it is considered as if it had rested? Rejoined R. Papa, according to others R. Ada bar Mathna or Rabbina, to Rabha: "Is it not a similar case as in our Mishna, where it is said: 'When he sees them running,' etc., where R. Jeremiah said in the name of R. Johanan that he only acquires title when he ran after them and overtook them; and then he propounded the question, what is the law in the case of a gift, from whom afterwards R. Aba bar Kahana heard that by a gift he acquired title through his property even when without overtaking them?" In the case of our Mishna the animals were also only running through the field without resting there, and nevertheless it is said that the property gave title to him. The same is therefore even in our case. So Rabha rejoined: "Both these cases are different, as there, although the animals did not rest upon the field, still they ran upon it, and touching the ground may be considered as if they had rested upon it, which is not the case with the purse, which did not touch the ground at all."

MISHNA IV.: When a thing was found by the minor son or daughter of a man or by his man or maid servant, or by his wife, the found article belongs to him. When, however, it was found by his son or daughter of age, or by his Jewish man or maid servant, or by his divorced wife, although he had not yet paid the amount due according to her marriage contract, the found article belongs to the finder.

GEMARA: Said Samuel: "Why did the rabbis say that the found article of a minor son belongs to his father? The reason is that, as soon as he finds it, he runs with it to his father without any delay. (He picked it up, therefore, specially for his father, and so it belongs to the parent.) (Kethuboth gives another reason why the found article of his minor daughter or his wife belongs to him, and therefore here the question is only of the minor son.) Shall we say that Samuel is of the opinion that a minor cannot acquire title for himself, according to biblical law? (for if the minor could acquire title for himself, the rabbis would not say that the found article should always belong to his father, even in the case where the son is independent of his father and supports himself). Did we not learn: "When a man hires a workman to labor in his field, it is allowed for the son of the workman to gather the forgotten sheaves in the same field (in

case the son is poor)? When, however, the workman was working (as a partner) for a half or a third or a quarter of the products of the field, then his son is not allowed to gather." (As then the workman is considered as the owner of the field. The son is, therefore, not allowed to gather in the same field.) R. Jose, however, said: "Even in the latter case his son and his wife are allowed to gather in the same field (as R. Jose is of the opinion that the son even can keep that which he gathers for himself, and so he can do it even when his father is the owner of the field, when the son himself is poor)." And Samuel said that the law is according to R. Jose's theory. This would be right when we say that Samuel is of the opinion that a minor can acquire title in himself, for the reason that we say the minor gathers it for himself, and the father afterwards acquires title to it from his son (and therefore he said that the law is according to R. Jose). But when Samuel was of the opinion that a minor cannot acquire title for himself at all (how could Samuel say that the law is according to R. Jose, that the son may gather in the same field?), as the son can only acquire title to it for his father, and his father is a rich man; how is it allowed that the son as well as his wife may gather in the same field? Nay, this presents no difficulty, as Samuel only gives the reason of the Tana of our Mishna, but Samuel himself did not accept the theory. But does R. Jose really hold that a minor had a right to acquire title according to biblical law—is there not a Mishna in Tract Gittin, in which his opinion there contradicts his opinion here? Therefore Abaye said: "It is, however, allowed that the son may gather in the same field for the following reason (the rabbis consider this field as a field in which the gatherers after the youth were already in the field, in which case the sheaves are allowed to be gathered even by rich people, because the poor had already renounced their ownership in the field, and the same is the case with this field), that the poor (at the start) renounce their right to gather in this field, as they know that the son of the workman will gather in there where the father is working." R. Ada b. Mathna, however, objected to Abaye's statement: "Is it allowed for a man to put a lion in his field, that the poor men shall be frightened to run away when seeing it? (It means if the son has no right to gather in this field it should not be allowed for him to be there at all, and then the poor will not renounce their right to gather in this same field?)" Therefore says Rabha: "In this case they gave him the right to acquire title, although he cannot do so in other cases, because the other

poor men would be satisfied with this; for when they themselves will be hired as workmen, their sons also would be allowed to gather in the same field."

And he differs (*i.e.*, Samuel, with his above-stated reason of the Mishna) with the opinion of R. Hyya bar Aba in the name of R. Johanan, who said (about the expression "of age" and "minor" in our Mishna) that it is no matter if the son is of age or a minor; but even if of age, if he lives with his father and depends upon him, he is considered as a minor. On the other hand, even a minor, if he is independent of his father, is considered as of age.

"*The found article of his Jewish man or maid servant,*" etc. Why? Suppose he would be only hired as a workman, we have learned: "When a thing is found by a workman, it belongs to him. This is only the case when the employer has said to him, Clean my field or dig it to-day; but when he has hired him for any work for the day, the found belongs to the employer." (And why, then, should not the case in our Mishna be the same?) Said R. Hyya bar Aba in the name of Johanan: "The Mishna treats of a case where the servant was working at a labor similar to piercing pearls, and his employer did not want him to interrupt his ordinary work with any other work, not even to pick up a found article, and therefore (even when it happened that he had found a very precious thing) it belonged to himself." Rabha said: "The case here is that he picked up the found article without interrupting his work (and therefore it belongs to himself)." R. Papa, however, said: "The case in the Boraitha, where it is said that the found article belongs to the employer, means only when the working-man was hired to gather found articles for him; *e.g.*, when his field was flooded, and he hired him to gather the cast-up fish."

(In such a case only any other found article belongs to the employer, but not in any other case.)

"*The found article of his wife,*" etc. If she was divorced, is it not self-evident? The case was where it was doubtful if the divorce reached her legally, and in such a case the husband is still bound to support her; lest one say that for that reason her found article belongs to him, it comes to teach us that the reason why her found article belongs to the husband is only to prevent animosity, which cannot apply here, as here there is already animosity.

MISHNA V.: When one has found a note which secures real estate, he shall not return it, because it can be collected by the court; but if not, he shall return it, as it cannot be collected.

So is the decree of R. Meir. The sages, however, say: "He must not return (to the parties), as at any rate the case will come before the court and the money will be collected."

GEMARA: How is the case? Shall we assume that the debtor admits, even in the first case, why he shall not return to the lender, and if he does not admit, why shall he return it, even when there is no security, the note cannot be collected only from encumbered property, but from free property? The case is when the debtor admits, and the reason why it must not be returned is this: It is to be feared, perhaps, the note was written in Nisan, but he did not receive the money in question before Tishri. And if it will be returned to the lender, he will take possession of goods sold in the mean time against the law. If so, then why is it not to be feared in the case of all the notes which come before the court? In all the notes there is no weak point; but this note, because lost, has a weak point. R. Elazar said: "They differ when the debtor does not admit. R. Meir holds that a note without security cannot be collected even from unencumbered property, and the rabbis hold that it can be collected; but when there is an admission, all agree it must be returned without any fear that perhaps it is paid, and his admission is a *χοιγωγία* (a sort of conspiracy.)" R. Johanan, however, said: "They differ only when there is an admission, and the point of their difference is this: R. Meir holds that a note without security is collected from unencumbered property only; the rabbis, however, hold, that from encumbered property also. But in case there is no admission, according to all it must not be returned, because it is to be feared that the note is paid."

There is a Boraitha in support of R. Johanan objecting to R. Elazar's statement in one point and to Samuel's in two: "When one has found a note, if there is security, although both admit it shall not be returned to one of the parties; if, however, there is no security, when the borrower admits, it shall be returned to the lender; but if there is no admission, it must not be returned to either of them. So is the decree of R. Meir, as he used to say that notes to which there are security can be collected even from encumbered property; but if there is no security, it can be collected only from free property. The sages, however, say any note can be collected even from encumbered property." Hence there is a contradiction to R. Elazar's statement in one point, for he says: R. Meir holds that a note without security is not to be collected from any property, and he says,

also, that according to both R. Meir and the rabbis there is no fear for a *Kainunia*, and the Boraitha states that a note without security can be collected from unencumbered property, and it is also too plain to see that according to all, the Boraitha fears a *Kainunia*, in that it states that even when they both admit, it must not be returned. [But is this not two points in which R. Elazar is contradicted by the Boraitha? Nay, it is counted only one, because there is only one reason for both the theories, namely: As he interpreted it, the difference between the Tanaim of the Mishna in case there is no admission, he was compelled to say that such a note is not to be collected even from free property; and when, according to his interpretation when there is an admission, all agree that it must be returned, he was compelled to say that there is no fear for a *Kainunia*.] And there is a contradiction to Samuel in two points; the first one is the same as to R. Elazar's statement, as he also interpreted the Mishna when there is no admission; and the second is to Samuel's statement elsewhere, that if one has found a bill of sale he must return it to the owner without fear that it is a paid one, and the above Boraitha, which states that even if they both agree, it must not be returned to either of them, contradicts directly Samuel's statement, as we see that the Boraitha fears that it is paid even when they both agree; and so much the more in the case of Samuel, when the debtor does not admit. Samuel said: "The reason why the sages hold that a note without security is to be collected from all kinds of properties is, because that according to their supposition the mistake, in not mentioning the security, is made by the scribe, but there is no doubt that the lender who took the note had intended that the amount should be secured by all the property of the borrower." Said Rabha bar Ithi to R. Idi bar Abin: Did Samuel indeed say so—did he not declare elsewhere that the scribe must be advised by the owner regarding the increment to the field in case it is mortgaged, and will be taken away from him, and also that in such a case he shall have the right to collect his money from the best estate, and that all his estates are mortgaged to this sale, but he must not write such things without advice in the matter? Shall we assume that the one who said, in the name of Samuel, the above statement does not hold, that Samuel stated the last one, or both contradictory statements can be reconciled? There is no difficulty in explaining. The first statement of Samuel is in case of a money loan, in which usually one who gives money is very careful in securing all

the borrower's property, and if it was not so mentioned in the note it must be a mistake of the scribe's; and the other one is by a regular sale, in which it can happen that one needs an estate only for a short time and he does not care if it will be taken away from him afterwards, as it happened that Abuha bar Ihi bought the best estate of his sister. Afterwards it was taken away by one of her creditors, and he complained before Mar Samuel. The latter questioned him: "Is it mentioned in the bill of sale that her property is security?" And he answered "No." Then Samuel said: "You can go in peace." He questioned: "Did not the master say that the omission of security was only a mistake of the scribe?" And the answer was: "This is only in the case of notes on money loans; but in a case of a bill of sale, it can happen that the buyer needs the real estate only for a short time."

Rabha said: "If Reuben sold a field to Simeon with security, and the creditor of Reuben came and took it away, this is the law, that Reuben has a right to summon him before the court, and the creditor cannot say, I have nothing to do with you, because Reuben may claim that finally the debt will return to him for payment. According to others, the same is the case even if the field was sold without security, because Reuben may say: I dislike to have Simeon incensed against me."

Rabha said again: "If Reuben sold a field to Simeon without security, and before he took possession of it there were claims against it, he can retract; but not when the claims arose after he had taken possession, because the seller can say, You have bought a cat in a bag (without looking to see what there was in it), and therefore you must keep it." What act of the buyer is considered sufficient as a Hazaka (occupation)? When he has improved the borders of the field. According to others, the same is the case even when the field was sold with security, because the seller can say to him, Show me the warrant by which the field will be taken away from you, and I will repay the money to you, but not before. It was taught: "If one sold a field and it was found that it was not his, Rabh said: The money as well as the increase must be returned." Samuel, however, said: "The money only." The schoolmen asked R. Huna: "When the increase in question was stated plainly in the bill of sale, what is the law? Shall we assume that Samuel's reason rested on the theory that the increase was not stated, then in our case the seller is obliged to return; or that Samuel's reason rested on the theory that in reality he did not

possess any estate, and if the money paid would be returned with any increase, it would appear usurious?" R. Huna answered: "Yea and nay," as he himself was in doubt. It was taught, however, by R. Na'hman in the name of Samuel, that "the increase does not belong to him, even if it were in the bill of sale, for the reason just mentioned." Rabha objected to R. Na'hman from the following Mishna [Gittin, V., 1]: "Encumbered property is not liable either for the used fruits, for the increase of the estate, or for the support of the wife and daughters; for the benefit of humanity." (For if this would be practised, nobody would buy a field, for fear it might be taken away from him.) Now, from the expression "encumbered," it is to be inferred that free estate is liable even for the increase; and is this not the same case as when it was bought from one who did not possess any estate? Nay, a creditor may be meant. If it is so, how is the first part of the same Mishna to be understood, that "of the used fruit"? If there is a creditor, has he the right to use the fruit at all? Did not Samuel say: "The creditor has the right to collect from the field of its increase, but not of the fruits." We must, therefore, say that in this part the case of a robbery arises and, consequently, the latter part also treats of a robbery—why, then? Is it not customary in a Mishna that the first part should treat of one case and the other part of another? But is it not otherwise explained in the following Boraitha: "What is meant by the expression 'for the increase of the estate'? If one has robbed a field and it is to be taken away from him; the amount of the field is to be collected even from encumbered property; the increment, however, from unencumbered only." Now, how was the case? If we assume that it is from a robber, why should the robber get any benefit? It must, therefore, treat of a case where the robber had sold the field to another, and the other has increased its value, and nevertheless it is said that it must be paid for the increment also? Answered R. Na'hman: "And without your objection, could, then, the Boraitha be taken as it reads? It must be corrected; correct it, also, that it treats of a creditor." The Gemara raised another objection from the further explanation of the above Boraitha: Come and hear: "What is meant by the expression 'of the used fruits,' etc.?"

Here, also, it cannot be interpreted to mean that it was taken away from a robber, for the reason explained above; and it must treat of a case as explained above, and nevertheless it is said that for the used fruits is to be collected. (Are, then, not the fruits to be

considered as an increment ?) Said Rabha : "The case was that one had robbed a field full with fruits, and he had consumed the fruits and digged excavations in it. When, then, the robbed one came to complain, he collected for the field even from the encumbered property of the robber, but for the fruits of his free estate only." Rabha bar R. Huna said : "It means that it was taken away from Gentiles for debt. The robbed one, then, when he complains, collects as above." Rabha did not explain as Rabha bar R. Huna, because the expression, "and it is to be taken away from him," is to be interpreted by the court. Rabha bar R. Huna did not explain as Rabha, because the same expression means that the field is to be taken away in good condition, and not when it was spoiled by digging. R. Assi, however, said : "The Boraitha is to be corrected, and it speaks of two different parties in the case as follows : If one robbed a field full with fruit, and he consumed the fruit and sold the field, then the buyer collects his money from the encumbered property of the robber, and the robbed one for the fruit from the free estate only."

Let us see : according to both Rabha and Rabha bar R. Huna, is this not a debt without any written document, the law of which is, that it cannot be collected from encumbered property ? The case arose after it was decided by the court, which is equal in strength to a note. If it is so, why not the fruit also ? The case was that the decision was for the principal estate, but not for the fruit. What compels you to interpret the Boraitha with such an explanation ? Because usually men claim of the court first for the estate and after for the fruits.

Did Samuel indeed say that the buyer does not collect for the increase—did not Samuel say to R. Huna bar Shilath : "Be careful, in writing a bill of sale or a mortgage, to mention that it should be collected from the best estate, and the increase and the fruit ?" Now, what case is referred to ? If a creditor, has he then a right to the fruit ? Did not Samuel say : "The creditor collects the increase, but not the fruit ?" It must, therefore, be said that Samuel means to say that there is a suspicion that the seller is a robber ? Said R. Joseph : "Samuel speaks of a case where such was the condition, that he should be responsible also for the increase, with the same legal formality." Said Abaye to him : "Is it then allowed to lend a saah of grain to get back the same measure (although the price of it may be then higher, seeming usurious), when it was in accord with the legal formality ?" and

he answered: "There is a difference between a loan and a sale. Here it is a loan, and therefore it is allowed."

The text reads: "Samuel said: 'The creditor,'" etc. Said Rabha: "From this it is to be inferred that the seller shall write the bill of sale as follows: I, the first party, assign the goods to you, and I will discharge all claims which may arise against the sold property, and am responsible for the trouble and increase you may have made, and it shall also be testified to in this bill of sale that the transaction was consummated with good will, etc." Said R. Hyya bar Abin to Rabha: "If it is so, how would it be with a gift, in which case such a bill of sale is not made, as the donor would not care to take such a responsibility on himself? Does this affect the case so that the donor is not bound to pay for the increment?" And he said, "Yea, it is." "But if so, does then a gift give more right than a sale?" And he rejoined: "Certainly it has, because the buyer gets it returned from the seller, which is not the case with a gift."

R. Na'hman said: "The following Boraitha supports the statement of Mar Samuel, but my colleague, Huna, interprets it for other purposes, namely: 'When one sold a field to another, and finally it is to be taken away from him, he collects for the estate from encumbered property, but for the increment from free estate only. (Hence there is a support to Samuel's theory.) Huna, however, interprets that the Boraitha speaks of when it was bought from a robber.'"

We have learned in another Boraitha: When one sells a field and the buyer has improved it, and a creditor takes it away, then, when the buyer collects his money, if the value of the increase was more than the expenses, he collects the expenses from the creditor, and the difference between the expenses and the value of the increase from the owner of the field; when, in reverse, he collects from the creditor the value of the increase only, how would Samuel himself explain the above Boraitha? If the case is when it was bought from a robber, in the first part there will be a difficulty, as, according to his theory, no increment must be paid to a robber; and if it speaks of a creditor, then the whole Boraitha would not agree with him, as, according to his theory, a creditor collects the increment of the field (without being obliged to return the expenses?). The Gemara explains this: "If you choose, it speaks either of a case of where it was bought from a robber who possessed real estate, or when the increment was mentioned in the bill of sale with the legal formality.

And if you choose to explain that the Boraitha speaks of a creditor, here also it presents no difficulty, if you take into consideration that there is a difference between an increment that is not yet ripe, where in such a case a creditor can collect it, and an increment of grain, which is already ripe for harvest, which a creditor cannot collect. But is it not a fact that Samuel's court collects every day even from grain that is ripe for harvest? This presents no difficulty. When the claim is equal to the amount of the field with its increment (then the creditor collects the increase also). When, however, the claim is only for the estate, then he pays for the increment and takes the estate."

If one buys an estate knowing that the seller is not the real owner of it, and, nevertheless, he has paid money for it, then the money must be returned to him, but not the increment. So is the opinion of Rabh. Samuel, however, said: "Even the money is lost." In what point is their difference? According to Rabh the money was given by the buyer as a deposit, and the reason why he did not plainly say so was because he was afraid he would not accept it. Samuel, however, means that knowing that the property did not belong to the seller, he gave his money as a gift; and the reason why he did not say so is because he was afraid he would be ashamed to accept it. But let us see: According to both he has not bought the estate; how then did he take possession of it and consume its fruit? The buyer thought so: I, meanwhile, will work the estate and use its fruit as the robber did till now, and when the real owner of it will come, then the money shall be, according to Samuel, lost; or, according to Rabh, returned. Rabha said: "In case an estate is bought from a robber, the Halakha prevails that he collects both the amount and the increment, although the latter was not spoken of. In case the buyer had knowledge that the estate did not belong to the seller, and nevertheless he paid money and has improved the estate, the Halakha prevails that he loses the increase but not the money, and also that not mentioning the security in a bill of sale or a note given for a loan is to be considered as a mistake of the scribe, and not, as Samuel said, that the scribe must not do it without advice."

Samuel questioned Rabh: "If the robber, after he has sold it, bought it from the real owner, can he be substituted for the real owner, to take it away from his buyer?" And Rabh answered: Nay, because before the sale the intention of the (so-called) robber was to buy it from the owner; consequently, he

sold to the buyer the right which he would acquire afterwards. What is the reason for ascribing to him such an intention? Mar Sutra says: "Because it would be disagreeable for him to be called a robber." R. Ashi, however, says: "It is agreeable to one that he shall remain an honest man." What is the difference between these two opinions? There is a difference in case the robber has given the robbed field as a gift, according to him who says that it is agreeable to remain an honest man; the same is the case also in a gift; but according to him who says that he would not like to be called a robber, with a gift it is different, as he could not be called a robber even if the gift would be taken away from the donor.

It is self-evident that when (before the robber bought it from the owner) he sold it again to another man or bequeathed it, or gave it as a gift, then certainly his intention was to remove the goods from his possession, he sold it first; the same is the case when he inherited this estate; after he sold it, he may rescind the sale by returning the money, as here cannot apply the supposition that he intended to remain an honest man, as the estate came to him not through his effort; but in case he took possession of the field afterward as a creditor of the robbed one, then it is to be seen whether the latter possesses other estates; and the creditor insisted on having this field, then it is to be inferred that it is to remain in the possession of the buyer; but if not, then his intention is not certain and the buyer cannot insist upon this estate; but when he received it after it was sold as a gift, then R. A'ha and Rabbina differ: one maintains a gift is the same as an inheritance; the other, however, says that a gift is equal to a sale; for if he would not trouble himself to please the robbed one, he would not get this gift, and the intention to remain an honest man in the eyes of the buyer is applied here. At what time did he buy it from the robbed one, so that the above intention can be applied that the buyer can insist upon this sale? R. Huna said, when the robber bought it before he was summoned by the buyer to the court (but when he was summoned and he appealed to the court, then we see that the above intention was not in his mind, and he bought the field only for himself). Hyya bar Rabh said: "Before the judgment was in his hands." R. Papa said: "The time did not expire until the days of the proclamation began." *

* The custom was that, after a judgment was issued that the estate should be transferred from one to another, this act was to be proclaimed in public places.

Rami bar Hama opposed, saying: "Let us see what was the act by which the buyer acquired title to the estate; with the bill of sale? Is that not to be considered as a piece of broken clay vessel, as the estate was not his?" Said Rabha to him: "The theory of Rabh's statement can be explained, that when the buyer said to him, 'I trust upon your word that you will see that the estate shall remain in my possession without any trouble,' and for this satisfaction that his word was trusted, the intention mentioned above is to be applied here." R. Shesheth, however, objected from the following Boraitha: "If one says, 'I sell to you my inheritance from my father, or what I will catch with my net,' he says nothing. If, however, he said, 'I sell you what I will inherit from my father, who is dying, or what my net will catch this day,' the transaction is valid. Hence we see that the sale of property which is not yet in possession is of no value?" Answered Rami bar Hama: "Here I see a great man with a wonderful objection." Rabha, however, answered: "I see the great man, but I do not see the wonderful objection, as the two cases have no comparison at all. In the case of Rabh, the buyer said to him, I rely upon you, therefore he troubles himself to make his sale good so that he shall not be called a robber afterwards; but here the buyer cannot rely upon him (because it was not known to him if he will inherit anything or not)." The above objection of R. Shesheth was sent to R. Abba bar Zabda, and he answered: "It would be of no use to bring this objection before the students, as it seems to me that they will not be able to answer it." Rabha, however, said: "It ought to be brought before the students of the higher class, for it seems to me they will understand the difference between the two cases as stated above. A similar case happened in Pumbeditha (and the court decided on Rabh's theory, and objection was made from the above Boraitha, and R. Joseph said then, as Abba bar Zabda and Abaye, the same as Rabha."

But what is the reason that in the latter part of the Boraitha the sale is of value? Said R. Johanan: In the latter part, when his father is dying, the sale is of value for the honor of his father (as it may be that he needs money for the expense of burial, and he sells it beforehand not to disgrace his father in delaying the burial). And what about the net? that is also an enactment of the sages to make the sale valid, as perhaps he needs food for the day.

R. Huna said in the name of Rabh: "If one says that the

estate which I am about to buy now shall be transferred to you at the same time that I acquire title to it, the title is acquired and it cannot be rescinded any more." Said Rabha: "It seems to me that Rabh's statement applies only when he said any field which I am about to buy, as the donee relies upon him; but if he mentioned a certain field, then the donee does not rely upon it, as he may think perhaps this field is not for sale at all (the Gemara said) by God, Rabh said even when he specified a field, as Rabh's theory is in accord with R. Meir [Kedushin II., 43b] that a man can grant a thing which is not yet in existence in a case of marriage, and our case is equal to that."

Samuel said: "If one finds in the market a note, made for a loan, which contains the legal formality that it should be collected even if the loan did not take place, it is to be returned to the creditor; for if it was written for the purpose of making a loan which did not as yet take place, yet the note is valid, as his promise was to pay at any rate, and there need be no fear that it was paid, because if so it would be torn." Said R. Na'hman: "When I was about six or seven years old, my father was among the scribes of Mar Samuel's court, and they used to proclaim that a note of the above-mentioned kind, if found, should be returned to the creditor." Said R. Amram: "This is also supported from the last Mishna. 'All documents signed by the court are to be returned.' Hence we see that there is no fear that perhaps it is paid." Said R. Sera to him: "The Mishna may speak of documents in which it is testified that, according to the order of the court, the creditor had already taken possession of the estate, or judgments against debtors who at that time had no property, and both kinds are not to be paid with money." Said Rabha: "Are these kinds of notes not payable? Did not the court of Nahardayi say that even an estate the value of which was ascertained and assigned to the creditor is to be returned till twelve months elapsed, and Amemar of the same place testified that he, as one of the judges of the above city, had declared there is always time it should be returned if paid." Said Rabha: "In those cases there is another reason, for, according to the law, the creditor would not be obliged to return the estate, and it is only an enactment of the sages to return it on account of the verse [Deut. vi. 6]: 'And thou shalt do that which is right and good in the sight of the Lord.' Therefore, when he took possession of the estate, it was considered as a regular sale, and also the debtor had either to tear the note made for a loan when

paid, or take from him a bill of sale ; and by not doing so, he harmed himself, which, however, in the case of a common credit note, the above reason cannot be applied, for the following reason : It may happen that the creditor, when he got the money, promised him to return the note afterwards, as at this time it was not at hand, or he kept it back for the expenses of the scribe."

R. Abuha said in the name of R. Johanan : " If one finds a note on the street, although approved by the court, it shall, however, not be returned to the creditor, because it may be feared that the note is paid, and much less when such was not approved." R. Jeremiah, however, objected from the above mentioned Mishna : " All documents, etc." Said R. Abuha to him : " Jeremiah, my son, all cases are not equal ! The Mishna may be explained so that it speaks of a debtor who was already known as a liar." Said Rabha : " And even in such a case, must it be taken as a rule that such a man never pays his debts ? " " Therefore," says Rabha, " the Mishna in question explains as R. Sera said above." And as the case of a liar is mentioned, we may say thus : R. Joseph bar Minumi said in the name of R. Na'hman : " When one was ordered by the court to pay, and he claimed afterwards he had done so, he may be trusted (with a rabbinical oath). If, however, the court had only decided and the order was not yet issued, and the debtor claimed he had paid it, he is not to be trusted, and the creditor can get a judgment (when he takes a rabbinical oath)." R. Zebid, however, in the name of R. Na'hman said : " In both cases he is to be trusted ; and when the creditor claims a judgment, it is not to comply with his request ; therefore, if there is some difference in the above cases, it may be as follows : When he was ordered by court to pay his debt and afterwards he said he had done so, and there were witnesses that he had not, then he is considered a liar in regard to this money that he is not to be trusted when he says again he has paid it ; if, however, it was only decided, but the order was not yet issued, and the witnesses contradicted him, he may be, nevertheless, trusted, if he says again he had paid, because his first statement was only to gain time, and he thought that until the judges would consider the matter that an order be issued the money would be paid."

Rabba bar bar Hana said in the name of R. Johanan : " If one claims hundred zuz and the other denies, but witnesses, however, testify for the whole amount ; afterwards he says, I have paid it, he is considered a liar in this case." A similar case arose

with Shabbathai, the son of Mrinus, who assigned a silk garment to his daughter-in-law in her marriage contract, and she accepted it. Afterwards the marriage contract was lost, and he denied that such a thing was written in the contract; witnesses, however, testified that he had written; then he declared he had given her the garment, and when the case came before R. Hyya, he decided that the above Shabbathai is to be considered a liar in this case. R. Abin in the name of R. Ilaa, quoting R. Johanan: "If it was decided that the defendant take an oath, and afterwards he said he did so against the testimony of witnesses that he had not, he is considered a liar in regard to this oath." When this statement was reported to R. Abuhu, he said: "It seems that such a statement holds only when he was ordered by the court, but not when he declared himself willing to take an oath, as then it may happen that he had after reconsidered, and therefore he cannot be considered a liar." When this statement was reported again to R. Abin, he said: "So, too, was my declaration. And so it was taught elsewhere plainly." R. Asi said in the name of R. Johanan: "If one finds a note made for a loan which was approved by the court, dated the same day on which it was found, it must be returned to the creditor, because there is no fear that the loan did not take place, as it was approved by the court, and also there need be no fear that it was paid, as the loan was made only that day." Said R. Zera to R. Asi: "Did R. Johanan say so—did you not state in his name that if the loan was paid, one cannot use the same note for another loan, as its strength to collect from encumbered property ceased (from the moment it was paid)? Now, then, on what date does it mean that it cannot be taken for another loan? If for a later date, then this note cannot be used at any rate, as the note is of an earlier date. We must then say that it means it cannot be used for another loan on the same day." * And he rejoined: "Did I say that it can never happen? I said only it is not usual." R. Cahana said: "The statement of R. Johanan treats only when the borrower admits that the note was not yet paid. If so, what comes he to tell us? Lest one say the note is paid, and the reason the debtor admits that it was not paid is only because he wants to take another loan, and save the expense of writing another note, he comes therefore to teach us that it is not so, as in such a case the creditor himself would oppose, for the reason that if this would be heard in the court it would cancel the note."

* Hence we see it may happen that a loan may be paid on the same day?

R. Hyya bar Abba said in the name of R. Johanan: "If one claims to have done what was enacted by the court to do, he says nothing; for the enactment of the court is good as if one held a note in his hand." And the same, when he heard this, asked R. Johanan: "Is this not said in the [Kethuboth] Mishna: When a woman shows her divorce without the marriage contract, she nevertheless collects what is written in the marriage contract?" Answered R. Johanan: "If I would not take away the broken vessel which had covered the pearl, thou hadst not found it." Said Abaye: "Why, then, this Mishna may treat of such places where it is not customary to write a marriage contract at all, and so the document of divorce is considered as if she had the contract in her hand; but where the above contract is customary, she cannot collect without it. After consideration he retracts the former statement, and said what I said above cannot be the reason; for if such is the case, that where the contract is written she cannot collect it without the contract, how should she collect when she becomes a widow after betrothal (with a ring, as the custom was then, and from that time she was already considered a married woman; the marriage contract, however, was written after the official marriage)? You can say that she collects it when she brings witnesses that her husband is dead; then this would count nothing, as the heir could nevertheless say that he had paid already; and lest one say that it is so, then to what use would be the enactment of the sages that the woman shall get support."

MISHNA VII.: When one finds documents of divorce, of enfranchisement of a slave, of presents, or of receipts, he should not return them (to the person for whom they were made), because it may be that the person who had written the documents had changed his mind not to give them for whomever they were written.

GEMARA: Rabba bar bar Hana lost a document of divorce (which he had to deliver to the women as a messenger) in college, and when it was found he said: "If you require signs to identify the document, I have them; and if I am trusted by you to recognize it, then I recognize it" (and he had done both, he had told what were the signs and also recognized it by sight). When it was returned to him he said: "I cannot tell if they did it on account of the signs, as they hold that the biblical law requires only signs; or signs only would not be sufficient, and it was returned only by sight, in which only a scholar is trusted, but not a com-

mon man." (There is an objection to our Mishna from the following Mishna :) "If one has found in market a document of divorce, and if her husband admits that he wrote such a divorce he shall return it to her; and if not, he must not return it to either of them." Now then, it states that when the husband admits, it may be returned. Why then: let it be feared that perhaps the husband wrote the divorce to deliver it in the month Nissan, and he had not given it to her until Tishri, and in the meantime he had sold (legally) the fruit of her property, which was produced from Nissan to Tishri, and afterwards when the woman would collect with the same divorce, she would take away from the buyers the products from the time it was written illegally. This, however, would be correct according to him who holds that as soon as the husband has decided to divorce her, he has no more right to use her products; but according to him who holds that he has a right until the divorce is delivered, what can be said? When she comes to collect, it can be said to her, Bring evidence at what time the document was delivered to you. But why should this be different from the note made for a loan stated above, where he must not return it, even when the debtor admits, for the same reason stated above by the divorce, let him there also return it to the creditor, and when he will come to collect, evidence shall be required at what date the note made for the loan was delivered to him? It may be said, in the case of a divorce the buyer can say that the rabbis had decided to return the divorce to her only for the purpose that she should be able to remarry; but regarding the collecting, she must bring evidence when the divorce was delivered to her, but by a creditor the buyer cannot say anything. Now is it obvious that the purpose the robbers had in returning to him the note was for collecting.

The rabbis taught: "If one finds a document of enfranchisement on the market, if the owner admits, it may be returned to the slave; and if not, it must not be returned to either of them." It states, however, that when the owner admits, it may be returned to the slave. Why should it not be feared here the same as above, that the document was written in Nissan and was not delivered to him until Tishri, and meanwhile the slave had bought property for himself, and the owner (who had not yet delivered the document) sold out, and when the slave came with his document of enfranchisement, which was written in Nissan, he will certainly collect it illegally? The above answer can also

apply here, that evidence will be required from the slave at what time the document was given to him.

"*Wills or presents*," etc. The rabbis taught: "What is to be considered a will? if it is written, the property so and so shall belong to so and so after my death; and what is considered a note for a gift, a present? if it is written, the property so and so belongs to so and so from this date, but he cannot sell it or use its fruit until I die. Is it to be assumed that if it was written it shall belong to so and so from to-day without the above explanation, the donee did not acquire title of it! (he certainly acquires title to sell it and to use it from that day)." Said Abaye: "The Boraitha means to say thus: When is the note for a gift to be considered equal to a will? If it is explained that he shall not take possession of it before his death."

Now let us see, after all the discussion above, the reason for our Mishna that it shall not be returned because the testator did not consent to return it; but if he does, it may be returned; is that not contradictory to the following *Boraitha*: "If one has found documents of wills, of hypothecation, or presents, although both admit, it is not to be returned to either of them?" Said R. Zebid: (It is not as Abba bar Mamal tried to explain the above contradiction that one speaks of a healthy man and one of a sick man, but) "both speak of the latter case, and nevertheless there is no contradiction, as our Mishna treats of a case where the testator himself, who can change his mind to assign it to anybody, said, Give to another; so that if it would be returned to whom it was first assigned, he would not acquire title to it, but the last one would: and the Boraitha which states that it shall not be returned speaks of the son of the testator, and the reason is, it is to be feared that perhaps the testator has not given it to him because he has decided to assign it to another; and, therefore, he did not deliver it to him, and the son, after the death of the father, to whom the intention of his father was known, assigned the estate to another and already delivered the document to him, and afterwards he decided to give it to the one to whom it was previously assigned by his father, but as the document was already given to the second, and he could not retract it, he declared that the father's will was, to deliver it to whom it was first assigned with the intention that the latter should summon the party to whom the son had delivered his document, so that finally the estate should be divided among them. The court, therefore, may say it will not be returned for the reason explained

above ; but if you wish that the man in question should get the estate, go and draw up another document and deliver it to him and then the will of your father will be complied with.

The rabbis taught : " If one finds a receipt (of a marriage contract), it is to be returned to the husband when the woman recognizes it, but not otherwise." Now then, why should it not be feared the same as above ? Perhaps she wrote it to deliver it in Nissan and she had not delivered it before Tishri, and in the meantime she had assigned to somebody else her marriage contract for the benefit of the products in the interim from Nissan to Tishri, and afterwards if the goods would be collected by her receipt, it would be illegal." Said Rabha : " Infer from this, that the Boraitha is in accord with Samuel, who says : ' When one sells a note made for a loan and afterwards he relinquishes the debt mentioned in the note, it is relinquished, and even his heir can do so (so that the debtor must pay nothing and the money taken for the note is to be returned).'" Abaye, however, said : " Even if we should say that Samuel's decision is not to be considered, the case in question is to explain when the marriage contract is in her possession and she brought it before the court. According to Rabha's theory, however, the marriage contract is not to be considered, for she may have had two." Abaye, however, rejoined : " First, it is not to be feared that there may be two ; and secondly, the collection on account of the receipt takes place from the date it was signed, no matter when it was delivered." The last statement of Abaye is in accord with his theory elsewhere, that witnesses with their *signature* give title to whomever the document was written.

MISHNA VII. : One who found documents in which was assigned by the court the property of the defendant in benefit for the plaintiff, or obligations of supporting (his step-daughter, or) documents of Haliza or such where the annulment of a marriage of a female minor is expressed, documents of a claim and of arbitration, and other documents made by the court, are to be returned to whomever they belong. When one finds a note in a *קאפא* or bag or a roll or a bunch of notes, it must be returned. What is to be considered a bunch ? Three bound together. R. Simeon ben Gamaliel says : " When three notes of the same debtor and different creditors are found, they should be returned to the debtor ; but if three different debtors from one creditor, then to the creditor. If one finds a note among his own notes and he does not know to whom it belongs, it shall be placed in court

until Elijah will come. If there is a *συμφωνία*, he shall act according to it."

GEMARA: What is meant, claiming documents? In the college of Babylon they used to explain it as documents of plaintiff and of the defendant. R. Jeremiah, however, said: "Documents of the arbiters taken by the parties."

"And all documents made by the court." There was found a divorce which was written in the city of Shevére, which was situated on the river Rackth, and it was brought in the court of R. Huna. Said R. Huna: "It is to be feared that there are two cities of such a name (therefore it is doubtful if it may be returned)." Said R. Hisda to Rabba: "Look up this matter, for in the evening R. Huna will inquire about it of you." Rabba did so, and found the quotation stated above in our Mishna. Said R. Amram to Rabba: "How can you, master, decide the matter of a legal marriage from a money case?" And he answered: "Tardus! Did not the Mishna state documents of Haliza, etc. (are these not documents of legal marriage)?" In the meantime the pillar of the college broke, and each of the above sages claimed that this happened as a punishment for the disgrace of his honor (Rabba because he was insulted by the expression of R. Amram, and the latter because he was ashamed of being called Tardus).

"A roll or a bunch of notes." The rabbis taught: "What is called a roll?" If there were no less than three; and a bunch must contain the same number, but in this case they must be tied together. Shall we infer from this that such a knot is to be considered as a sign of identification? Said R. Hyya: "It treats of a case where the notes of the bunch were also rolled, one in the other." If it is so, then it is a roll (already mentioned above). A roll means that each of the notes was rolled separately in it; and a bunch means they were rolled together. What shall be proclaimed: the number? Why, then, no less than three: must he not proclaim it even when there were two? As Rabbina said elsewhere, that if one finds a number of coins he must proclaim that he found money without mentioning the number and without explaining what kind of money, the same is the case here, he shall proclaim: "I have found documents," without any explanation (and the loser must explain their condition and how many).

"R. Simeon ben Gamaliel," etc. If they belong to the creditors, how could they be together? But perhaps they were

lost by the creditors while going to register them. The case was when they were already registered. But perhaps they were lost from the hand of the register. It is not usual for one to leave his registered note with the register.

"When three borrowed from," etc. For if they were lost by debtors, how could they be found together? But perhaps they were lost on the way from the scribe's. The case was when three different handwritings were found. Perhaps they were lost on the way to the register's? Usually the creditor registers the note, but not the borrower.

"If there is," etc. R. Jeremiah bar Abba said in the name of Rabh: "A *συμφωνία* that is in the hand of the creditor is invalid even when it was written by himself, as it may be that he prepared it in case the debtor would give him the money at a time when it would not be easy for him to make a receipt, and much less when it was written by a scribe, as it may be that he expected money from the debtor, and while waiting for it, it happened that the scribe called upon him. Does not our Mishna, which states he shall do accordingly, contradict Rabh? As R. Saphra said elsewhere, if it were found between torn notes, so also can be explained our Mishna. An objection was raised. Come and hear: "A *συμφωνία* in which was proved by witnesses (and the creditor denies that he received the money), it is sufficient if the witnesses admit their signatures." Read: The witnesses must be questioned if they saw the payment. There is another objection: "A *συμφωνία* which is proved by witnesses is valid." It means that the payment was approved by the court, and this explanation seems to be right, as the latter part states that if there are no witnesses it is invalid, and it cannot mean that no witnesses at all, as this would be self-evident. Hence it must be explained that when it was not approved by the court, it is considered as if there were no witnesses. In addition to the text mentioned above, we learn: "If there were no witnesses, but it was in the hands of the depository, or it was placed below the signatures, it is valid: and the reasons are that a depository was trusted by the creditor; and below the signatures, because if it would not be paid, he would not permit them to spoil the note."

CHAPTER II.

LAWS RELATING TO FOUND ARTICLES, WHICH MAY OR MAY NOT BE KEPT WITHOUT PROCLAMATION, AND HOW FOUND ARTICLES SHALL BE CARED FOR, ETC.

MISHNA I.: There are found articles which belong to the finder without any proclamation; namely, scattered fruits or scattered money in a public thoroughfare, small sheaves, strings of pressed figs, bread of a baker (as all bread of the baker is alike; home bread, however, differs, and is recognizable), strings of fish, pieces of meat, and shorn wool from the country where it was shorn, cleansed flax, and stripes of scarlet wool—all these belong to the finder (when it was found in such a place where people pass). So is the decree of R. Meir. R. Jehudah, however, maintains: If there is a change in the found article, which usually ought not to be, as, *e.g.*, he found a fragment of a clay vessel in pressed figs, or he found a coin in a loaf of bread, he must proclaim. R. Simeon b. Elazar says: All stew vessels which are for sale he need not proclaim.

GEMARA: How much of the scattered fruit belongs to him without proclaiming? Said R. Itzhak: "If in a distance of four ells there were scattered fruits the measure of kab." Let us see in what condition did he find it. If it was placed in such a way as dropped unintentionally, why only a kab? Even if there are more, it should be his; and if it was placed in such a manner that it can be supposed they were placed intentionally, even less he should proclaim. Said R. Uqba bar Hama: "It treats of a place where the grain is gathered from the barns, and if he found the size of one kab scattered within four ells, which it is too much trouble to gather, the owner of it usually would not take such trouble and renounce his ownership, but if it were scattered within a shorter distance, he may think, 'I will take the trouble to pick it up afterwards,' and he does not renounce his ownership." It was taught: "The renouncing of hope in regaining a lost article, which it is not yet certain is lost (*i.e.*, the article was found before the loss was known to the owner, but usually, becoming aware of its loss, he will not try

to regain it). According to Abayi such must not be taken in consideration, and Rabha, however, maintains it may." They, however, do not differ when the article has a mark that in such a case it must be supposed that when he will become aware of it, he will not renounce his hope to regain it because of the mark; and even if thereafter it was heard that he had renounced his hope, still the finder has not acquired title, because at the time he found it, it cannot be considered that the hope should be renounced when the owner becomes aware of its loss, because there is a mark, and he will certainly think, "I will try to search for it by identifying the mark." The same also do not differ when the article was found at the seashore or near a waterfall, that it belongs to him, even if it has a mark, because the law allows it, as will be explained further on; the point of their difference, however, is in case the article has no mark. Abayi is of the opinion that the finder cannot acquire title to it, because the owner is not yet aware of his loss. Rabha, however, maintains that he does, because it is certain when the owner becomes aware of it that he will renounce his hope. Come and hear. Our Mishna states: "Scattered fruit, it is his." Although he did not know whose it was? Said R. Uqba b. Hama: "The Mishna means a case in the season of gathering the grain from the threshing floor, which is considered an intentional loss." Come and hear. Scattered money belongs to him, and certainly the loser of it was not aware when he lost it (as if he were, he certainly would pick it up), and nevertheless it belongs to the finder. This can be explained as R. Itzhak said elsewhere: "Usually a man inspects his purse frequently (and the loss of his money was already known to him when the finder picked it up)." Come and hear the other part of the Mishna: "*Pressed figs and bread of a baker, it is his.*" Why, the owner was not aware of it? It also can be said because such are of great value he must have been aware of the loss. [The same was objected to, based on further expression of our Mishna, "Stripes of scarlet wool," and the answer was the same as above.] Come and hear (another objection). "*χασσια* which were found in a public thoroughfare, although they were near the field where they grew, and also a fig tree the branches of which were bent toward the street, and one found figs beneath, the people are allowed to eat these, and it is not considered robbery; they are free from tithe." Now the Boraitha would not contradict Abayi, as the cassia are of great value, and it is known where the fruit of the

fig tree would drop; but the latter part of the same Boraitha states that if it were an olive tree or carob, it is prohibited. Would not this be a contradiction of Rabha's statement? Said R. Abbahu: "It is different with an olive tree, as the color of the olives is the same as that of the tree, and they can be recognized wherever they are found* (and therefore the owner of them does not renounce his ownership, thinking that any one will recognize that they are his). If so, why should it be the same with the fig tree mentioned above? Said R. Papa: When figs drop, they become soiled (therefore their owner does not care for them any more). Come and hear. A thief or a robber who took an article from one and gave it to another, or an article falls into the Jordan and is washed up at another place, and some one picked it up, the latter is entitled to it. Now this would be correct concerning a robber or the Jordan, where the owner sees his article lost, and renounces his hope of regaining it; but with the case of a thief, has then the owner seen him, that he should renounce his hope? R. Papa interprets the Boraitha, saying that it treats of an armed robber; but is it not the same as a robber, which case has already been mentioned? It treats of two kinds of robbers. Come and hear: "If the river has flooded one's beams, wood, or stones, and carried them away to another field, the latter may use them, because their owner has lost his hope." We see that the reason is because it was certain that the one had renounced his hope already, but when uncertain it is not to be used (and this would contradict Rabha). The case was that the owners could have saved the articles; if so, how is the latter part of the same to be understood? If the owner came to get them, he is obliged to return them. Now, why going to get them? If he could save them he should be obliged to return, even if he had not come to get them, etc. The case was that he could save them with great trouble. If he came to get them, we see that he had not renounced his hope; and if not, it is to be supposed that hope is renounced. Come and hear (another objection). How can a case be where one shall separate heave-offering without the knowledge of its owner, and nevertheless the heave-offering

* The text here is complicated, and some of the commentators try to correct it; nevertheless, Rashi's opinion and Tosphat's opinion concerning it differ; the commentators after them, such as Lurie and Meier of Lublin, and also Edlias (Marsha), discuss it also. We, however, have translated as best we could, so as to make it understood.

shall be valid? Thus, if one goes to the field of his neighbor and gathers grain, and has separated the heave-offering without knowledge of the owner, if robbery can be suspected, the heave-offering is not valid; and if not, it is; and how does he know that there is no robbery? When the owner appears while his neighbor is on his field engaged in the above-stated work, and said to him, You should separate for the priest from the better ones; then, if better ones are found, the heave-offering is valid, but if not it is invalid (because the remark of the owner was but ironical, as there *were* no better ones). If, however, the owner had added to the heave-offering, it is valid, although better ones were not to be found. We see, then, if there were better ones the heave offering is valid, though the separator did not know of it while doing so (let it be the same with regard to renouncing hope, that even when it comes afterwards, the finder shall acquire title even before the renouncing was known?). Rabha explained this in order that the Boraitha shall agree with Abayi's theory: "The owner, with his remark, appoints his neighbor to be his messenger." (Said the Gemara:) It seems that Rabha's explanation is correct, for if he would not become his messenger, how can his act be of any value? Is it not written [Numb. xviii. 28]: "Thus shall ye also offer," etc., and from the word "also," which is superfluous, it is declared that it includes a messenger, and it is also declared there that as the word "ye" means "it shall be done intentionally," so also if this is done by the messenger the intention is necessary? (hence we see that only a messenger has the right to separate heave-offering), and the above Boraitha must therefore be explained that he appointed him as a messenger, saying, "Go and separate"; but he did not determine of which grain he should separate. And usually the owners separate from the middle one; the messenger, however, does so from the better one; now when the owner comes and says, "Why did you not separate from the better one?" if there is to be found still better than he had separated, his act is valid; but if not, the saying of the owner must be considered ironical, and the messenger's act is of no avail.

Amaimar, Mar Zutra, and R. Ashi happened to be in the garden of Mari bar Issak, and the gardener placed before them dates and pomegranates. Amaimar and R. Ashi partook. Mar Zutra, however, did not; meanwhile the host came and said to his gardener: "Why did you not serve the rabbis with the best

ones?" Said both Amaimar and R. Ashi to Mar Zutra: "Why does the master not partake of it now? Have we not learned if better ones are to be found the heave-offering is valid?" And he answered: "So said Rabha, that this expression is to be cited in case of heave-offerings only, because it is a meritorious act, and it may be assumed that the owner made his remark with good intentions; but here, it can be said that he said so to the gardener only not to be ashamed (to be considered niggardly)." Come and hear. R. Johanan said in the name of R. Ishmael b. Jehouzadok: "Whence do we know that a lost article, which was flooded, is allowed to be used by one? Because it is written [Deut. xxii. 3]: 'In like manner shalt thou do with his ass, and in like manner shalt thou do with his raiment, and in like manner shalt thou do with every lost thing of thy brother's which may have been lost by him, and which thou hast found.' From which it is deduced that when it is lost to him, but not to others; exclude, then, the flooded article, which is lost to him and also for every one; and as in the case of flooding the article is allowed for use, no matter whether it had a mark or not, the same is the case with an article which is not allowed for use, when it is not certain that the owner of it has renounced his hope. No matter whether the article has a mark or not, it is prohibited, even in case where the hope would be renounced by the owner immediately after he became aware of his loss." Hence Rabha's statement is objected to, and the Halakha prevails according to Abayi, as this is one of the six things. (See Baba Kama, p. 163.)* Said R. Achi' the son of Rabha to R. Ashi: "Now as it is decided that Rabha's statement is objected to, how then do we eat dates which the wind blows away to the highway?" And he answered: "Because there are insects which consume them; the owners of the dates therefore renounce their hope of such." The former questioned again: "In case the trees belong to orphans, who are disqualified to renounce their hope, let therefore all fallen dates not be used." And he rejoined: "Must we then consider that the whole valley belongs to orphans?" The former said again: "But if it be known that such is the case, how is the law?" And he rejoined: "Then it is prohibited."

"*Small sheaves*," etc. If the mark on the article in ques-

* In Tract Sanhedrin the six cases will be named.

tion was of such a nature that it could be effaced by stepping on it, Rabba said: "That such a mark is not to be considered." Rabha, however, said: "It is." An objection was raised from our Mishna. Small sheaves in public thoroughfare may be used without proclamation, but if they were found on private ground he may take it provided he proclaims. Now how was the case?

If it treats of such that have not a mark, what shall he proclaim? We must, therefore, assume that although they have a mark they are his if found in public thoroughfares, because the mark is usually effaced by stepping upon it; hence it is an objection to Rabha. He may say that the Mishna treats of such that have not a mark, and your question, What shall he proclaim if on private ground? is to be answered that he shall proclaim the place where it was found, as it was taught that both sages mentioned above differ concerning the place. Rabha maintains that it is a mark, and Rabba says it is not.*

Said R. Zbid in the name of Rabha: "The rule concerning a lost article is this, as soon as the owner exclaims, 'Woe, the damage I have had!' he does not care to search for it any more (it is considered renouncing of hope, etc.)." The same said again, in the name of the same authority: "The Halakha prevails that sheaves on public ground belong to the finder in all cases; however, in private thoroughfares, if it was found in such a manner indicating that it was dropped, it can be used, and if indicating that it was placed so intentionally, he may take it providing he proclaims; and in both cases it is only when it has no distinguishing mark; but if there were, no matter in which place, and how they were placed, he must proclaim."

"*Strings of fish*," etc. Why? Let the knot be the required mark? It means, *i.e.*, that it was found in the way as fishermen usually tie it; but let the number be the required mark. Such a number is used by all fishermen.

R. Shesheth was questioned whether a number is considered a distinguishing mark or not, and he answered: "We have learned this in the following: 'If one found silver or copper vessels, a cassiteron of tin, or any other metal vessel, the finder need not return it, unless the owner of it identify it by a mark

* In the text here similar questions are continued from the Mishna and Boraitas concerning marks and articles which are destroyed by stepping upon them, and also about places, whether it should be considered a mark for proclamation or not. Objections and answers are made to the opinions of the above sages in the same manner as above, which is already translated, and therefore we have omitted them.

or the exact weight of it.' Now, as the weight is a mark, the same is the case with the size and number."

"*And pieces of meat*," etc. Why let the weight be a mark? when the weight was as customary with all butchers. But let the kind of the piece be a mark, *e.g.*, leg or shoulder, etc. Have we not learned in the following Boraitha: If one found pieces of fish or a bitten fish, he must proclaim; barrels of wine, oil, grain, dry figs, and olives are his? It treats of a case when there was a distinguishing mark in cutting it, as Rabba bar R. Huna used to cut it in the form of a triangle. It is so also to be inferred from the statement "a bitten fish" (and this is certainly a distinguishing mark, so also pieces of fish mean which were cut differently). The master says barrels of wine, etc.; but have we not learned in a Mishna further on: Pitchers of wine or oil he must proclaim? Said R. Zeira in the name of Rabb: "The Mishna treats of a case when the pitchers were sealed and marked. If it is so, then the Boraitha treats of a case when they were found open: must it not be considered an intentional loss (*i.e.*, when open it would be spoiled by reptiles, vermin, etc.)?"

Said R. Houshea: "It treats of a case when it was covered with a cork, and not smeared with clay."* Abayi, however, said: "It may treat also of sealed ones, and nevertheless it does not contradict the Mishna, as the Mishna speaks of a case when the market for wine was not yet opened, and the barrel found was of one who had sealed it with a mark which could be recognized. The Boraitha, however, speaks of a case after the market was opened, and usually the marks on the barrels were all alike, and could not be distinguished from each other, as it happened with Jacob bar Abba, who found a barrel of wine after the market was open, and he questioned Abayi and was told that he may keep it for himself."

R. Bibi questioned R. Na'hman: "Is the place (where it was found) considered a mark or not?" And he answered: "This we have learned in the above Boraitha: 'If one found barrels of wine, etc., they are his'; now if the place would be considered a mark, then why should he not proclaim the *place*?" R. Zbid, however, said: "This is no support, as it may treat

* Rashi explains it thus: In their time the barrels were of clay, and also the cork, and they usually put glue around the cork to save the smell. In the month of Shebat or Nissan, when usually the wine merchants would sell to the store-keepers several barrels at once, they would open each of them, to taste, and to again cover it.

of a case that when he found it on a dock where many barrels were placed."

R. Mari said: "The reason why the sages decided that the place is not to be considered as a mark, was because it can be said to him who claims that the article was lost by him in this place, that there were men passing the same, and another one may have lost it there."

It happened that one found unripe dates* near the wine-press room, and questioned Rabh, and was told that he may keep it for himself; the man, however, hesitating, and Rabh said to him: "You may give a part of it to my son, Hyah." Shall we assume that Rabh holds that a place is not to be considered as a mark?

Said R. Abba: "Rabh's reason was, it was seen on this article that the owner had renounced his hope in it, as it was already mouldy."

"*R. Simeon b. Elazar said,*" etc. What does he mean by the expression *new vessels*? Said R. Jehudah in the name of Samuel: "By the word new he means that the eye was not acquainted with it." How was the case if the vessels had a mark? What is it if the eye *was* not yet acquainted with them, and if there was no mark? What use is it that the eye should be acquainted with them? It can be used to return it to a young scholar who claims that he recognized them by seeing. If the eye was acquainted with them, we do so; if not, we do not. As R. Jehudah said in the name of Samuel in the following three things. The rabbis hesitate to tell the truth when being questioned in a tractate (*e.g.*, if some one asked, can you repeat the tractate so and so by heart, they answer no, although it is not true, out of modesty), and in conversation between him and his wife, and also about the hospitality of a private one, they usually answer in the negative, although it is not so (because people should not abuse his liberality and bring the man to poverty). And when it was questioned to what purpose did Samuel declare the above, Mar Zutra answered: "It was said with regard to returning a lost thing to one of the rabbis, if he recognized it with his eye, if we know that only in the

* The text reads *Kufra*, and Rashi explains it to mean pitch. We, however, cannot agree with such an explanation, as the place where it was found, and also that Rabh told him to give a part of it to his son, could not be with such an article. We find the same word *Kufra* in *Baba Kama*, p. 140, which is translated as we have it here.

above three things he hesitates to tell the truth, but in all other things he speaks the truth, then the article in question is to be returned to him, but not otherwise."

It happened that a silver goblet was stolen from Mar Zutra the pious, when he was in a *hospes*; in the mean time he saw a young man who dried his hands, after washing, with the garment of another, and he thought, this man does not care for his neighbor's money, and he accused him until he confessed that he stole the goblet. We have learned in a Boraitha: R. Simeon b. Elazar admits that new vessels, in case the eye was familiar with them, that he must proclaim them; however, the following new vessels which were not familiar to the eye he need not: namely, strings of needles, spinning instruments, and strings of hooks, but only when he found single strings; if, however, he found a pair of each, he must proclaim. The same R. Simeon used to say: "If one saved something from a lion, a bear, a tiger, or a bardalas, or from the sea, or if he found it on a dock or in one of the great markets, and in any place where it is crowded, he may keep it for himself, as the owner of it has surely renounced hope.* It happened that one found four zuz tied up in a rag, and was dropped in the river Biron, and he came before R. Jehudah and was told to proclaim. Why so; is it not equal to the depth of a sea, as stated above? With the river Biron is different, because it was frequently cleaned, and there were stones and fences for fishing, the loser may not renounce his hope in regaining it; furthermore that the majority of the fishers and the cleaners of that river were Israelites, and the loser may think that in case an Israelite finds it he may return it.

R. Jehudah was walking behind Mar Samuel in the market, where wheat prepared for fermenting was sold, and R. Jehudah questioned him: How would be the case if some one should find a purse here? And he answered: It would belong to the finder. But how if an Israelite would come and give the mark of it? (the former questioned again). And Mar Samuel answered, then he would be obliged to return. The former rejoined: Are not the two decisions contradictory? And he answered: I mean not according to the exact law, but by moderating the

* In the text the discoursing continues on what places must be considered always crowded, and what not; if the synagogues and houses of learning are among them, and what kind of people, Israelites or heathen, all of which is of no importance, and therefore we have omitted it.

same, as it happened to my father, who found certain asses in a desert and returned them to the owner after an elapse of twelve months; though he was not obliged to do so in accordance with the strict law, he nevertheless did so by moderating the same. Rabha happened to walk behind R. Na'hman in the market of tanners, according to others in the market where the rabbis used to assemble, and he questioned him: How if one would find here a purse? And he answered: It would belong to him. And how if an Israelite would claim that it is his by giving a mark? And he answered it counts for nothing; but if he claims with a certainty that it is surely his, Rabha said again. And the latter rejoined, it would be equal to him who cries for his collapsed house or for his sunken ship (as the ownership of it is lost with the losing).

There was a vulture which captured meat in the market, and put it between the trees of Bar Marian, and when Bar Marian came to question Abayi, he was told to keep it for himself. Although the majority of the inhabitants were Israelites, hence infer from this that the Halakha prevails in accordance with R. Simeon b. Elazar of our Mishna, even in case the majority are Israelites? With the vulture it is different, as it may be just as the depth of the sea. But did not Rabh declare that meat which was hidden from the eye must not be eaten for fear it is not legally slaughtered? It may be said that Bar Marian saw the vulture taking it from a place where legal meat was sold. R. Hanina found a slaughtered goat on the way from Tiberias to Ziporus, and he was allowed to use it. Said R. Ami: It was allowed as a found article in a crowded place, in accordance with R. Simeon b. Elazar; and also as a legal slaughter in accordance with R. Hananiah b. R. Jose the Galilean of the following Boraitha: If one has lost his goats or hens, and thereafter he found them slaughtered, R. Jehudah prohibited their use, and R. Hananiah b. R. Jose the Galilean allowed it. Said Rabbi: It seems that the opinion of R. Jehudah is correct when he found it in rubbish, and the opinion of R. Hananiah is correct when he found it in a house. Infer from all this that if one finds an article in a crowded place it is his, even when the majority of the inhabitants are Israelites. Said Rabha: Such meat may be used even when the majority of the inhabitants are heathen, but the majority of the butchers are Israelites. R. Ami found slaughtered pigeons on the way from Tiberias to Ziporus, and he questioned R. Assi, according to others R.

Johanan, and according to still others he questioned the college, and was told to keep it for himself. R. Itzhak of Naph'ha found a ball of cord, of which nets were made, and he came before R. Johanan or in the college, and was told to keep it for himself.

MISHNA II.: The following articles he must proclaim: When he found a vessel containing fruit or an empty one, money in a purse or an empty one, heaps of fruit or heaps of money, or even three coins which were one upon another, sheaves in private ground and bread made in a household, and shorn wool which looks as if it was already in the hand of a master, pitchers of wine or oil, all these he must proclaim.

GEMARA: The Mishna treats of a case when the fruit was found *in* the vessel, and the money *in* the purse; but how is it if the vessel was empty and fruit was scattered near by, or the purse was empty and the money was near it? It would be his without any proclamation, and the rabbis taught the same plainly in a Boraitha, with the addition that if a part of it was in the vessel or in the purse, and another part on the ground near by, he must proclaim. Does this not contradict the following: If one has found an article which has no mark, near an article which has a mark, he must proclaim; and if the owner comes declaring the mark, and takes the article, he is also entitled to the other one which was without a mark (hence the vessel and the fruit in question should be proclaimed)? Said R. Zbid: This presents no difficulty. The Boraitha which states it is his treats of, *e.g.*, an empty vat and near it flax (it is not to be supposed that the flax fell out of the vat, as some would remain there, and the same is the case with an empty purse and money near it), and the Boraitha which states it should be proclaimed treats of an empty basket, and fruit which is supposed to have fallen out of the basket. R. Papa, however, maintains that both Boraithas may treat of a basket and fruit, but one speaks of a case where some was left in the basket, and the other one treats when it was entirely empty; and if you wish, it may be said that both treat of a case when nothing was left, but in one case the face of the vessel was turned toward the fruit, and in the other case the vessel was with a rim (so if the fruit which was found near it would fall from the vessel, some of it would remain there because of the rim).

"*Heaps of fruit*," etc. Infer from this that the number is a mark? Perhaps the plurality stated in the Mishna is not

correct, as it ought to be singular. If so, infer from it that "place" is a mark? Perhaps the plurality *is* correct.*

"*Three coins one upon the other,*" etc. Said R. Itzhak of Magdahl:† Only when they were like a steeple. The same we have learned in the following Boraitha: If one found scattered coins, they are his; if, however, they were lying in a steeple-like manner, he must proclaim. And what is to be understood as steeple-like manner? Where three coins were lying one upon another.

Does not the Boraitha contradict itself? It begins "scattered money," of which it is to be inferred that if it was not entirely scattered, but in the condition where a part overlapped another, and the other part was on the ground, it must be proclaimed; and immediately after it states that it was in a steeple-like manner, etc., of which it is to be inferred that if they were not so but overlapped, it is his? The Tana is of the opinion that if they were not placed in a steeple-like manner it is considered scattered.

Said R. Hanina: "The case in question speaks of coins of three different rulers; but if they were of the very same ruler, they are his." How is this to be understood? If they were placed in a steeple-like manner, he must certainly proclaim, no matter of what ruler they are; and if scattered, even if they are from three rulers; what is it? Therefore if the statement was made by R. Hanina, it is as follows: The case is only when the three coins were placed as if they were of three rulers: viz., the larger one at the bottom, the middle one, which was a little smaller, upon it, and the third, a still smaller one, on the top, which indicates that some one placed it so intentionally; but if the coins were of one ruler and of one kind, that all were alike, even if they were one upon the other, it is his, as it may happen that they were lost by the owner in such a manner. R. Johanan, however, is of the opinion that even if they were from one ruler he must proclaim.

* Such a discussion or question and answer occurs very seldom, if this be not the only one, in the whole Talmud, and it shows that the sages of the Gemara were doubtful whether the Mishna was transmitted to them correctly; in other words, they did not know exactly whether the paragraph submitted to them was a correct translation from the original. Mark this.

† The literal translation of the word "Magdahl" is steeple, or turret; and Itzhak of Magdahl means the Itzhak who delivered the Halakha of Magdahl. See Hacha'h-lutz by Schur, in the chapter where he discusses about the names of the Tanaim and Amouraim, who were named according to the Halakha they taught.

What shall he proclaim? If the number, why then three; even two should be the same. Said Rabbina: He proclaims the kind of coin. R. Ashi questioned: If they were placed like the stones of *Markullus* (an idol of ancient times which was worshipped by putting stones one upon the other), what is the law? Come and hear. There is a Boraitha: Scattered money, it is his; however, like the stones of Kullis, he must proclaim. And how were the above stones placed? Two on either side and one on top of both. The rabbis taught: If one finds a sala in the market, and his neighbor claims it is his, giving a mark that it is new, it is a coin of Nero or of another ruler, he says nothing; and even if he says my name is written upon it, it counts for nothing, because on a coin no mark is to be considered, as he may nevertheless have given it away to some one and it was lost by the latter.

MISHNA III.: If one found under a wooden wall, or a brick one, pigeons tied one to the other, or if they were placed on a thoroughfare of a private field, he must not touch them. The same is the case with a covered vessel found in rubbish; if, however, it was uncovered, he may take it and proclaim.

GEMARA: Why shall it not be touched? Because it may be that some one has hid it, but it has no mark on it (so if it would be taken away he could not regain it), therefore it must be left until the owner will come and take it. But why should not the tying be a distinguishing mark? Said R. Abba b. Zabda in the name of Rabh: It means that they were tied, as usually, at the wings, but let then the place be a mark. Said R. Uqba bar Hama: When they were jumping; if jumping, then it may be that they were coming from some other place, and should be allowed. Yea, it may be so, and it may be also that one hid them purposely, and in such a doubtful case R. Abba b. Zabda declared, in the name of Rabh, that it should not be taken from the very first; but if one nevertheless took it, he is not to be compelled to return it.

"*If he found a covered vessel,*" etc. This contradicts the following: If he found a vessel hidden in rubbish, he may take it and proclaim, because usually the rubbish will be removed and some one else may take possession of the vessel (hence you see that he may take it, and our Mishna states it shall not be touched?). Said R. Zbid: This presents no difficulty. The Mishna treats of Kuva and Goblets, and the Boraitha treats of small knives and double-pronged zincked forks which were mixed

unintentionally with the rubbish. R. Papa, however, says: In both, goblets were meant, but the Mishna treats of rubbish which is not to be removed, and the Boraitha of that which is to be; but if it is to be removed, the article which is there was certainly put there intentionally (it means that the owner does not intend to make use of it any more), therefore we must say that the rubbish in question was of a kind which is not to be removed, but afterwards it was decided that it should be. According to R. Papa's theory it is correct what the Boraitha adds, "as usually rubbish will be removed," but according to R. Zbid's theory, how is this additional expression to be understood? Read "as usually small vessels are thrown away with rubbish."

MISHNA IV: If one found anything in a heap of rubbish or in an old brick wall, it is his; if, however, in a new wall, in the outer part, it is his; if in the inner part, it belongs to the owner. If, however, the house was rented, if even he found it in the *house* it is his.

GEMARA: It was learned that the reason was that the finder may say, that this article was hidden by the Amorites. But only the Amorites hide things, and the Israelites not? It means when the vessel seemed to be antique.

"*If it was a new one,*" etc. Said R. Ashi: If the article was a knife, and the handle was from the outside, it is supposed it was placed there by some stranger; and if it was from the inside, it is to be supposed that it was put there by the owner of the house. The same is the case with a purse: it must be investigated whether the opening of the purse is outside or inside. If so, why does our Mishna state, "if from the outside it is his," without any distinction whether the handle or the opening of the purse was placed outside or inside? Our Mishna treats of round or roundish articles, which on all sides are alike. There is a Boraitha in addition to it, that if the articles were found on both sides, they are to be divided between the finder and the owner.

"*If it was rented,*" etc. Why so? Let us see who was the last tenant. Said Resh Lakish in the name of Bar Kapara: It speaks of a case when it was rented to three men. Infer from this that the Halakha prevails in accordance with R. Simeon b. R. Elazar stated above, page 51. Therefore, said R. Menashia bar Jacob, it speaks when it was an inn with three heathen. R. Na'hman in the name of Rabba b. Abuhu, how-

ever, said: "There is no difference who the guests were, even Israelites, if one of them lost something, he may say, 'There were no others, but my two neighbors. If they found it they would return it to me, as I had mentioned several times to them that such a thing was lost by me; and when they did not return it, it indicates that they would steal it, and there is no use arguing with them.'" (Consequently he renounced his hope of regaining it.) And R. Na'hman said, in accordance with his theory elsewhere, as follows: "If one has seen that a sala was dropped by one of two who were standing there (but he does not know to which of the two it must be returned). Why so? Because only two of them occupied the place, and the loser will think, 'As there was no other besides my neighbor, I will tell him, Only you could have found it, and you must return.' But if there were two others besides him, the finder of the sala may keep it for himself, as the loser would think, 'My sala is lost at any rate. If I claim it of one of my neighbors he would deny, and so, too, would say the other one' (consequently the hope of regaining is renounced)." Said Rabha: "If there were three, he must not return it only in case the coin has not the value of one *perutha*; but if it has the value of two *peruthas*, he must return. Why so? Perhaps they are partners, and one of them relinquishes his share to the other without renouncing any hope." The same said again: "If one has seen a sala dropped, and he took it before the owner renounced his hope, with the intention to rob it, he transgresses the three following commandments: [Lev. xix. 13] 'Nor rob him,' [Deut. xxii. 1] 'Thou shalt surely bring them back again,' etc., and [ibid., ibid. 3] 'Thou art not at liberty to withdraw thyself'; and even if reconsidering, he returned it, it is considered a gift; the transgression, however, remains. If, however, he took it with the intention of returning it, and after the owner renounced his hope he reconsidered to rob it, he transgresses the second commandment mentioned above. But if he was waiting until the owner renounced his hope, and then took it, he transgresses only the commandment of the last verse stated above." He said again: "If one has seen money dropped in sand, and afterwards found and took it, he is not obliged to return it, although the loser sifted the sand; for it may be supposed that the purpose of sifting the sand was because he thought, as it happened to me it also may happen to some one else, and perhaps I might find, if not mine, something of another loser."

MISHNA V.: If one found something in a store, it is his; if, however, between the counter and the storekeeper, it belongs to the latter; if before a money changer, it is his; if, however, between the chair where he usually sits and the table, it belongs to the money changer; if one has bought fruit or one sent him such, and he found money in it, it is his; if, however, he found it tied in a package he may take it, but proclaim.

GEMARA: Said R. Elazar: "Not only on the ground before the money changer, but even if he found it on the table, it is his." Whence did the same get such a law? Said Rabha: "From the expression of the Mishna, 'between the chair and the table,' etc.; let it state even on the table, or if he finds *in* the table, as it states in the first part. If he found in the store? Infer from this that even the money was on the table (and the money changer being absent), it is his (as it may be supposed some one else forgot it, as the money changer is usually very careful)."

"*If one has bought fruit,*" etc. Said Resh Lakish in the name of R. Janai: "It treats of a case where he bought of a merchant, but if of a private person, he must return; and so also taught a scholar in the presence of R. Na'hman. Said the latter to him: Did, then, the private person thresh it himself (though the expression in the Mishna is *fruit* it means also *grain*)? and the former answered, Then ignore the Boraitha. Rejoined R. Na'hman: It is not necessary to ignore it, as it could be explained that the case was where the owner threshed it by means of his male or female heathen slave (and if even they lost the money in question, it belongs nevertheless to the owner)."

MISHNA VI.: A garment is also included (in the verses concerning lost articles). Why, then, is it mentioned separately? To teach that all other articles should be equal to it; as a garment usually has marks and claimants, so also any article which has marks and claimants, he must proclaim.

GEMARA: In what verse is it included? Said Rabha: "In [Deut. xxii. 3] 'With *every* lost thing.'" He said again: "To what purpose does the Scripture mention ox, ass, sheep, and a garment separately? (Is it not included in the cited verse above?) They are all needed, for if the Scripture would mention the garment only, one might say that it must be returned when witnesses testify that it belongs to the claimant, or when the claimant gives the mark which is on the material of it; but

if, *e.g.*, an ass, and witnesses or marks can be given of the saddle only, the ass is not to be returned; therefore ass is mentioned; and ox was also necessary to signify that a mark indicating that its tail was cut was sufficient, and the same is with sheep, that the mark, the wool shorn, suffices. But would it not be sufficient if the ox only, without the sheep, were mentioned, as it would be self-evident that the wool of sheep which was shorn is a sufficient sign for returning, as the same is the case with an ox with its tail cut? The answer to this (see Baba Kama, p. 127, the quotation *if an ox fall in* at the end).

The rabbis taught: It is written [*ibid.*, *ibid.*], "Which may be lost to him," means to exclude a loss which has not the value of a *perutha*. R. Jehudah, however, says: "The words further on, 'which thou hast found,' signify this."

The schoolmen propounded a question: The returning, according to marks given, is biblically or rabbinically. What is the difference? Regarding the returning of a written divorce, by proclaiming the marks on it, if it is biblically, it must certainly be returned; if, however, rabbinically, it may be said that the sages made their enactment concerning money matters, but not concerning a biblical prohibition (for if an error would occur in such a case, a married woman would be allowed to marry again). Shall we assume that the Tanaim of the following Boraitha differ in that case; namely, testimony of witnesses must not be accepted on suppositions (*e.g.*, if witnesses came to testify that they suppose, by seeing the body of so and so, that he was killed, unless they testify that they had seen his face and his nose attached). Elazar b. Mahbai, however, said: "It may." Should we not assume that the point of their difference is that the first Tana holds that signs are rabbinical, and Elazar holds that they are biblical? Said Rabha: "All agree that signs are biblical, and the point in which they differ is, one holds that the suppositions of such a case by his comrade may be relied upon, and one holds it may not (because an error may occur also in a case of a comrade)." He said again: "The fact that we return lost articles according to signs given, proves that it is biblically; for if not, how could the sages make such an enactment in a case of doubtful money? Should we assume that the finder is pleased to return the article according to signs, only because if it should happen that he himself lost an article, the same would be done to him?" Said R. Saphra to him: "What do we care for the pleasure of the finder, when the loser

is not pleased (*e.g.*, the man who claims and gives signs, and yet it is not the real ones)? Is it, then, usual that one should desire to do good to himself *in futuro* (which it is doubtful if it will happen) with money which does not belong to him?" Therefore said Rabha:* "All the losers would be pleased by giving signs that the articles should be returned to them, as they know that witnesses are not always to be found; and, on the other hand, the signs on the articles are not known to every one who would like to claim them, and only the loser, who knows the exact mark, will proclaim them and come in possession thereof" (and therefore it is possible that such an enactment was made by the sages, and it is not biblically). Finally said Rabha: "That the marks in question are biblically is to be deduced from the following verse [Deut. xxii. 2]: 'And it shall remain with thee until thy brother inquire after it.' Could, then, one bear in mind that it should be returned before it is inquired about? We must, therefore, say that the inquirer must be examined whether he is not a swindler, and by what means he can be identified if not by the exact marks; hence infer from this that they are biblically." He says again: "If it is your decision that the marks in question are biblically." "[If it is your decision." Did not Rabha just deduce it from a verse? Yea, but still one can say that the examination mentioned above should be by means of witnesses.] If there were two persons who gave the very same marks, it must be reserved (until proper evidence is brought); if there were marks and witnesses contradicting each other, the witnesses have the preference. If there were marks and marks from two parties, and there was a third one who brought one witness, the third one must not be taken in consideration, and the article must be kept in reserve. If there were witnesses testifying that the ownership of the article by this man was when it was woven, and other witnesses the ownership of another man when it was lost, the latter has the preference, as it may be that the first one sold it and it was lost by the buyer. If one party testifies to the length, and another

* In the text it is not mentioned that Rabha is the author of this phrase, but it is the continuation of R. Saphra. Rashi, however, has corrected Rabha, for a reason which is not known to us; we see, however, some more corrections of Rashi, in this so complicated a discussion; and notwithstanding this, it is very difficult to find out the real meaning of it. We have tried to make it in some way understood to the reader; still we are not sure whether it is correct, and would be very glad if some one should translate it in a better way; to omit this all, would be against our method.

party to the width, the length has preference, as the width can be assumed by seeing the article when it was used. If one testifies to the length and the width, and another one testifies to the square, the former has the preference; the square and the weight, the latter has the preference. If the husband claims that the written divorce was dropped by him before it was delivered to his wife, and proclaims certain marks, and she claims it was dropped by her after she received it (consequently she is single and can marry), she has the preference (because if she had not received it, how could she know the marks?). However, the marks must be not in length and width, as she could see it before it was given to her, but a mark such as a hole in such and such letter of it. If the marks were the very same given by him and her concerning the length of the thread upon which the divorce was put, she has the preference. If both claim that it was in the *χαψα* (a kind of small case), he has the preference, because it is well known to her that the entire contents of it he has placed there.

MISHNA VII.: Until what time is he obliged to proclaim? Until his neighbors are aware of it; so is the decree of R. Meier. R. Jehudah, however, says: "All the three festivals (Passover, Pentecost, and Tabernacles), and after the latest festival seven days, that the loser should be able to go home three days and return three days, and one day for the proclaiming of his loss.

GEMARA: A Boraitha in addition to the Mishna, which states "the neighbors of the lost article." How is it to be understood? Does it mean that the neighbors knew who lost the article? Let them go and return. Therefore it must be said that it means the neighbors of the place where the lost thing was found.

"R. Jehudah said," etc. There is a contradiction in the following: On the third of Mar Cheshvan they pray for rain. R. Gamaliel said: "On the seventh of it, which is the fifteenth after the festival, for the purpose that the last of the inhabitants of Palestine shall have reached Euphrates."

(Hence we see that *seven* days were needed for each tour.) Said R. Joseph: "This presents no difficulty. The cited Boraitha speaks of the first temple, of which it is written [I Kings, iv.]: 'Judah and Israel were numerous as the sand which is by the sea in multitude,' then fifteen days were needed; in the second temple, however, of which it is written [Ezra, ii. 64]: 'The whole congregation together was forty and two thousand

three hundred and sixty,' etc., seven days are sufficient." Said Abayi to him: "Is it not written [Nehemiah, vii. 73]: 'So the priests and the Levites,' etc., and also [Ezra, ii. 70]: 'And the singers and the gatekeepers . . . in their cities'? and as it was so, the reverse of your theory should be held. In the first temple, then the people were very numerous, and caravans were going to and fro, day and night; not so much time was necessary as in the second temple, when caravans were not so frequently travelling and not in night-time." Said Rabha: "There is no difference between the first and second temple concerning a lost thing. The rabbis did not like to cause too much trouble to any one." Said Rabbina: "Infer from this that the finder must proclaim the kind of the garment he has found, for if he has only to proclaim a lost article, one day would be added to the loser for searching for his garments, to see what was missing. Infer from this that so it is." Rabha, however, says: "Nothing is to be inferred from this. The rabbi did not like to cause too much trouble, as stated above." The rabbis taught: "The first festival, the proclaimer must say: This is the first feast for my proclamation, and on the second he must say this is the second, and on the third he need say nothing (and this will mark that it is the third time)." The rabbis taught: "Formerly each finder used to proclaim on all three festivals, etc., as stated above; however, since the destruction of the Temple [which we hope will be rebuilt soon in our days], the sages enacted that it shall be proclaimed in the synagogues and houses of learning, and since oppressors have increased, it was ordered that the finder should notify his neighbors and friend, and he is quit." What is to be understood by the expression "oppressors"? They who claim that all lost articles belong to the government.

R. Ami happened to find a purse with dinars in the presence of a Roman, and he was afraid to take it. The Roman, however, said to him, You may take it for yourself; we are not Persians, who say that a lost article belongs to the government. The rabbis taught: "A certain stone was in Jerusalem, and every one who had lost anything would go there, and the same did the finders. The one used to proclaim, and the loser would give the marks of the article lost, and if correct, he took it; and this is what we have learned in Tract Taanith concerning Chouna, who said, Go and see if the certain stone is covered by rain.

MISHNA VIII.: If one identifies the article, but not its marks, it must not be delivered to him; and if the claimant is known to be a swindler, even if he gives marks, as it is written [Deut. xxii. 2], "until thy brother inquire after it," which means until you shall investigate whether he is thy brother or a swindler.

GEMARA: It was taught: R. Jehudah said: An article, but not the kind of it, must be proclaimed, as swindle is to be feared. R. Na'hman, however, said: He proclaims also the kind of article, for if swindle is to be feared, there will be no end of the matter. An objection was raised from our Mishna, which states, "if he identifies the article without its marks," etc.; this would be correct if an article but not the kind is proclaimed. Then the Mishna comes to teach that even if he identified the article, it must nevertheless not be delivered until he gives the marks; but if, as you say, he proclaims the kind of article, is it not self-evident that without given marks it would not be returned? Said R. Saphra: "It may be said that he proclaims the kind of article, and the claimant gives marks, but not the essential marks, it is not to be returned, and the Mishna with the expression 'marks' means the essential ones."

"*And he who is known as a swindler,*" etc. The rabbis taught: Formerly, if one lost an article he would give the marks and it was delivered to him. But since swindlers have increased, it was enacted that the claimant was obliged to bring witnesses that he was not a swindler; as it happened with the father of R. Papa, who lost an ass and thereafter found it at some one's place. When the case came before Rabba bar Huna, he said to him, Bring witnesses that you are not a swindler; and he did so, and Rabba questioned them: Do you know that this man is a swindler? And he answered: Yea. Said the claimant: I am a swindler? The witnesses rejoined: We meant to say you are not, and Rabba decided that it be returned, because one would not bring witnesses who would testify against him.

MISHNA IX.: If the found article is of such a kind that it labors for its food, it shall be fed and labored with; and if of such a kind which does not labor and must be fed, it shall be sold, as it is written [ibid., ibid.]: "And then thou shalt restore it," which means, deliberate how the restoration should be made. But what shall be done with the money? According to R. Tarphon he may use it, and therefore if he loses it, he is responsible. According to R. Aqiba, however, it must not be used, and therefore if it is lost, he is not responsible.

GEMARA: (The Mishna does not state any definite time.) Is it for eternity? Said R. Na'hman in the name of Samuel: "It means until twelve months have elapsed. We have learned the same in the following Boraitha: Each article which is subject to labor for its food, as, *e.g.*, a cow or an ass, he may keep it until twelve months have elapsed, and when this time has passed it may be appraised and the value of it deposited. Calves and colts he may keep three months, geese and hens thirty days, and after this time has elapsed it should be appraised," etc. R. Na'hman bar Itzhak, however, says: "A hen (which lays eggs) should be kept twelve months (as it is equal to a cow which labors for its food), and the same is plainly stated in a Boraitha."

"And if of such a kind which does not labor," etc. The rabbis taught: "It is written: 'Thou shalt restore it to him,' which means you must see that the restoration is made; viz., if you have found several calves, colts, geese, or hens, you must not sell one of them for the purpose of feeding the remainder (for if so, it can happen that all of them should be sold for their food), but sell all at once and deposit the money."

"But what shall be done with the money," etc. We see that the sages mentioned in the Mishna differ only in case where the money was used, but if it was not, and it was lost, all agree that he is free. Shall we assume that our Mishna is an objection to R. Joseph's statement, who said (Baba Kama, p. 134): "That the bailee of a lost thing is equal to a bailee for hire"? R. Joseph may say that when the article was stolen or lost (by carelessness), all agree that he is responsible, and the point of their difference is, it was lost through an accident for which only a borrower is responsible. According to R. Tarphon, who permits the money to be used, he is considered a borrower, and is responsible; and according to R. Aqiba, who does not permit the use of it, he is not considered a borrower, and therefore not responsible for an accident. If so, to what purpose does R. Aqiba use the expression "therefore"? He did it because R. Tarphon used the same expression, and with him it was necessary, as he meant to teach thus: As the use of the money was permitted, although he did not, he is nevertheless responsible, because he is considered a borrower. But does not R. Tarphon say it was lost, which means even if not accidentally? As Rabba said elsewhere: "That where the expression 'it was stolen' occurs, it means by an armed robber; and where the

expression 'lost' occurs, it means accidentally, as, *e.g.*, the ship sunk in the sea, so also is to be explained here." Said R. Jehudah in the name of Samuel: "The Halakha prevails in accordance with R. Tarphon. Bid Ra'hba was in the possession of money belonging to orphans, and he questioned R. Joseph whether he may use it, and he answered: "So R. Jehudah declared in the name of Samuel, that the Halakha prevails in accordance with R. Tarphon." Said Abayi to him: "But was it not taught in addition: R. Helba in the name of R. Huna said that the case holds only with money obtained for a found article, he may use it for his trouble; but if the money was found, of which he had no trouble, it must not be used; and this money of the orphans which is in possession of the questioner came to him without any trouble?" R. Joseph said to the questioner: "Go, people do not allow I shall permit you."*

MISHNA X.: If one found books, then he may read them once within thirty days; if he is unable to read, then he must unroll them once in thirty days (to air them). He is, however, not allowed to study in them for the first time; and, furthermore, no other one shall assist him. If the article was a garment, it must be shaken once within thirty days, and he may spread it out for its own sake, but not for his honor. Vessels of silver and copper may be used if for the sake of the articles, but not so often that they may become worn. If, however, the utensils are of gold or of glass, they must not be touched until Elijah will come. If, however, the article found was unfit for the finder to carry, he may leave it.

GEMARA: Samuel said: "He who finds Tephilin (Phylacterien) in market, he may appraise their value and use them immediately." Rabbina objected from our Mishna: "If one found books, . . . he may unroll," etc.; hence it is *not* mentioned that he may appraise and use them. Said Abayi: "With Tephilin it is different, as they are always to be found for sale at the scribe's, as, *e.g.*, Bar Habu; written books, however, are very seldom articles which can be bought." The rabbis taught: "One who borrows the Holy Scrolls of his neighbor, must not lend them to another; he may open and

* Luria (Rashall) in his remarks says: "I have not found in any commentary an explanation why money belonging to orphans should be equal to found money, that the decision of R. Tarphon should apply also to it. It seems to me, therefore, that the case was where he found the money, and thereafter it was known to belong to orphans not yet of age, which should be returned to them."

read in them provided he does not begin to study in them for the first time, and also he must not invite another to study with him. The same is the case if one deposits Holy Scrolls at his neighbor's: the bailee must unroll them (for airing) once in twelve months, and in the meantime he may read in them; he must not, however, open them for the purpose of reading only." Symmachus, however, says: "If they were new ones, he may air them once in a month; and if old, once in twelve months." R. Elazar b. Jacob says: "It makes no difference, once in twelve is sufficient."

The master said: "He must not lend them to another." Does this law apply only to Holy Scrolls? Is it not the same with anything else? Did not Resh Lakish say (in regard to a Mishna in Tract Gittin): Here taught Rabbi that a borrower must not lend an article to another, and the same is the case with a hirer? Lest one say that usually one is pleased that a meritorious deed be done with his property, he comes to teach us that he must not do so, even with the Holy Scrolls without permission. To what purpose, then, does the master teach, He opens them, etc.? Is this not self-evident, as for this purpose they were borrowed? Because he means to tell that he must not begin his study for the first time, etc., he mentioned also the above.* But how is to understand the latter part? R. Elazar b. Jacob says: "Once in twelve." Is it not the same as the first Tana said? Read, R. Elazar b. Jacob said in both cases they must be unrolled once in thirty days.

"*To study in them,*" etc. There is a contradiction in the following: "One shall not read a paragraph and repeat it or translate it into another language; he must not open more than three folios of them, and three men must not read in one and the same volume." Is it not to be understood from this that three must not, but two may? Said Abayi: "This presents no difficulty. In one and the same paragraph even two are not allowed, but in two different paragraphs each of them may read separately."

"*If the article was a garment,*" etc. Is it, then, good for the garment to shake it frequently? Did not R. Johanan say that whoever has a specialist weaver in his house (who may weave for him new garments), may shake his garments every day; hence we see that frequent shaking spoils the garment?

* The text here discusses the bailee of Holy Scrolls and finally explains it as we have just translated; therefore the omission.

Yea. Every day it would spoil it, but once in thirty days is good for it; and if you wish, it may be said that R. Johanan treats of a woollen garment (which can be torn by shaking), and the Mishna treats of linen ones.

R. Johanan said: * "It is better to drink a goblet from the hand of a witch than to drink a goblet of lukewarm water when the goblet is of metal, and was not boiled previously, and it is ordinary water without any spices in it." He also said: "He to whom his father bequeathed too much money, and he desires to lose it, shall dress himself in Roman linen garments (which are very dear and are spoiled in a short time), and shall use glass utensils of great value, and shall hire others to do the work necessary in his vineyards while he is absent."

"*Vessels of silver and copper*," etc. The rabbis taught: "If one finds wooden vessels, he may use them in order that they may not decay. Copper ones he may use for warm liquids, but not put them on the fire, because the vessels may be worn off; silver ones he may use for cold liquids, but not for warm, for they may lose their brightness; spades or axes he may use for soft materials, but not for hard, for they may be diminished; however, golden ones or glass ones must not be touched until Elijah will come. The same law applies also to deposited articles. If so, to what purpose was it deposited? Said R. Ada b. Hama in the name of R. Shesheth: "It was deposited for saving only, as, *e.g.*, the owners had departed for the sea-countries."

"*If, however, the article found, . . . he may leave it.*" Whence do we deduce it? From that which the rabbis taught: "It is written [Deut. xxii. 1]: 'And withdraw thyself from them,' which means that there are cases in which you may withdraw, and others in which you may not. How so? If, *e.g.*, he was a priest, and the found article was on a cemetery, or he was a sage, and it is not fit for him to carry the found article, or if his labor at that time should have more value than the value of the found article, he may leave it, as in such cases the verse cited above applies." Let us see in what case the above verse is needed. If to a priest who saw a found article in a cemetery, is then a verse needed? Is it not self-evident, as there is a negative and positive commandment concerning a priest, who must not defile himself by the dead [Lev. xxi. 1],

* Because it is stated here what R. Johanan said regarding worldly affairs, it mentions here the other things he said in the same matter. (Rashi.)

and the positive commandment, "Ye shall be holy" [ibid. xix. 2], and to return a lost thing is one positive commandment only; and aside from this it must not be ignored, a bodily prohibition for money matter even if it is meritorious, and if the above-cited verse is needed, because his loss of time has more value than the lost article. This is also inferred from the saying of R. Jehudah in the name of Rabh, as follows: "It is written [Deut. xv. 4]: 'There shall be no needy man among thee,'* which signifies that yours has preference over that of another; it must therefore be said that the verse in question is needed for the case of a sage, for whom the found article is unfit for his honor." Rabba said: "If he has seen an animal, and struck it (and it ran away), he must return it." It happened that Abayi was sitting in the presence of Rabba, and goats came near him, and he took a clot of dirt and threw it at them, and they ran away. Said Rabba to him: "If they will be lost you will be responsible; go and bring them back to the owner."

The schoolmen propounded a question: If the man is so respected that in the city it is not nice for him to drive cattle, but in the field he usually does so, what is the law? If he has seen his neighbor's cattle astray in the field, must he return them to the city only, or, as the Scripture requires that they shall be returned to their proper place, and as it is not fit for him to lead them in the city, he need not do so even in the field? On the other hand, it may be said because it is fit for him to do it in the field, it is his duty to lead them to the city, and when it is already there return them to the proper place. This question remains unanswered. Rabha said: "(This is the rule.) If it would be his own article, he would trouble himself to put it in the proper place; then he must do the same with that of others. The same is the case with loading and unloading a wagon. If he is accustomed to do so for himself, he must do so for another if he is in need [Ex. xxiii. 5]."

R. Ismail b. Jose was on the road, and met a man carrying a bundle of wood, who put it down to take a rest; thereafter he asked R. Ismail to help him lift it on his shoulder, and he asked him the value of it, and the man answered a half zuz. R. Ismail then bought it for a half zuz, and renounced his ownership to it. The man, however, had acquired title to it by drawing it. Then R. Ismail bought it from him again by adding

* The Scripture reads *Bekha*, which means literally *in thyself*; hence the significance of the text. Leeser, however, translates *among*, according to the sense.

another half zuz, and renounced his ownership again. When he had seen that the man intended to draw it again to acquire title again, he said: "I have released my ownership for the whole world, but not for you." And was not R. Ismail a sage for whom it was not fit to do such a thing? He was acting to moderate the law, as R. Joseph taught: It is written [Ex. xviii. 20]: "And thou shalt make them know," etc. "To make them know" means how to make a living; "the way" means bestowing of favors; "wherein they must walk" signifies to visit the sick and bury the dead; "and the work" means the exact law; "they must do" means to moderate the law. The master says: Wherein they must walk to visit the sick. Is this not included in bestowing of favors? It was necessary to name this separately, in case when the sick one was his comrade, and the master says elsewhere that by visiting a sick one, if he is his comrade, a sixtieth part of the sickness goes over to him, and notwithstanding this he must do so. But is not the burying of the dead included in bestowing of favors? It was necessary to teach that even if he was a sage, and it is beyond his dignity, he must nevertheless do so in such a case. "To moderate the law," as R. Johanan said that Jerusalem was destroyed because they used the exact law only and never moderated it.

MISHNA XI.: What is to be considered a lost thing? *E.g.*, if he found an ass or a cow feeding in a public thoroughfare, it is not to be considered a loss. If, however, the packing material of the ass was turned over wrongly, or the cow was running between the vineyards, it is to be considered a loss which must be returned. If he has returned it, and it runs away again, even four or five times, he must return it, as it is written [Deut. xxii. 1]: "Thou shalt surely bring them back." If his loss of time was worth a sala, he must not say, Give me a sala, but he may take the reward as a laborer would usually take for such work. If there were three persons (who constitute a Beth Din of common men), he may make the condition before them (my loss of time in this case is worth so and so much, and I will collect from the owner); but if there were not such three persons, before whom could he make such a condition? Hence his own time has preference.

GEMARA: How is the first part of the Mishna to be understood, which states it is not to be considered a loss when it were lost to the owner? Why not? Said R. Jehudah: It means to

say, what the rule of a lost thing is which one is obliged to trouble himself. If the articles mentioned were fed in a public thoroughfare, it is not considered such that the finder need trouble himself, unless he finds them in such condition as mentioned in the Mishna further on. But how is the second part to be understood, which states it is to be considered a loss, etc.? Does it mean for eternity? Said R. Jehudah, in the name of Rabh: "If he has seen them three days in succession at the same place." How was the case, if in night-time even one hour is sufficient, and if in the daytime even more than three days should not be considered? The Mishna treats of a case where he had seen them in the morning or at sunset; if only three days in succession, it may be supposed that it is only mishap, and they will come out soon; but if more, it is certainly a lost thing. We have learned the same in the following Boraitha: "If one found a garment or an ox in the market, or a cow running in the vineyard, it is considered a loss; but if the articles mentioned were lying on the side of a partition, or the cow was fed between the vineyards, it is not considered a loss, unless he has seen them three days in succession. If one has seen that his neighbor's field is about to be overflowed, he may prevent it if it is within his power." Rabha said: "It is written [Deut. xxii. 3]: 'With every lost thing,' it means to add a loss of real estate." Said R. Hananiah to him: "The following Boraitha should support you: If he has seen water going to overflow, he may prevent it by making a dam." And Rabha answered: "This teaching may not support me, as it may be that it treats of a case when there were sheaves in the field (hence it is not real estate). If it is so, what does the Boraitha teach us? Is it not included in the verse cited above? It may be said that there were sheaves which were still attached to the ground, and the use of the ground was yet necessary. Lest one say because they still need the support of the earth, it should be considered as the earth itself, it comes to teach us that this is not so."

"If he returned it, and it runs away again," etc. Said one of the scholars to Rabha: "Why so? The Scripture reads *Hoshéb* (which means, 'thou shalt return'), once, and then *Thisbibém* ('thou shalt return them'), twice." And Rabha answered: "The first word means even hundred times, and the second word is needed lest one say that he is only obliged to return to his house, but not to his garden or ruined building,

hence the second word *Thisbibem*." * How was the case? If the article would be saved in the garden or ruins, then it is self-evident that he must return it, and if it was not saved there, why should he return? It may be said that it is to be saved there, and it comes to teach us that the knowledge of the owner is not necessary, and this is in accordance with R. Elazar, who said, in everything between man and man, the knowledge of the owner is needed, except concerning the return of a lost thing, in which the knowledge of the owner is not needed (*i.e.*, he may put the found article on the owner's property, where it may be saved without notifying him that he has done so), and this is deduced from the superfluous word in the Scripture mentioned above. The same is the case with the word [*ibid.*, *ibid.* 7] which also reads *Shalach Téishalach* (literally, "sending, thou shalt send"). "I would say Shalach once, Téishalach twice," (said the above scholar to Rabha, and he answered:) "Shalach means even hundred times, and Téishalach signifies that even if the mother was needed for a meritorious purpose (*e.g.*, to cleanse a leper [Lev. xiv. 4]), it must be, nevertheless, sent away." The same scholar said again to him: "It is written [Lev. x. 17]: *Hakhéach Toucheach* (literally, 'rebuke, thou shalt rebuke'); say the first word means one, and the second two." And Rabha answered: "The first word means even hundred times, and the second means that not only the master must rebuke his pupil (when seeing him acting wrong), but even the pupil must do so to his master. The same is the case with the word [Ex. xxiii. 5] *Ozob Tahsob* (literally, 'help, thou shalt help'), which means you must give your assistance, even not in the presence of the owner; and the same means the word [Deut. xxii. 4] *Hokem Tokim* (literally, 'load, thou shalt load'). But why does the Scripture repeat the same concerning unloading [Ex. xxxiii.] and loading [Deut. xxii.]? It is needed. For if it would say the first case only, one might say that because a living thing is inflicted and damages also he must assist, but in the other case of loading, in which both things do not exist, it is not so; and if it would be mentioned in the last case loading, one might say that he must do so, because he has a right to charge for his loss of time, but in unloading, which must be done gratuitously, he is not obliged, therefore both are written." [But according to R. Simeon, who holds that even load-

* Leeser translates according to the sense, Thou shalt surely return; the Talmud, however, is particular as to the words which we have translated literally in our text.

ing must be done without any compensation, what can be said? He may say that the Scripture does not indicate which verse is to be explained for loading and which for unloading. But could not the trouble about a lost article be deduced from the above-cited verses? Why is it mentioned separately? It is necessary because one might say that in both cases above there is an infliction on a living being and an infliction on the owner also (therefore the Scripture prescribes support), but concerning a lost article, in which there is an infliction on the owner only and not on the lost thing, the Scripture would not prescribe support, and the former cases also cannot be deduced from the latter one, because in this case the owner is not present (and therefore support is necessary), which is not so with the former cases, hence all of them were necessary.] The same is with the repetition of [Numb. xxxv. 17] *Moth Yoomot* (literally, "dead, he shall die"), which means that if it is impossible to kill him by the prescribed death, he may be killed in any manner; the same is with [Deut. xiii. 16] *Hakkie Thakki* (literally, "smite, thou shalt smite"), which means if you cannot smite it as prescribed, you must do so in any manner; the same is with [ibid. xxiv. 13] *Hohsheb Tokshib* (literally, "return, thou shalt return"), which means that even when the pledge was taken without permission of the court, it must nevertheless be returned; so also [Ex. xxii. 23] *Choboul Tahchboul* (literally, "pledge, thou shalt pledge"), which means the same as above [if so, to what purpose is it repeated? one for a day dress and the other for a night dress]; so it is also [Deut. xv. 8] *Pathoach Tiptahch* (literally, "open, thou shalt open"), which means that not only to the poor of your city you are obligated, but also to those of other cities; and also [ibid., ibid. 10] *Naathon Teeten* (literally, "giving, thou shalt give"), which means both great and small gifts. The same is [ibid., ibid. 14] *Hahnék Theahnek* (literally, "donate, thou shalt donate"), which means that you must do so even if thy house was not blessed through him [but according to R. Elazar b. Azaria, who holds that if it was not blessed, he is not obliged to donate, what can be said? Nothing; but the Scripture usually speaks like a human being]. So also is with [ibid., ibid. 8*] *Ha'bét Taabitanov* (literally, "lend, thou shalt lend"), which means that not only to him who possesses nothing and

* In all repetitions cited the Talmud takes the matter literally, though the translators, especially Leaser, whom we follow in our work, translate differently, according to the sense. Cf. Leaser's Bible.

refuses donations, but even to him who possesses but does not want to use his property for his livelihood, you must also act the same. [But according to R. Simeon, who denies any obligation upon a person of the latter case, what does the repetition signify? Nothing; the Scripture speaks as stated above.]

"*When the loss of time was the value of a sala,*" etc. How is this to be understood? Said Abayi: "The loss of time must be appraised according to his loss in his special trade."

"*If there were three men,*" etc. Issur and R. Saphra were partners in business. Subsequently R. Saphra divided in presence of two witnesses. Finally he came before Rabba bar R. Huna, and was told to bring three men, or two of them, before whom he divided the goods, or even two witnesses that he has done so in presence of other three men, and he said to him: "From what source do you take your decision?" And he rejoined: "From our Mishna, which states, 'If there were three men,' etc." Rejoined R. Saphra: "What comparison is this? The Mishna treats of collecting money from one to give it to another, and therefore a Beth Din of three men was necessary; but in my case I took that which belongs to me only. Why do not two witnesses suffice? And my theory may be supported from a Mishna elsewhere, which states that a widow may sell for her support the goods of her late husband, even not in the presence of a Beth Din (but before two witnesses)." Said Abayi to him: "But was it not taught in addition to your Mishna thus, R. Joseph bar Minyumi in the name of R. Na'h-man said: It means, she does not need a court of special judges, but a Beth Din of three common men is nevertheless necessary."

MISHNA XVII.: If he has found the animal in a stable, he is not obliged to trouble himself. In a public thoroughfare, however, he is. If it was in a cemetery (and he was a priest), he must not defile himself. If he was told by his father to defile himself, or not to return it, he must not listen to him. If he has unloaded, and reloaded, and again even four or five times, he is obliged to do so, as it is written [Ex. xxiii. 5]: "Thou shalt surely help him."* If, however, the owner went away and sat down, saying: "You are obliged by Scripture to assist me, do so if you want in my absence," he is not obliged to do anything, as it is written *Eemou* (literally, "with him"). If, however, he was old or sick, he is free. The commandment

* See foot-note p. 72.

of the Scripture is for unloading, but not loading. R. Simeon, however, maintains loading also; R. Jose the Galilean said: "If the animal was overburdened more than it could carry, there is no liability, as it is written [ibid., ibid. 5], 'under his burden,' which signifies under such a burden which it can bear."

GEMARA: Rabha said: "The stable mentioned in the Mishna means that it was of such a kind where the animal was not afraid to stay, and also was not locked in, and if it wanted to leave it could do so; and this is to be inferred from the expression, 'He is not obliged.' It is only in case it is not afraid to stay there, and from the same is also to be inferred that the stable was not locked, as if it were so, would it be necessary to teach that he is not obliged; is it not certain that when he finds it on the street, he is obliged to place it in such a stable, should he then be obliged to take it out? Hence infer that such was the case."

"*In a public thoroughfare, however, he is,*" etc. Said R. Itzhak: "It means when the thoroughfare was placed two thousand ells from the town, not otherwise, and from this is to be inferred that the stable in question, even if it was placed beyond the stated limit, there is no liability."

"*In a cemetery,*" etc. The rabbis taught: Whence do we deduce that he must not listen to his father in the above-mentioned cases? It is written [Lev. xix. 19]: "Ye shall fear every man his mother and his father, and my Sabbath ye shall keep; I am the Lord," which means that ye all are obliged to preserve my commandments (says the Gemara); but were it not written here, "and my Sabbath ye shall keep," you would say that he must listen to his father? Why? In case of a lost thing there is a positive and negative commandment (*supra*, p. 68, 69), and honoring his father is a positive commandment only, and there is a rule that one positive commandment does not contradict a case wherein are a positive and a negative commandment? It was necessary lest one say because the honor of parents is equal to the honor of Omnipotent, from an analogy of expression "honor" [Ex. xx. 12] and [Prov. iii. 9], "he shall listen to his father," (although it is against a commandment), which teach us that it is not so.

"*But not loading,*" etc. How is this to be understood? Shall we assume not loading at all? Is it not written [Deut. xxii. 4]: "Thou shalt surely help him"? Therefore we must explain that the Mishna means thus: "The commandment is

to unload without any compensation, but not loading without any." R. Simeon, however, says: "The same applies to the latter, and this explanation is as the rabbis taught plainly: 'Unloading without a compensation, and loading with.' R. Simeon, however, says: 'Both are equal.' What is the reason of the rabbis? Because, if it would be according to R. Simeon, the Scripture would be loading only, and the unloading would be deduced by drawing an *a fortiori* conclusion, as above (p. 73), and R. Simeon may answer as said above."

Rabha said: "From the decision of both we learn that a living being must not be inflicted is so biblically, as even according to R. Simeon the above *a fortiori* conclusion is not to be drawn, because in the Scripture loading or unloading is not clearly mentioned, but if it were, this *a fortiori* conclusion would be drawn; hence the infliction in question is so biblically, even in accordance with R. Simeon (for if not, how could an *a fortiori* conclusion be drawn?); but perhaps the same would be drawn not from the infliction, but from the damage; thus, in case of loading, wherein there is not any damage, he is obligated so much the more in case of unloading, wherein there is damage? Does, then, the Scripture treat only of a case wherein there is no damage? How, then, is it if, *e.g.*, when the man is going to a fair and is prevented from reaching it by some occurrence, or if in the mean time all his goods are stolen (is one not obliged to help him)? And one more support, that the infliction in question is so biblically, is to be found in the latter part. R. Jose the Galilean says: "If he was overloaded," etc., from which is to be inferred that the first Tana holds even in such a case one is obliged to help, and this only because of the infliction of the animal. But perhaps they (first Tana, R. Jose) differ only in that verse from which R. Jose deduces his decision, and the rabbis do not care to deduce it (not because the infliction in question is biblically); furthermore, it may be deduced that it is not so biblically from the first part, which states that in absence of the owner one is not obliged to help; and if the infliction in question is biblically, what difference is it whether the owner is present or absent (he is biblically obliged to redeem the animal of its infliction at any rate)? Nay, the infliction is so biblically, and the decision that in the absence of the owner he is free, is not to be understood as meaning entirely free, but free to do it without compensation; but in the absence of the owner he must do for compensation. This is supported by the

following Boraitha: "An animal belonging to a heathen, he must trouble himself with it as it were an Israelite's." This is correct. If the infliction is biblically there is no difference to whom the animal belongs; but if it is not biblically, why must he trouble himself about a heathen's animal? It may be said he must do so not to cause animosity, and so it seems from the latter part, which states: "If it was loaded with prohibited wine, he need do nothing with it." And this can apply only when the infliction is *not* biblically; for if it is, what difference is it with what material the animal was loaded? Nay, the Boraitha means to say that if there was prohibited wine to load, he should have nothing to do with it. Come and hear (another objection). If his friend was needed to unload, and his enemy was needed to load, it is a meritorious act to help the enemy for the purpose of overcoming his wicked nature. Now if the infliction is biblically, his friend should have the preference, because his animal is inflicted? Notwithstanding this, the overcoming of his wicked nature has the preference. Come and hear. The enemy in question is meant an Israelite and not an enemy, an idolater. Now if the infliction would be biblically, what difference is it who the enemy was? (The animal is inflicted.) Do you think the enemy in question means the enemy mentioned in the Bible [Ex. xxiii. 5]? it means the enemy mentioned in the Boraitha (who needs help in loading). Come and hear. The word lying, in the just cited verse, means that the lying occurred through the burden, but not when his habit was to lie down while under burden, "lying" and not when it was standing, "under his burden" and not when it was unloaded, "his burden" such as it could stand, but not otherwise. Now if the infliction is biblically, what difference is it between lying and standing? The Boraitha is in accord with R. Jose the Galilean, who holds that the infliction is not biblically, and it seems to be so from the statement "under such a burden which it could stand," and such a theory was heard from R. Jose only.

The rabbis taught: "It is written [ibid., ibid. 5] "if thou see"; one may say that even when he was far away; therefore it is written [ibid. 3] "if thou meet"; and lest one say that only by an exact meeting (but not when he happened to be near him), therefore it is written "if thou see," to indicate that his seeing was when it was possible to meet him; and the conjecture of the sages was a seventh and half part of a mile distant, which

was known as a *riss*. A Boraitha in addition to this states that he must accompany him the distance of a *passa*. Said Rabba bar bar Hama: "Provided he is paid."

MISHNA XIII.: If one lost a thing as did his father before, his own has preference. The same is the case with his master. If, however, his father and his master have lost an article at the same time, his master has preference because his father brought him only into this world, while his master, who taught him wisdom, brings him into the world to come; if, however, his father was a sage, he has the preference (*i.e.*, to trouble himself for him). If his father and his master were overburdened, he should unload his master first, and after his father. If both were in prison, his master has preference to be redeemed; if, however, his father was a sage, he has the preference.

GEMARA: Whence is this deduced? Said R. Jehudah in the name of Rabh: "It is written [Deut. xv. 4] 'No needy man among thee' * (above, p. 69), which means that yours has the preference always." The same said again in the name of the same authority: "Although the law is exactly so, he who always acts accordingly will finally need the support of others." (Rashi explains this that he who is always particular that *he* shall have the preference absolves himself of charity, of bestowing favors, and is not respected, and therefore he stands alone and will finally need support.)

"If his father and his master were overloaded," etc. The rabbis taught: "The master in question is meant one who has taught him the wisdom of Gemara" (*i.e.*, the reasons of the decisions of the Mishna and that they do not contradict each other, and some sense for allowed and not allowed obligations and absolutions of the Scripture.—Rashi); "but not who taught him Scripture, exact Mishnayoth," is the dictum of R. Meir. R. Jehudah says: He who taught him the greater part of his wisdom only is considered his master. R. Jose, however, maintains: "That even if he enlightened his eyes in only one Mishna, he is to be considered his master." Said Rabha: "As, *e.g.*, R. Sh'orah, who explained to me the word Zuhma with the word Listrum." † Samuel tore his garment at the death of one of the

* The Scripture reads *Bekha*, literally *in thee*, which the Talmud explains, there shall be no needy in thyself.

† In Section Jaharot (Keilim, XXV., 3) this word is to be found, and Rabha said: "It was known to me that it is a vessel but I did not know what kind, and he explained to me that it means a soup strainer" (Rashi).

rabbis who had explained to him only one expression in the Gemara. Said Ula: "The Babylonian sages arise one before another, and tear their garments, for the death of one of their colleagues; however, concerning a lost thing of which the master has preference, they do not consider only the master of whom he had learned the greater part of his wisdom."

R. Hisda questioned R. Huna: How is it with a disciple whom his master needed? And he answered: "Hisda, Hisda, I have not any need for you; you, however, need me for forty years more." They both became angry, and did not visit each other any more. R. Hisda, however, fasted forty days for the disgrace of R. Huna, and R. Huna did the same because he suspected that R. Hisda with his question meant him. "It was taught: R. Itzhak b. Joseph in the name of R. Johanan said: The Halakha prevails in accordance with R. Jehudah. R. Aha b. R. Huna in the name of R. Shes'heth said: The Halakha prevails according to R. Jose." Could R. Johanan say so? Did he not say elsewhere that the Halakha prevails in accordance with an anonymous Mishna, and our Mishna states his master, who taught him wisdom? By the word wisdom, *i.e.*, the greater of his wisdom.

The rabbis taught: "They who occupy themselves with the study of Scripture are not to be blamed, but, on the other hand, not to be praised. With the Mishnayoth, however, they are to be praised, and will be rewarded; but with the Gemara there is not a better custom. However, look to occupy thyself with the Mishnayoth better than with the Gemara." Does not the Boraitha contradict itself? It states there is not a better custom than the Gemara, and immediately it states, Occupy thyself with the Mishna. Said R. Johanan: "In the time of Rabbi the above Mishna was taught; in consequence all the disciples left the Mishna and started the Gemara; he therefore lectured again, "Occupy thyself better with Mishnayoth," etc., and subsequently his above lecture was added to the Mishna.* What

* This remarkable statement is interpreted by Rashi thus: When the disciples of Shammai and Hillel increased to a great number (about three generations before Rabbi), differing and quarrelling so, that it looked as if there were two Torahs. In addition to this, persecution by the government was increased daily, and new disagreeable decisions were renewed day by day, so that they could not give the proper attention to revise the point of their differences, until the days of Rabbi. When the Almighty gave him grace in the eyes of Antoninus Cæsar of Rome, who abolished all the disagreeable decisions, and Rabbi had the opportunity to compile the Mishnayoth, which was oral until his time. He assembled all the disciples

was the basis of the above-mentioned lecture? R. Jehudah b. Ilayi lectured as follows: "It is written [Isaiah, xvi. 5]: 'Hear the word of the Lord, ye that tremble of his word. Your brethren that hated you, that cast you out for the sake of my name, said, Let the Lord be glorified, but he will appear to your joy, and they shall be made ashamed.'" "Tremble of his word" means the scholars who study Gemara; "your brethren" means those who study the Scripture; "that hated you" means the students of the Mishnayoth (the students of the Mishnayoth, says Rashi, hated the students of the Gemara, because the latter had decided that the students of the Mishnayoth, without Gemara, are the destroyers of the world, because they act according to the Mishnayoth without knowledge of their sources and bases, and very often the Halakha does not prevail according to their decisions); "that cast you out" means the common people. But lest one say their hope has ceased, therefore it is written: "He will appear to your joy"; and may one say that Israel will be ashamed, therefore it is written: "And they (the idolaters) shall be ashamed, and Israel will rejoice." *

of Palestine, and each of them had to report a Halakha which he had heard from a great man, which was written down in the name of each author, and only then the sections of the Mishnayoth were classified; *i.e.*, the Halakhas which belong to damages, women, festivals, etc., were selected, separated in sections. Rabbi, however, omitted from some Mishnayoth the name of their author for the purpose of establishing the Halakha accordingly, which probably could not be done if it were taught in the name of individuals, and when this was done, the Mishna mentioned in the text was said, *i.e.*, "there is not a better custom than to study the Gemara," which means, to understand the sources and reasons of the decisions of the Mishnayoth. But when Rabbi saw that all had occupied themselves with the study of Gemara, without repeating the Mishnayoth itself, he was afraid that the name of the sages and the obligation would be changed, so he lectured again: "Occupy thyself with Mishnayoth." See our brief general introduction, Section Festivals, Vol. I., p. xv, in which we give the history of the Mishnayoth differently, the basis of our opinion being the majority, who differ with Rashi, and say that the Mishnayoth was written down many generations before the time of Rabbi. In our periodical "Hakol," Vol. VI., No. 1, we published an article pointing out all the names of them who agree with Rashi and all those who are contrary, also the opinion of the late famous Dr. Gellennik. See also "Dour Dour Vedourshow," by I. H. Wise. All details of this matter for the English reader will be found in our forthcoming history of the Talmud.

* We have followed Leiser in the translation of the verse. It seems, however, that the verse was different before the Talmudist, as the end mentioned in the text is not to be found there, and also the translation, "he will appear to your joy," is not in accordance with the Talmud, which translates, "and we will see your joy," and Rashi explains that the prophet says, "I and all your brethren mentioned above will see your joy." It may be, however, that the end of the verse was added only because it is the end of this chapter, and their custom was to finish with a good word.

CHAPTER III.

LAWS RELATING TO BAILMENTS, HIRERS, LOSSES ON DEPOSITED ARTICLE AS TO THEIR QUANTITY AND THEIR QUALITY, AS TO THE CARE TO BE BESTOWED ON DEPOSITED ARTICLES BY THE DEPOSITARY, AND OF MONEY WHETHER IT MAY BE USED.

MISHNA I. : If one has deposited an animal or vessel with his neighbor, and they were stolen or lost, and he paid, because he refused to take an oath [according to the law that a gratuitous bailee must swear and is acquitted], and thereafter the thief was found, who must pay the double amount, or in case he has slaughtered or sold, four and five fold, to whom shall he pay? To him who has kept the bailment. If, however, the bailee took an oath, because he refuses to pay, and the thief was found, he must pay the above-mentioned amount to the owner.

GEMARA : "*He has paid, because he refused,*" etc. Said R. Hyya bar Abba in the name of R. Johanan : "The expression 'paid' is not to be understood that he has done so already, but if he said, 'I will pay,' it is to be considered paid." And there is a Boraitha in accordance with his statement, viz. : "If one has hired a cow of his neighbor, and it was stolen, and the hirer said, I will pay rather than take an oath (that it was not an accident), and thereafter the thief was found, the double amount belongs to the hirer."

R. Papa said : "A gratuitous bailee, when he said, 'I have neglected my duty' (which makes liable for payment), acquires title of the double amount because he could be acquitted if he should claim it was stolen. The same is the case with a bailee for hire, when he claims 'stolen,' because he could be acquitted by claiming it was crippled or died (in which case he is not responsible); and also a borrower, if he said, I am ready to pay, he acquires title for the double amount, as he could acquit himself by claiming the animal had died while laboring." Said R. Zbid to him : "So said Abayi : A borrower does not acquire title of the double amount, unless he has already paid. Why so? for all the benefit he has derived was only upon his word, without any

actual payment. It is not sufficient his saying, I am ready to pay." And there is a Boraitha supporting him: "If one borrowed a cow of his neighbor, and it was stolen, and the borrower hastened and paid, and thereafter the thief was found, the double amount belongs to the borrower." Shall we assume that the Boraitha is an objection to R. Papa's statement? He may say, has, then, the Boraitha more strength than our Mishna—does not the Mishna state, "and he paid," and nevertheless it was interpreted that the same is the case if he says, "I will pay"? Why should not this same explanation apply to the Boraitha? But what comparison is it? The Boraitha states, "he hastened and paid," which is not the case in the Mishna. But why should it not be explained he hastened to *say*, "I will pay"? Nay, the same Boraitha expresses in the case of a hirer, "he *said*," and in the case of a borrower, "hastened," hence the Boraitha was particular as to its word. But whence do we know that the Boraitha's statements were taught together—perhaps each statement was taught separately, consequently no special attention must be paid to the wording? The disciples of R. Hyya and R. Oshia were questioned, and the answer was, that all the statements of the above Boraitha were delivered at one time.

It is certain that if he previously said, "I will not pay," and afterwards he declared, "I will," it is a reconsideration and must be counted; but how is it if it is *vice versa*? Shall we assume this also a reconsideration, or perhaps he intended to pay, but as he had no cash, he only postponed payment? Also how is it if he promised to pay, and dies, and his heirs refuse, or he dies without saying anything, and his heirs pay, does the double amount belong to them, or can he say to them, "If your father would promise to pay I would be pleased to transfer the double amount to him, but with you I have nothing to do, as probably you were aware of the double amount, and, therefore, you paid"? These questions are not decided. R. Huna said: "In all cases an oath is given to the bailee that at that time the article is not in his possession, for fear, perhaps, he would prefer to keep the article for himself, and, therefore, he paid for it." *

There was a man who deposited a nose jewel with his friend, and when being required to return, he said, "I do not know where I put it," and when the case came before R. Na'hman, he

* There are objections and answers concerning oaths, which are repeated in Tract Shebuoth (Oaths), therefore omitted here.

said: "Such an answer shows a neglect of duty, and you must pay." The man did not submit to R. Na'hman's decision, unless R. Na'hman made him pay by force. Finally, the article was found, and was increased in value. Said R. Na'hman: "Return it to its owner and have your money refunded." Said Rabha: "I was sitting before R. Na'hman when he decided the above case, and our study was in this chapter, and I questioned him, Is not this case equal to the statement of our Mishna: If he paid and refused to swear, etc., and R. Na'hman did not answer, (and thus deliberating this matter I came to the conclusion that) it was right in him not to answer, because the case in our Mishna does not treat of a case where he was troubled by the court, as in this case." (Says the Gemara:) "Shall we assume that R. Na'hman holds that property appraised by the court, for the sake of the creditor, and delivered to him, should be returned to the defendant when he brings cash? Nay! The above case of the nose jewel is different; as the article was in his possession, no appraisement could be made; hence the appraisement itself was an error. (However, when the court appraises by examining the article, no change is to be made.) The sages of Nahardea, however, hold that even a correct appraisement by the court is to be returned in twelve months (when the defendant brings cash). Said Amemor: "I myself am a Nahardean, and I hold that an appraisement is always to be returned." (Said the Gemara:) "So the Halakha prevails, because it is written [Deut. vi. 18]: "And thou shalt do that which is right and good," etc.*

It is certain, when it was appraised for the sake of a creditor, and the latter appraised it for his own creditor, the returning may take place, because it may be said to the latter creditor, You cannot be entitled to any more privilege than this defendant. The reverse is the case when the creditor sold it, or gave it as a present, because the intention of the people was given to the estate but not to the value of it. The same is the case if it was appraised for a widow (according to her marriage contract) and she remarried, and the same is also when the estate was appraised for the sake of a creditor of a widow, and after she remarried and died her husband cannot require for returning, as he is considered a buyer (and not an heir), to whom the law prescribes no returning

* Of which it is to be deduced that if it is possible to moderate the strict law without any trouble it must be done.

shall take place, neither by nor to him. As R. Jose said: "It was enacted in the city of Usha that if a woman sold her estate, called *mulgeo** (*i.e.*, an estate in which her husband has the usufruct, the use of the products and the principal estate remain hers) while her husband is yet alive and she dies, the husband may take it away from the hands of the buyer." If, however, the creditor took the estate for his debt without appraisal, but with the admission of his creditors, it may be returned or not. R. A'ha and Rabbina differ; according to one it may not, because it was a correct sale, as the debtor had given it with his good will; and according to the other it may, because the sale is not to be considered a good one, as the debtor did it only because he was ashamed to go to court, but not with his good will.

From what time may the creditor use the products of an appraised estate? According to Rabba, as soon as the warrant reaches him; and according to Abayi, from the time the warrant was signed by the court. Rabha, however, says: "The warrant that the estate shall be sold for his debt does not suffice even when it is in the hands of the creditor, provided the time of heraldry had elapsed." (The previous products, however, belong to the debtor.)

MISHNA II: If one has hired a cow and he loaned it to some one else, and it died a natural death, the hirer takes an oath that the death was natural, and the borrower must pay to the hirer. Said R. Jose: "How could the hirer do business with the cow, which did not belong to him? Therefore the cow, or the value of it, must be returned to the owner."

GEMARA: Said R. Idi b. Abin to Abayi: "Is not the oath the only reason for acquiring title? Let then the owner say: Keep aloof from this case with your oath, and I will summon your borrower (as it did not die while in your possession). It will be better for me to summon the borrower (who is responsible even for an accident)." And Abayi answered: "Do you think that the oath is the only reason for the title? It is not so. The title is acquired with the death of the animal, the title of its value is acquired to the hirer, and the oath is only to please the owner."

R. Zera said: "It can happen that the hirer has a right to require several cows from the owner for one cow. How so? (As the explanation of this queer proposition is so clearly illustrated

* *Mulgeo* means milking, and it is used in a case where the milk is always drawn away, and the cow, the principal, loses nothing by the operation.

by Rashi, we omit the explanation given in the Gemara, and we append it in a foot-note.*) Said R. A'ha of Difta to Rabbina: "Let us see. It was only one animal which was going from borrowing to hiring, and *vice versa*. Why then should he furnish him with four—is it not sufficient he should furnish him with two, one of them to remain the property of A and the other for the remaining labor days"? And Rabbina answered: "Is then the animal yet alive, that it could be said so? The animal is dead, and there were two cases of hiring and two cases of borrowing, and he has a right to receive compensation for each case, also for each hiring of the labor days." Mar bar R. Ashi, however, maintains: "A is entitled to two cows only, one for both cases of hiring, and one for both cases of borrowing; as the cases under one name cannot be considered two, because all this occurred with only one animal (as explained above)."

It was taught: "A bailee who has transferred the bailment to another bailee, according to Rabh the first bailee has the same responsibility as if he would take care of it himself, (*i.e.* he is free from accident). According to R. Johanan, the first one is responsible even for an accident." Said Abayi: "According to Rabh's theory, not only a gratuitous bailee who transferred to a bailee for hire, who has increased the responsibility of it, is not responsible any more than the prescribed law of such a bailee, but even if he was a bailee for hire and he transferred it to a gratuitous bailee, that the responsibility was decreased; the same is the case, because he transferred it to one who was able to take care of it (consequently he did not neglect his duty); and according to R. Johanan's theory, not only a bailee for hire who transferred it to a gratuitous bailee, in which the responsibility was decreased, but

* A hired an animal of B that he should labor with it one hundred days, and then B asked A, as a favor, he should loan it to him for ninety days of the hundred, and subsequently he should return it to A for the remaining ten days, and if death occurred during the time it was yet borrowed, B, although he is the owner, is now considered a borrower only, who is responsible. But if A after he had loaned the hired cow to B, the owner, hired the same again for eighty days, B is considered a borrower of the animal, who hired it to another one for labor. Now if the animal dies while under the control of A he has only to take an oath that the death was natural and B must furnish him with another cow instead. If, however, B has borrowed it again for seventy days out of the eighty of the second hiring, and death occurs while under B's control, then A has only to take an oath for the natural death, and B, the borrower, has to furnish A with four cows—two for the two times he has borrowed from him, *i.e.*, as the time of his borrowing is not yet elapsed it is considered as if he had loaned him *two animals* and two deaths occurred, and the other two he must furnish him for the remaining labor days he hired from him.

even a gratuitous bailee who transferred it to a bailee for hire, in which the responsibility was increased, he is nevertheless responsible for all that occurs, because the owner may say, "I have trusted the bailment to you, not to any one else, as I did not want the bailment to be under the control of some one else." Said R. Hisda: "Rabh's statement was not made by him directly, but it was inferred from an act which happened, namely: There were gardeners who had deposited their spades at a certain old woman's; one day, however, one of them gave it for safe-keeping to his comrade, and when the latter heard voices from a wedding procession and wanted to accompany it, he transferred the spade of the above to the old woman, and when he returned, he found it was stolen. When the case came before Rabh, he acquitted him. Those who have heard this decision thought that it was because of the law that a bailee who transfers the bailment to another bailee is free; in reality, however, Rabh acquitted him because the depositor himself used to deposit his articles with the same old woman; consequently he could not claim that he would not trust her with his bailment. R. Ami was sitting and declaring the just stated Halakha, and R. Abba bar Mammal objected to his statement from our Mishna: "One hired a cow," etc. Now if the above statement is correct, why could not the owner of the animal claim, "I did not want that my bailment should be under the control of another one"? And he answered: The Mishna treats of a case where the owner gave him permission to loan it to some one. If so, the owner has a right to the value of the cow? The owner told him, You can do so to whomever you like (and so he cannot claim any more that he does not want his bailment to be under another's control).

Rami bar Hama objected to this from Mishna VII., in this chapter, which states that if he transferred them to his little children, etc., of which it is to be inferred that if he would transfer them to his big children, he would be free. Why so? The owner could claim, "I do not want my bailment to be under another's control." Said Rabha: "Usually, when one deposits an article for safekeeping with any one, he intends that he may ask his wife and children to take care of it, and the sages of Nahardea said: "That it seems the cited Mishna is rightly explained so, as it states, 'his little children,' of which it is to be inferred that if he would give it to the care of the big ones, he would be free."

However, the case is only with his children, not with strangers, for if he would transfer them to strangers, he would be responsible

at any rate, for the reason that the bailee can claim that he did not want it in the control of another, as stated above." Rabha said : "The Halakha prevails, that a bailee who has transferred the bailment to another bailee of any kind is responsible. Why so? Because the owner may say, that you alone are trusted by me with an oath, but not the man to whom you have transferred it."

It was taught : "If the bailee has neglected his duty, and the animal was going out to the rushes and dies a natural death, Abayi in the name of Rabba makes him liable, and said : That any judge who would decide to the contrary is not worthy to be a judge, as not only according to him who holds that if an accident follows a neglect, there is a liability, he is responsible, but even according to him who holds that in such a case there is no liability, in this case he would admit that he is responsible. Why so? Because it may be said that the air of the rushes killed it (hence it is not the accident, but the neglect, which caused the death)." Rabha, however, in the name of Rabba said : "He is free, and every judge who decides to the contrary is not worthy to be a judge, as not only according to him who holds that if an accident follows a neglect there is no liability, but even according to him who holds to the contrary, would admit that in this case he is free. Why so? Because there was a natural death, and there is no difference to the Angel of Death where his subject is placed." Rabha, however, admits that if it was stolen from the rushes, although it dies a natural death in the house of the thief, the bailee is nevertheless responsible. Why so? Because if it were alive, not he, but the thief, would possess it (consequently, before he dies the liability came simultaneously with the theft).

Said Abayi to Rabha : "According to your theory, that there is no difference to Angel of Death where it is placed, the answer of R. Ami to R. Aba stated above, p. 86, that it treats of a case where the owner has permitted the hirer to borrow it, etc., would not be satisfactory, as also in their case a natural death occurred and he could claim that it is no difference to Angel of Death where it was placed." Rejoined Rabha : "According to you the objection was : That the owner could claim, 'I do not want that my bailment should be under the control of another,' your objection could be sustained ; but I said that the claim of the owner was that the first bailee only is trusted by him with an oath, but not any one else ; hence your objection cannot be sustained."

Rami bar Hama objected from the following Boraitha: "If he brought the animal to a steep hill, and it falls and dies, it is not to be considered an accident, and he is liable." Of which it is to be inferred that if a natural death would occur while yet on the steep hill, it would be considered an accident. Why? Let him say that the mountain air or the labor of ascending such a high altitude has killed it? The Boraitha treats when it was brought to a good fat pasture.

"*Said R. Jose*," etc.: Said R. Jehudah in the name of Samuel: "The Halakha prevails in accordance with R. Jose." Said R. Samuel b. Jehudah to R. Jehudah: "You declared to us in the name of Samuel that Jose differs also with the first Mishna (in case of double payment); does the Halakha prevail according to him against the first Mishna also or not?" And he answered: "Yea, so it is!" The same was taught in the name of R. Elazar. R. Johanan, however, said: "R. Jose agrees with the first Mishna, in case he has already paid." Already paid! Did not R. Hyya b. R'Aba declare in his name (above, p. 81) that even if he said, "I am ready to pay," suffices? Say then, R. Jose agrees with the first Mishna in case the defendant declared already, "He is ready to pay."

MISHNA III.: If one said to two persons, I have robbed one of you the value of a manna (100 zuz) but I do not know which of you, or the father of one of you deposited with me a manna, but I do not know whose father, he must pay a manna to each of them, as he himself admitted his debt.

If two persons have deposited with one person one hundred zuz and the other two hundred, and each of them claims that the two hundred are his, the depository must pay to each of them one hundred, and the remaining hundred should be deposited until Elijah will come. Said R. Jose: If so, what does the swindler lose? Therefore, the whole sum should be deposited. The same is the case with two utensils: one of them was worth hundred zuz and the other thousand, and each of them claimed that the better one was his; then one of them must get the hundred one, and the other get hundred zuz in cash from the value of the utensils, and the remainder is deposited until Elijah will come. R. Jose, however, objected as said above, and maintained that both utensils should be deposited until Elijah will come.

GEMARA: We see then, from the beginning of the Mishna, that doubtful money is to be collected, and we do not say leave the money with its present possessor, in accordance with the law

of occupancy (Hasaka). Is there not a contradiction in the second part, in case of a deposit, where the doubtful hundred zuz must be deposited? The answer was: "Do you want to contradict a case of a deposit with a case of robbery?" A robber must be punished, but not a depositor.

There is, however, contradiction of both robbery and deposit. In case of a deposit it is stated in the first part: The father of one of you has deposited, etc. He must pay a manna to each of them. And in the second part, in case of the deposits of one and two hundred, it states that the doubtful hundred shall remain, etc. Said Rabha: "The first part is to be compared to two men who have deposited separately, one in the absence of the other, two bundles, where it is the duty of the depository to be very particular with the bundles and to mark on each of them to whom it belongs (so he ought to know whose father deposited with him). And the second part treats of a case where both persons deposited together the above sum, and it is to be compared as if they would put their moneys in one bundle, in which case the depository may say: You yourself were not particular in separating the sum to whom it belongs; then shall I be more particular than you? The contradiction of a case of robbery to the other case of the same is as follows: There is a Mishna (First Gate, p. 233): "If one robbed one of five persons and does not know the one, and each of them claims, 'He was robbed,' the robber may place the sum among them, etc., and depart, so is the decree of R. Tarphon."

We see, then, that we do not collect money in case of doubt because of the law of occupancy, and our Mishna, however, states that the robber must pay a manna to each of them (hence doubtful money is to be collected?). Are you then certain that our Mishna is in accordance with R. Tarphon? Yea! As in addition to the cited Mishna it is said that R. Tarphon admitted that if one said to two persons, "I have robbed one of you of a manna and I do not know who is the one," he must pay a manna to each of them. (Hence the contradiction is clear.) Nay! There is no contradiction. R. Tarphon speaks of a case when both persons summoned him; and our Mishna treats of a case when the robber repents and would like to satisfy the heavenly will, and it seems that our Mishna must be so explained, as it closes with the expression that he himself admitted his debt. Infer from this that so it is.

The master says: "When both parties summon him." But

what does the defendant claim?" R. Jehudah in the name of Rabh said: "He kept silence." And R. Mathnah said in the name of the same: "He denies knowing either of them. According to him who says he denies, if he keeps silent it would be counted as an admission, and according to him who says he kept silent, this silence is not counted as an admission, as he may declare, 'I kept silent before each of them because I thought, perhaps he is the one who deposited the greater sum.'"

The master said: "The robber may place the sum thus robbed and depart." And what shall be then? Shall the five take the sum? Did not R. Aba b. Zabda declare in the name of Rabh (above, p.): "Every doubt," etc.

Said R. Saphra: "The expression 'departed' means this: He is to place the sum *before the court* in presence of the five men, saying, 'Who of you is robbed shall bring evidence'; and as they could not do so, he may depart with the money,* and it shall remain with him until evidence is brought." Said Abayi to Rabha: "Did not R. Aqiba say that such a way would not keep him from transgression, but he must pay the sum robbed to each of them? Hence we see that on account of doubt money is to be collected, and not to leave the money with the possessor in accordance with the law of occupancy (and in Tract Baba Bassra, 155b, we heard him saying that the law of occupancy has the preference)? And he answered: There was an uncertainty of both the plaintiff and the defendant, and here it is only an uncertainty of the plaintiff, but the defendant is certain that he has robbed one of them. But is not the case in our Mishna also, an uncertainty of both the plaintiff and the defendant, as the latter says to each of them, 'I do not know whether *you* were robbed'? It is already explained above that our Mishna treats of a case where he repents and would satisfy the heavenly will. Said Rabbina to R. Ashi: "How could Rabha say, if there were two bundles he ought to be particular to know to whom each bundle belongs. Did not Rabha or R. Papa say elsewhere: That all agree in case where two men have deposited with a shepherd, one two sheep, and one one sheep, in the presence of both, and thereafter each claims the two sheep are his, the shepherd must place three sheep before them and depart? And he answered, There the case was where they deposited in his flock in his absence."

* In the text only one word, *Veyonēach*, was Saphra's answer, and the explanation is translated by us from Rashi.

The same is the case with two utensils, etc. Why the repetition? Is this case not the same as the previous? To teach us that even in the case of utensils, which may involve a loss by selling the better one, the rabbis are nevertheless of the same opinion.

MISHNA IV.: If one deposits fruit at his neighbor, he must not touch it, even when should they be lost (destroyed by mice or by decay). R. Simeon b. Gamaliel, however, maintains, that he must sell it by order of the court, as this is similar to returning a lost thing.

GEMARA: What is the reason of the first Tana of our Mishna? Said R. Kahana: "Usually one is pleased with his own goods, be it a ninth part, as with the goods of a stranger, be it multifold." R. Na'hman b. Itzhak, however, said: "Because it is to be feared,* perhaps the owner of it has separated it for heave-offering or tithe." Said Rabba b. b. Hana in the name of R. Johanan: "The Tanaim of the Mishna differ only when the fruit becomes diminished as usual (further on is explained the measure of usual loss of each kind of grain and fruit); but if the loss would be more than usual, all agree that he may sell it by order of the court." An objection was raised from the following: If one has deposited fruit at his neighbor's, and it decays; or wine, and it becomes sour; or oil, and it creates a stench; or honey, fermenting, one must not touch it; such is the decree of R. Meier. The sages, however, say: "He may try to prevent the loss and sell it by order of the court, provided he does not buy it for himself. Similarly, holders of charity funds, when there is no poor to whom to distribute, may change the money to any one, but not to themselves. Officers who are appointed to distribute food to the poor, if there is none, they may sell it, provided they do not buy it for themselves." Now the Boraitha states: "Fruit, and became rotten"; does it not mean even more rotten than usual? Nay, it means as usual. It states: "If wine becomes sour," etc., which certainly means that it is entirely spoiled for consumption? With beverages it is different, as there is no remedy (this would be correct with wine that becomes sour, and then has yet a value as vinegar, but oil and honey) when spoiled, what use can be had of them? Oil to smear the heels of footwear, and honey to use as salve for the camel wounds. The Boraitha states: "According to the sages he may try to

* It means to state that this law was an old one, in time when heave-offering and tithes were observed.

prevent the loss." What should he do? Said R. Ashi: "He can save the pitchers which contained the spoiled articles; for if anything remains within, the pitchers may also become spoiled. What is the point of their difference? According to one, care should be taken only for a great loss, but not for a trivial loss; and according to the other, care must be taken even for a trivial loss.

"*R. Simeon b. Gamaliel said*," etc. It was taught, R. A'ba b. Jacob in the name of R. Johanan said: "The Halakha prevails in accordance with R. Simeon." And Rabha in the name of R. Na'haman said: "The Halakha prevails in accordance with the sages." But did not R. Johanan declare conclusively that when R. Simeon b. Gamaliel is mentioned in the Mishna the Halakha prevails in accordance with him—why then the repetition? There are Amoraim who differ concerning R. Johanan's decision; according to some of them the decision was conclusive, and according to others the decision was rendered not for all time (*i.e.*, in some instance the Halakha does not prevail according to Raban Simeón).

It was taught: "If one becomes a prisoner, according to Rabh his property must not be transferred to the nearest relative; and according to Samuel, it may." If there was a rumor that the man was dead, all agree it may be done; but if there is no rumor about his death, Rabh maintains: "It may not, because the relative may spoil his property"; and Samuel maintains it may, because the master decided that when the owner of the property returns, the man who kept his property for him may be rewarded, as usually gardeners take a share for tilling the ground (*i.e.*, that from each property he receives his share), he would not spoil it. An objection was raised from the following Boraitha: R. Elazar said: "It is written [Ex. xxii. 23]: 'My wrath shall wax hot, and I will slay you with the sword,' etc. From this it is understood that their wives remained widows and their children orphans. For what purpose, then, does the verse add, 'and your wives shall be widows and your children fatherless'? To indicate that their wives would wish to remarry, but would not be allowed, and their children would beg that the property of their father should be transferred to them, and it will not be granted (*i.e.*, they will be prisoners, hence the property of a prisoner is not to be transferred to his relatives)." Said Rabha: "It was taught that it may be transferred to them, but they may not sell it. Such a case happened in Nahardea, and R. Shesheth

did not allow the transfer of the property to his relative to be made, basing his decision upon the just quoted Boraitha." Said R. Amram to him: "Perhaps the Boraitha is taught as Rabha amended it." And he rejoined: "Are you not a Pumbadithan, who tries to pass an elephant through the eye of a needle? Does not the Boraitha make the wives equal to their children? As the wives are entirely forbidden to marry, so are the children entirely from their father's property."

Says the Gemara: However, in the case in question the Tanaim of the following Boraitha differ. If one took possession of the estate of a prisoner, he must not be compelled to give it up; furthermore, if he was informed that the prisoner was about to be liberated, and he hastened to use the products of the estate, he is considered diligent, and rewarded. And the following are considered property of prisoners. If his father, brother, or one of his grantors went to the sea-countries, and there was a rumor that they were dead, whoever takes possession of their abandoned property, he must be compelled to give it up. And the following is considered abandoned property. "If the owners went to the sea-country, and no rumor of their death was heard." [R. Simeon b. Gamaliel, however, said: "I have heard that the latter's property is equalled to the prisoner's."] The same is the case with him who takes possession of forsaken property. And what is called forsaken property? If its owners are somewhere in the neighborhood, but cannot be found. Why, then, is the former called abandoned and the latter forsaken? Abandoned means, he was compelled to leave it; as it is written [Ex. xxiii. 11]: "But the seventh year shalt thou let it rest and lie still," * which is a decree of the Lord, and the latter means that he has forsaken it willingly, as it is written [Hosea, x. 14]: "The mother was dashed in pieces upon her children." The Boraitha adds, it was declared that all those who take possession of such land, their compensation must be appraised as if they were hired as gardeners.

Now let us see in which case this addition applies? It cannot be applicable to the case of prisoners, as it was stated above that

* The Hebrew word for it is *Nietooshim*, which means literally "abandoned"; and the second, *Retooshim*, which means split, and thus according to the meaning of the verse. It is translated by Leeser as in the text, which certainly also means unwillingly. Rashi, however, explains from the beginning of the verse, which is literally a tumult, that for fear enemies will rob the land the inhabitants ran away and left the land desolate; and the Gemara considers it as if it were done willingly.

he is considered diligent ; and also not in the case of forsaken property, as it is stated that he must be compelled to give it up ; consequently it applies only to the case of abandoned property. But according to whom ? Shall we assume that it is in accordance with the rabbis ? Did they not declare that also in such a case the possession must be given up ; and if in accordance with R. Simeon b. Gamaliel, did he not declare that he heard that this case must be decided as the case of prisoners ? Yea ! As in the case of prisoners, but not in all respects. It is equal only in case the possessor need not give it up, but not in case that he should be considered diligent, as his compensation is to be appraised as that of a gardener.

But why is this case different from that in the Mishna (Kethuboth, Chap. VIII., Mishna 3), which states that all he has done must be recognized ? Nay ! It is similar to the following case only, in which case it was said by R. Jacob in the name of R. Hisda, that if one incurred expense for the estate of his wife who is not yet of age, it is to be considered as if he incurred the expense for the estate of a stranger, which does not belong to him (*i.e.*, for which he may never be reimbursed). Why so ? The rabbis enacted in such a case a rule to prevent the possessor from spoiling the estate, and the same is made here in our case for the same purpose.

But did not the Boraitha state "all of them, their compensations must be appraised," etc. ? What does the expression mean ? "All of them" ? To add to what R. Na'hman said in the name of Samuel, that if one became a prisoner, his estate may be transferred to his relatives, and if he left his estate willingly, this is not to be done. R. Na'hman, however, declares his own opinion to be that if he was compelled to run away, he should be considered as a prisoner. Because of what does he run away ? If for the reason that he has not paid his duty, is it not the same as if he abandoned his estate willingly ; therefore, it must be explained that R. Na'hman means that he ran away because of some crime. Said R. Jehudah in the name of Samuel : "A prisoner who left ripe stalks for cutting, or grapes, dates, or olives for pressing, the court should appoint a guardian who shall do all work necessary, and then transfer it to his relative. But why should the garden not remain until his return ? For adults, full-grown men, no guardians are appointed."

R. Huna said : "The estate of a prisoner must not be transferred to a minor relative, and not the estate of a minor to any relative, and also not to a relative of his relative (*e.g.*, a minor

who has a brother of his father, and this brother has a brother of his mother, who is a perfect stranger to the minor). It must not be transferred to a minor relative, because he may damage the estate; and also not to a relative, and a relative of relatives, because in the course of time they may possess it without any protest; they would keep it for themselves permanently, basing their possession upon the law of Occupancy."

Said Rabha: "It is to be inferred from R. Huna's statement above, that possession is not taken of the estate of a minor, no matter whether he is an uncle on his father's or mother's side; no matter whether it was land or houses, and also no matter whether the division among the brothers took place or not."

There was an old woman who had three daughters. Together with one of them she was taken to prison, and of the remaining two, one died and left a child. Said Abayi: "What shall we do? Should we transfer the estate to the remaining living daughter, who is here, then perhaps the old woman will die, and the minor will become an heir; and there is a rule that the estate of a minor must not be transferred to a relative in trust. Should we transfer the estate to the child, then perhaps the old woman will not die; and there is a rule that no minor can be appointed as guardian to the estate of a prisoner. Therefore, the half of the estate should be given to the sister, who is here; and a guardian shall be appointed for the other half for the sake of the child." Said Rabha: "When there is no other way but the appointment of a guardian for the half, then he shall be appointed rather for the whole estate." Finally, it was heard that the old woman was dead. Said Abayi: "Now, one-third of the estate should be given to the sister, and one-third transferred to the child, and the remaining third should be divided one-half to the sister, for safe-keeping, and for the other half a guardian shall be appointed for the sake of the child." (Rashi explains thus: One-third certainly belongs to her, as she is an heir; the same is the case with the other third of the minor; the remaining third, however, belongs to the sister who is a prisoner, whose existence is doubtful. Now, the half of her inheritance must surely be transferred in trust to her sister, as the law allows a relative to be a guardian; and, at any rate, her sister may take possession of it, if she is dead, as she is the heir; and if she is still alive, she is to be considered a guardian. The other half, however, if she is dead, the minor is an heir; but if she is alive, she cannot be a guardian, because of age; and, therefore, a guardian must be appointed.) Said

Rabha: "If a guardian, then he must be appointed for the whole third."

A brother of Mari b. Isk, who was born in Hoozai, came to him and demanded a share of the inheritance of his father, and he said: I do not know you. The case came before R. Hisda, and he said: Mari is right: as it is written [Gen. xlii. 8]: "And Joseph recognized his brothers, but they recognized not him." And the reason was, because Joseph had departed when he was not yet bearded, and when they saw him he was; therefore it is for you to bring evidence that you are his brother. And he answered: I have witnesses, but they are afraid to testify, because Mari is a powerful man (and they are afraid of being injured by him). Said R. Hisda to Mari: "Then you must go and bring witnesses that he is not your brother." Rejoined Mari: "Is this the law? Is it not a rule that the plaintiff must bring evidence?" And R. Hisda answered: "So is my decision to you and to all powerful men like you." And he rejoined: "What is the use of my bringing witnesses, they will certainly testify for my sake, as they will be afraid to testify against me." Rejoined R. Hisda: "I do not suspect that the witnesses will do two wrong things for fear of you; what they may do is, not to appear before the court, but they are not suspected that they should come and testify falsely." Finally, witnesses appeared, and testified that ~~he~~ is his brother. And the brother claimed Mari should give him a share from the vineyards and gardens cultivated by Mari, and R. Hisda said that his claim was right, as there was a Mishna, Chap. ix., in the Third Gate, which stated so. Said Abayi to him: "What comparison is this? The Mishna there treats of a case where were brothers of age and minors, and those of age cultivated the estate; the Mishna states, therefore, the improvement must be divided (*i.e.*, as they know of the existence of their minor brothers, they relinquish the forthcoming share of their labor for the sake of the minors). But here, did Mari know that a brother existed, that he should relinquish his labor for him?" The case was not decided in this court, and came before R. Ami, and he said: "Was it not decided in a case of greater importance, namely, of a relative who took possession of the estate of a prisoner, and improved it, his compensation must be appraised as a gardener; and in this case, as R. Hisda decided, he should take an equal share of the improvement made by Mari, without any compensation even as a gardener, and the case was returned to R. Hisda, and he said: How can it be compared? The case cited by R. Ami was, that the court appointed the rela-

tive to take care of the estate, and certainly a compensation must be given him; but here, did Mari do so with the permission of the court? and, moreover, the court could not appoint him as a guardian, because his brother was a minor then, and, as said above, no relative can be appointed guardian of the estate of a minor." The case was referred again to R. Ami, and he said: "I was not aware that his brother at that time was a minor."

MISHNA V.: If one deposits fruit, the depository may account to him losses as follow: To wheat and rice, nine half *cabs* to one *coor*; to barley and millet, nine whole *cabs*; to spelt and flax, three *saahs* to one *coor*; however, all must be appraised according to the measures and circumstances of the time. Said R. Johanan b. Nuri: What do the mice care? they consume all the same, whether more or less; therefore he must account the loss to him for one *coor* only. R. Jehudah, however, says: If there was a large quantity, he may account for no loss at all, because it increases.

GEMARA: Is it not a fact that with rice there is more loss? Said R. bar bar Hana in the name of R. Johanan: "The Mishna treats of shelled rice."

To spelt and flax, etc. Said R. Johanan in the name of R. Hyya: "The Mishna treats of flax which is yet in the stalk, and so we have also learned in the following Boraitha: To spelt and to flax in the stalk, and to rice not shelled, three *saahs* to one *coor*."

All must be appraised, etc. In a Boraitha it was taught so accordingly to each *coor* and circumstance of the season.

R. Johanan, etc. There is a Boraitha which adds as follows: It was said to R. Johanan, Is it not a fact that much of it undergoes a loss, and much of it is scattered?"

Another Boraitha, concerning our Mishna, states: All this is said in case he has mixed it with his own, but if he has assigned a corner for him to put his grain, then he may say: "Yours is before you, take it as it is."

But why should it not be the same, even if he has mixed it with his own? He may take his own, and for the remainder he shall say: Yours is before you? The case was, when he used this grain. But even then let him take the remainder of his own? The case was when he did not know how much he had used of it.

R. Jehudah said, etc. What is to be considered a large quantity? Said Rabba bar bar Hana in the name of R. Johanan: Ten *coors*; and so we also learned in a Boraitha.

A disciple taught before R. Na'hman that all this was said in

case the depositor measured the grain of his barn, and the depository returned the grain also from his barn; but if he returned the grain from his house he needs not to account to him any loss at all, because it usually increases. Said R. Na'hman to him: "Does the Mishna treat of fools who give a large measure and take in return a small one? Perhaps your Boraitha teaches as follows: All this is said when the depositor has given it to him at harvest time, and it was returned to him at the same season; but if he deposited it in the harvest, and it was returned to him in the rain season, he needs not to account any loss, as it increases." Said R. Papa to Abayi: "If it is so, why should not the pitcher full of grain crack in the rain season? It happened that such a pitcher cracked. According to others, the grain which was in a closed pitcher does not increase, for lack of space."

MISHNA VI.: The loss of wine counts one-sixth—R. Jehudah, however, says one-fifth—of oil, three *lugs* of each hundred, namely, one and a half for yeast, and one and a half for the absorption of the vessel.* If, however, the oil was already purified, there is no loss for yeast, and if the vessels were old ones, then nothing is to be accounted for the vessels. R. Jehudah, however, says that even if one sells purified oil the buyer bears the loss of one and a half to each hundred *lugs*, for waste † yearly.

GEMARA: And they do not differ. The one of them treats of waxed barrels, as the custom was in his place, which do not absorb much; and the other treats when they were smeared with pitch, as the custom was in his place, and absorbed more. Some say that in some places barrels were made of such kind of clay that did not absorb much. In the place where R. Jehudah used to live, there was usually put forty-eight pitchers into one barrel, and they were sold for six *sus*. R. Jehudah, however, when he became a storekeeper, sold every six pitchers for one *sus*, so that for thirty-six pitchers he obtained six *sus*, and twelve remained for him; counting the loss of eight pitchers for absorption by the vessels, he nevertheless had for his profit four pitchers. But did not Samuel say that one must manage that his profit should not exceed a sixth of the amount? Hence a sixth is allowed? Why, then, did not R. Jehudah manage to have a sixth profit? Because of the barrels and the yeast, which, aside from the four

* Rashi explained above that all vessels at that time were of clay, and therefore a new one absorbed.

† The text uses the word "schmarim," which means literally yeast. Here, however, it refers to waste material.

lugs, remained for him. If so, then R. Jehudah profited by more than a sixth? He took this for his trouble, and for the commission which he had to give to the barrel sellers.

"If it was *purified oil*," etc. But even if there were old ones, it is impossible that they should not absorb some? Said R. Na'hman: The case was when they were waxed. Abayi, however, says, even when they were not waxed, if they were old ones they had already absorbed all they could, and nothing more from the new stuff.

R. Jehudah says, etc. Said Abayi: "In accordance with R. Jehudah's theory, one may mix yeast with the oil he is selling; and that is the reason that the buyer must accept a *lug* and a half for yeast, as the seller may say, If I would like to mix yeast with it you would have to accept; do the same even when I give it to you pure. But why should not the buyer say, If you would put yeast in it, I would sell it with the oil; but now, even if you would furnish me with the yeast separately, what should I do with it, as I cannot sell it separately? The Mishna treats of a private person who prefers clear oil.

And, according to the theory of the rabbis, one must not mix yeast with oil, and therefore one may not accept any loss for yeast, as the buyer may say, As it is not allowable for you to mix the yeast with the oil, I need not accept any loss for yeast. Said R. Papa to Abayi: It seems to be the contrary. According to the sages, he is allowed to mix yeast, and therefore the buyer need not accept any loss for it, as he may say, Because you have not mixed it, you have relinquished it for my sake. And, in accordance to R. Jehudah's theory, the mixing is not allowed, and therefore he must accept the loss of a *lug* and a half, and the seller may say, To mix any yeast with the oil by one is not permitted, and if you were not to accept any loss, where is my profit? Shall I be a business man for buying and selling without deriving any profit from it? There is a Boraitha which states that a buyer or a depository, concerning the offscouring, is equal in law. How is this to be understood? Shall we assume as the buyer does not accept the offscouring, the same is the case with the depositor? Why? The depository may say: What have I to do with your offscourings? Therefore it must be explained in the reverse. As the depositor must accept the offscouring, the same is the case with the buyer. Is that so? Have we not learned in a Boraitha, R. Johanan said that the loss of unpurified oil is to be accounted to the seller only, but not to the

buyer, because he accepts a *lug* and a half for yeast, without off-scouring? This presents no difficulty. It treats of a case when the money for the oil was paid in Tishri, and he delivered it in Nissan, with the same measure as at the time it was bought (then the buyer must accept the loss, as the oil in Nissan is usually already purified), and R. Johanan speaks of a case when it was paid and delivered in Nissan with the usual measure of the season.

MISHNA VII. : If a barrel is deposited for safe-keeping with some one without the owner assigning a separate place for it, if the depository has handled it and it broke while yet under his hand, if his act was for his own advantage he is responsible. If for the sake of the article, he is not. If, however, it broke after it was replaced, there is no responsibility at any rate. If a separate place was assigned by the owner, and the depository handled it and it broke, he is responsible for it at any rate, provided he has replaced it for the sake of the article.

GEMARA: This Mishna, which states that there is no responsibility if it broke after he replaced it, even if it was for his own advantage, is in accordance with R. Ismael, who said elsewhere that no knowledge of the owner is necessary for the return of a lost article; but if so, why then only when a separate place was not assigned to it? The same should be the case even when it was assigned? Yea! but it is to be explained thus: Not only when a place was assigned by the depositor, and the depository put it into the same, he is free; but even if no place was assigned, if only the depository returned it to the place where it was before, he is also free; but if so, how is to be understood the latter part of our Mishna in case a place was assigned by the depositor? This is in accordance with R. Aqiba, who said that the knowledge of the owner is needed. And the same interpretation of the first part is to be used here also; that is, not only if a place was not assigned, but even if it were assigned, he is nevertheless responsible. But is it right that the first part should be in accordance with R. Ismael and the latter part with R. Aqiba? Yea! as R. Johanan said: "He who will interpret to me our Mishna in accordance with one of the two above Tanaim, I will carry his clothes for him to the bath-house." R. Jacob b. Abba, however, explained it before Rabh that he took the same with the intention of robbery, and R. Nathan b. Abba, before the same, that he took it with the intention of using a part of it, (and although he has not used it as yet) it is nevertheless

considered already his property and he is responsible for it.* In which point do Jacob and Nathan differ? In the law of "stretching his hand" (Ex. xxii. 10): If using a part of it is needed, or the intention alone makes him liable, although he has not touched it as yet. According to Jacob he is not liable unless he has used some, and according to Nathan the intention only suffices. R. Shesheth opposed (both statements). "Does then the Mishna state he took it? It states he handled it only." Therefore he explained it that the handling was for the purpose of reaching pigeons, which were on a higher place, by standing upon the barrel, and he holds that borrowing an article without permission of the owner is considered robbery; hence he acquired title to it. And by such an interpretation the whole Mishna can be explained in accordance with R. Ismael, and the latter part, in case the place was assigned by the depositor, treats when the depository has replaced it not in its assigned place. R. Johanan, however, maintains that, from the expression of the Mishna, replaced is to be understood that he put it at the very same place (and therefore his above statement). It was taught: "Rabh and Levi, one of them holds that stretching his hands means that he used a part of it already, and the other one holds that the intention only suffices, and from the explanation of Rabh in a Boraitha, further on, it may be understood that Rabh is the one who holds that the intention only suffices. The Boraitha states as follows: "A shepherd, who left his flock, and in the meantime a wolf or a lion damaged it, he is free (provided it was not a neglect of duty). If, however, he placed his cane or his bag upon the animal, which was damaged by the above wild beast he is responsible; and in the discussion, why such a law? It was explained in the name of Rabh that he struck it with his cane and it ran away." Now, did he take anything away from the animal? Hence it is to be inferred that he holds that the liability of stretching his hands needs not any using or diminution of the article. But perhaps Rabh means that he struck it so hard with his cane that it becomes lean (hence it is considered a diminution), and it seems so from the expression, he struck it with his *cane*; hence Rabh holds that to the above liability using is needed, and Levi is the one who holds it needs not. Said R. Johanan in the name

* This complicated paragraph is explained by Rashi at length, but notwithstanding his interpretation it remains complicated and seems to us of no importance. We, therefore, have translated almost literally without any explanation, as every student should be able to interpret it according to his own understanding.

of R. Jose b. Nehoraï: Peculiar is the stretching of hands, which reads in regard to a bailee for hire in connection from the same expression, which reads in regard to a gratuitous bailee. But I say that it is not peculiar. (Says the Gamara :) According to R. Jose, What is the peculiarity? He maintains this expression should not be written in the case of a bailee for hire, and it should be deduced from the case of a gratuitous bailee thus: A gratuitous bailee, who is not responsible for theft and loss, is responsible for stretching of hands. A bailee for hire, who is responsible for the former also, so much the more should he be responsible for the latter act. Why then is it written separately? The peculiarity is that he is responsible, even for the intention. And R. Johanan, who said: I say it is not peculiar, bases his theory on the ground that the above *a fortiori* conclusion is to be controverted thus: A gratuitous bailee is in some respects more rigorously held in a case where he claims stolen, and must pay the double amount if thereafter it was found that it was not so, which is not the case with the bailee for hire. He, however, who does not use the objection, maintains that the principal amount without an oath (which the law prescribes to a bailee for hire) is more rigorously held than the double amount with an oath.

Rabha says: "If the expression of stretching hands would not be written in the both above-mentioned cases, it could be deduced from the case of a borrower. A borrower who has stretched his hands on the article with the permission of its owner is, nevertheless, responsible, even for an accident; both the above-mentioned cases, which treat of those who have stretched their hands without the permission of the owner, so much the more should they be responsible. Why, then, is it written, one of them, to teach that the intention of stretching hands without using suffices; and the other one, that one shall not say that the rule: it is sufficient for a deduction, to apply the law of the case from which it is deduced, in the very same manner, but not more rigorously? And as a borrower is not responsible when it happened in the presence of the owner, so also should be with both mentioned bailees, that if they have done so in the presence of the owner, they should be free (therefore the repetition, to teach that in this case it is not so).

MISHNA VIII.: If one has deposited money for safe-keeping, and the depository tied it and carried it on his shoulder, or he gave it to his son or daughter, who were not as yet of age, or he

did not lock it safely, he is responsible for carelessness. If, however, he was careful with it, as it is required of a bailee (and nevertheless an accident happened), he is free.

GEMARA : It is correct in all cases mentioned in the Mishna, that he is responsible for carelessness, but in the case that he tied it and carried it on his shoulder, why is this considered careless? What better could he do? Said Rabha in the name of R. Itshak : It is written [Deut. xiv. 25], "and bind up the money in thy hand," which means, although it is "bound up," it shall nevertheless be in his hands. R. Itshak said again : That the above cited verse intimates that one shall manage so that his money shall always be in his hands. And he said again : It is advisable for one that he shall divide his money in three parts, one of which he shall invest in real estate, one of which in business, and the third part to remain always in his hands (as it may happen that he will need cash for a profitable transaction). The same said again : Usually blessing does not occur but in things which are not before the eyes, as it is written [Deut. xxviii. 8] : "The Lord will command upon thee the blessing in thy storehouses" (which are not continually before the eye). Similar to this, it was taught by the disciples of R. Ismael. The rabbis taught : "He who is going to measure the grain in his barn, he may say, It shall be thy will, O Lord our God, Thou shalt send blessing to the labor of our hands. When he begins to measure, he may say : Blessed may be He Who sendeth blessings upon this heap. If, however, he prayed after measuring, his praying was in vain, because blessing does not occur on things which are weighed, measured, or counted, but on things which are not before the eyes, as it is written (as the above cited verse)."

Samuel said : "Nothing is considered safety with money, unless it is hidden in the ground." Said Rabha : "Samuel admits that if it was in the twilight of the eve of Sabbath, that the rabbis would not trouble him to do so. If, however, after the Sabbath departed, and he had time to hide it, and he did not do so (and in the meantime something occurred), he is responsible, unless he was a young scholar who thought, probably, I will need money for the benediction of the Habhdala. It happened that one deposited money with his neighbor, who hid it in a hut made of branches, and it was stolen. When the case came before R. Joseph, he said : "Although concerning fire, it is a wilful carelessness; concerning thieves, it is considered safe; and there is a rule that if, finally, it was an accident, although it was started in

neglect, there is no responsibility. The Halakha, however, prevails, that in such a case there is responsibility."

It happened that one deposited money with his neighbor, and when he demanded the money, the depository said: I do not know where I put it; and Rabha made him pay, declaring that such an answer is considered wilfulness. It happened also that one deposited money with his neighbor, and he gave it to his mother for safe-keeping. She put it in a *χαρταλος* (a kind of box), and it was stolen. When the case came before Rabha, he was considering how to decide: Should we make him pay, he may say, he who gives an article for safe-keeping does so with the condition that the depository may save it by means of his family. Shall we make his mother pay, she may say, my son did not inform me that the money was not his. If I were aware of it, I would have buried it; and shall we make him pay because he did not tell his mother? He may say, on the contrary, I have done so, because I thought if she would think it is my money, she would take more care of it; therefore, he decided that he shall swear that he gave it to his mother; and she shall swear that she put it in the above-named box, and it was stolen, and then both shall be free. There was a guardian of orphans, who bought an ox for the orphans and transferred it to the shepherd. The ox had no teeth and could not eat, and finally it died. And Rami b. Hama considered how to decide: Shall we make the guardian pay, he may say, I transferred it to the shepherd, what could I do more? And shall we say the shepherd shall pay, he may say, I did my duty. I have put it between the oxen, and food was given to it; how could I know that it could not eat? [Let us see: the shepherd is considered a bailee for hire of the orphans, was it not his duty to investigate? If there would be a damage to the orphans, it would indeed be decided so; but the case was, that the orphans did not suffer any damage, as they found the owner of the ox and collected the money which was paid to him for it. Who, then, is now the plaintiff? The owner of the ox, who claims that he was not informed of the case. Of what should he be informed (did he not know that his ox had no teeth and the act of selling was a fraud)? It speaks of a speculator whose business is to buy and sell oxen.] The decision of Rami b. Hama was, that the speculator should swear that he was not aware of it, and then the shepherd must pay the value of cheap meat.*

* Rashi says: I wonder where Rami's decision is taken from. The shepherd was surely not the bailee of the speculator. It seems, however, to him, that

It happened one deposited a bundle of hops with his neighbor, who owned a similar bundle of the same, and told his employee to put the hops in the beer, from his own bundle, but the employee took them from the other one. When the case came before R. Amram, he was considering how to decide this case. Shall the depository be made to pay? He may claim, I told my employee to take from my own. Then should the employee be made to pay? He may claim, my employer did not tell me not to touch the other bundle, and I thought that he only showed me that he owned hops, and it was no difference from which bundle I would take. [But what damage did the depository sustain? Even if he paid for the hops used, he has in exchange his own. Said R. Sama b. Rabha: "The case was, that the beer was spoiled by the bad hops." And R. Ashi said: "The hops were good, but mixed with thorns, and the beer was not improved as it should be." And the employer claimed the damage was caused by the bad quality of the hops, and wanted the difference of the value for not improving, and it was decided he should get it.]

MISHNA IX.: Money deposited for safe-keeping with a money-changer, if it was tied up, he must not use it, and therefore, if lost, he is not responsible. If open, he may use it, and is responsible if lost. With a private person, however, he may not use it under any circumstances, and is therefore not responsible for loss. A storekeeper is considered in this respect a private person, according to R. Meier. According to R. Jehudh, however, he is considered a money-changer.

Rami based his decision upon the Mishna II. in this chapter, where R. Jose declared that the cow must be returned to its owner, although the owner has not any business with the borrower, and so was the Halakha decided. Now, as in that case the hirer suffered nothing, as the law makes him free of an accident, nevertheless, because he has a claim against the borrower, it is decided that the owner of the cow may substitute the hirer and collect the money for his claim from the borrower. The same is the case here; for if the orphans would suffer any damage, they would surely collect it from the shepherd, who was their bailee. Now, when they did not suffer any damage, the speculator substitutes them. However, such moderation could not be made if the orphans would suffer any damage, as the orphans, who are not yet of age, could not relinquish what is due to them; but now when the speculator substitutes them, and the claim of wilful carelessness could not be made by the speculator directly, because the shepherd claims that he had done all his duty, etc. (see text); hence the moderation, he shall pay the value of cheap meat and the skin shall be returned to him. Tosphat, however, maintains in the name of R. Tam, that this decision was not a moderation at all, but a strict law, for if the speculator would be informed, he would have slaughtered the ox immediately, as he could not wait with it for the market-day and sell the meat at a low price.

GEMARA: If the depositor names the sum contained in each bundle, why then shall the money-changer not use it? (Every one knows that a money-changer needs always money for his business, and one who deposits money with him does so usually with the intention that it shall be used.) Said R. Assi in the name of R. Jehudh: "Read in the Mishna that it was both tied up and sealed." R. Mari questioned: "How is the law, when it was tied up with an unusual knot? (Should it be considered as a seal or not?)" This question remains undecided.

"*If open, he may use it,*" etc. Said R. Huna: "Even if it was robbed." [But did not the Mishna state *for loss*? as Rabha explained above, page , that loss means such an accident as, *e.g.*, his ship was lost at sea.] R. Na'hman, however, maintains that in such case he is not responsible. Said Rabha to him: "According to your theory we see that the money-changer is not considered a borrower (who is responsible even for an accident); then must he not be considered also as a bailee for hire (hence he should not be responsible for theft)?" And he answered: "I agree with you, that because he has a right to use the money for business, to derive benefit from it, this makes him a bailee for hire." R. Na'hman objected to R. Huna's statement from the following Tosephta: "'Money deposited with a money-changer, if tied up, must not be used, and in case the money was from the sanctuary and the money-changer used it, the transgression is not imputed to the treasurer of the sanctuary. If, however, open, it may be used, and if the money-changer used it, the transgression falls upon the above-named treasurer.' Now, according to your theory that the money-changer is responsible, even if it was robbed by force (consequently, with the act of depositing, it goes from under the control of the treasurer, and is from now on under the control of the money-changer, hence the transgression was already done by depositing). Why then does the Tosephta state that only when the money-changer used it, the transgression falls upon the treasurer?" And R. Huna answered: "Indeed, the same is the case even when the money-changer has not used it, and the expression used in the latter part is not to be taken in particularity, but it is mentioned because of the same expression in the first part?"

MISHNA X: A depository who stretches his hand for the bailment, the school of Shamaï makes him liable from the time he touched it for increase and decrease, so that if, thereafter, it becomes lower in price the depository must suffer; and the same if it increases, he must transfer the increase to the owner. The

school of Hillel makes him liable from the time he used it. R. Aqiba, however, maintains that he must pay the value at the time he is summoned.

GEMARA: Rabba said: "If one robbed a barrel of wine, the value of which was one zuz at that time, and thereafter it increases to four zuz; if he breaks it or drank its contents, he must pay four zuz. If, however, it breaks accidentally, he must pay one zuz only. Why so? Because, if it would still be in existence, he would be obliged to return it; consequently, the guilt came with the drinking or breaking, when the value was already increased; and there is a Mishna that all robberies must be counted from the time they were perpetrated; but if it was broken without his fault, so that after its increase he had done nothing, he pays one zuz only, as his liability begins from the time he took it, and then it was worth only one zuz. An objection was raised from our Mishna: The school of Hillel makes him liable, etc. What is meant by the expression, *from the time he used it*? Shall we assume that by the word *used* is meant that he had given it away, and at that time the value of it was decreased? Is there one Tana in the whole college that holds so? Is it not stated in the Mishna that all robberies must be paid at the time they were perpetrated, and if increased at the time, then Beth Hillel's decision would be the same as Beth Shamai? Hence the expression, "at the time it was used," means when it was taken from the owner. And the above schools differ in case of an increase. According to Beth Shamai, if it increased at the time he had given it away, he must pay the increase also; and according to Beth Hillel, it must be appraised only at the time it was robbed; and if so, then Rabba's decision is in accordance with that of Beth Shamai? Rabba may say that the schools do not differ with an increase, but with decrease. And the point of difference is this: The Beth Shamai holds that the liability comes with the stretching out of his hands, although he has not used it as yet; consequently, the decrease occurs while under his control. And the Beth Hillel holds that using is necessary; consequently, it is considered under the control of the owner until the depository makes use of it, and if a decrease occurs while it was not as yet used by him, it is counted under the control of the owner. Then Rabba's decision above (page 101), that stretching out the hands needs not the *using*, would be in accordance with the Beth Shamai; therefore this point of their difference must be explained thus: The Beth Shamai holds that the increase of a

robbed article belongs to the owner, and according to Beth Hillel, it belongs to the robber. (And the Mishna treats of a case, *e.g.*, a gravid cow or a sheep unshorn, according to Beth Shamaï, it belongs to the owner; and according to Beth Hillel, it belongs to the depository.) R. Meier and R. Jehudah differ in the same case (Baba Kama, page), and it seems to be so, as the Mishna states that the school of Shamaï holds that he must suffer increase and decrease; and the school of Hillel, at the time it was used. (From the expression increase and decrease, and not dearer and cheaper, it is to be inferred that it treats of a case similar to the above-mentioned explanation—Rashi.) Infer from this that so it is.

R. Aqiba, however, maintains, etc. Said R. Jehudah in the name of Samuel: The Halakha prevails according to R. Aqiba. He, however, agrees that in case there were witnesses at the time of robbery it must be paid. Why so? Because it is written [Lev. v. 24]: "To whom it appertaineth shall he give it, on the day when he confesseth his trespass." And as there were witnesses, the trespass is counted from the time it was done. Said R. Oshia to R. Jehudah: "Rabbi, thou sayest so! So said R. Assi in the name of R. Johanan: R. Aqiba insists in his decree even if there are witnesses, and his reason is taken from the same verse cited, as only the court made him know of his trespass." Said R. Zeira to R. Abba b. Papa: "When you will ascend to Palestine, make thy way around the steps of Zur and visit R. Jacob b. I'di and question him whether he heard from R. Johanan about R. Aqiba's decision above, and if so, the Halakha prevails." (He did so) and the answer was: "So said R. Johanan, the Halakha prevails in accordance with R. Aqiba always."

What is meant always? Said R. Ashi: "It means even when there were witnesses. It can also be said that it means the Halakha prevails in accordance with him, even when the depository returned it to its former place and then it broke: against R. Ismael's theory that the knowledge of the owner is not necessary (*i.e.*, that R. Aqiba makes him responsible if it breaks, while the owner was not as yet aware that the article was returned), and so the Halakha prevails. Rabha, however, said: "The Halakha prevails in accordance with Beth Hillel."

MISHNA *XI.*: If one intends to use a bailment deposited in his control and said so in presence of witnesses, the liability follows immediately; so according to Beth Shamaï. Beth Hillel, however, maintains he is not liable unless he has acted so, as it

is written [Ex. xxii. 10]: "That he has not stretched out his hands against his neighbor's goods." If he has bent the (deposited) barrel, and took of it a quarter of a *lug*, and in the meantime it broke by accident, he must pay only for the quarter of a *lug*. If, however, he picked up the barrel and took the above-mentioned measure, and in the meantime it broke, he must pay for the whole barrel.

GEMARA: Whence is all this deduced? From the following, as the rabbis taught: "It is written [ibid., ibid. 8]: 'For all manner of trespass.'" From this the Beth Shammai deduces that he is liable for the intent as well as for the act itself. The Beth Hillel, however, maintains that there is no liability unless he stretches out his hands, as the above-cited verse (10) reads. Said the Beth Shammai to the Beth Hillel: Is it not written, "for all trespasses"? And they answered: But is it not written, "if he had not stretched out his hands"? The verse, however, cited by you is to be explained thus: Let one say that he is liable only when he himself committed this act, but not if he did so through his slave or messenger; therefore it is written, of all trespasses.

If one bent the barrel, etc. Said Rabha: "It is so in case it breaks. If, however, the wine became sour, he must pay for the whole. Why so? Because his act causes the damage (for if it were full, no air could enter to spoil it)."

If, however, he picks it up, etc. Said Samuel: "The expression, and he took of it, is not to be taken literally, for it means with the intention of taking out, and he is liable even if it broke before he did take." Shall we assume that Samuel holds that "using" is not needed for the liability of stretching hands? It may be said this case is different, as one-quarter of a *lug* may cause the spoiling of the whole wine, as explained above.

R. Ashi questioned: "If one picked up a deposited packet with the intention of taking out of it one *dinar*, what is the law? Shall we assume that wine only is saved when it is full, but money can be saved at any rate, or a full packet of money is safer than one which is not filled up (as from a packet full of money a coin cannot easily drop)? This question remains unsettled.

CHAPTER IV.

LAWS RELATING TO TITLE, REAL AND PERSONAL ; FRAUD, WHAT CONSTITUTES FRAUD AND THE CIRCUMSTANCES SURROUNDING FRAUDULENT TRANSACTIONS, ETC.

MISHNA I.: If one bought gold and silver coins together and made a drawing on the gold ones, title is also given to the silver ones, but not *vice versa*. The same is the case with copper and silver coins: the drawing on copper ones gives title to the silver, but not *vice versa*. If one has drawn coins which are out of circulation, having bought them together with good money, the sale is valid for both; if, however, he took possession of the good money, which was bought together with those out of circulation, the latter are not considered his unless he takes possession of them also. The same is the case if one buy uncoined with coined money, to acquire title to both he must take possession of the uncoined. If, however, he did so with the coined money, the uncoined is not considered bought. Movable articles give title by drawing them, also for the coins bought with them, which is not the case with drawing the coins only. All movable articles give title by drawing one of them. How so? If one made a legal drawing of the article, although he has not paid the money as yet, he cannot rescind. If, however, he paid the money, and did not make a drawing of the article, he may rescind. But it was said that He who has punished the generation of the flood and the generation of the scattered, whose tongues were confused (Gen. xi. 7), He will punish him who does not keep his promise. R. Simeon, however, maintains that he who has the money in his hand has the preference (even in the former case).

GEMARA: Rabbi taught his son R. Simeon: "Gold coins give title to the silver." And the son rejoined: "Rabbi, in your youth you taught us that the silver ones give title to the gold ones, and now in your old age you teach that only the gold ones give title, but not the silver ones." [The Gemara questioned what was the reason then? In his youth he taught that because gold is more valued it is considered a circulating coin, and silver, which is not so valued, is considered an article of trade, and,

therefore, if he took possession of the article, title to the gold one is acquired; and in his old age he came to the conclusion that because silver is a circulating coin used all over the world, it is considered a coin, and gold, which is not so much in circulation, is considered an article of trade: so that by drawing it the silver coins are bought.]

Said R. Ashi: "It seems to me that his opinion while in his youth is more correct, as our Mishna states that copper gives title to silver; now if you are of the opinion that silver in comparison with gold is considered an article of trade, it is correct when it states that copper gives title to the silver, as it is considered an article of trade only in comparison with gold, but in comparison with copper it is considered a circulating coin. But if you say that silver is considered a circulating coin, even in comparison with gold, is it then necessary to teach that it be considered so in comparison with copper? Is this not self-evident? (Hence his opinion while in his youth is more correct.)" The Gemara, however, maintains that this statement cannot be considered an evidence, as the teaching that copper gives title to silver was needed in case where silver is considered a circulating coin, even in comparison with gold, because it may be said that in the places where copper coins are used they are more in circulation than silver; hence they cannot be considered articles of trade in comparison with silver; therefore he comes to teach us that although in some places it is as stated above, in the majority, however, silver is more in circulation than copper, and is considered a circulating coin everywhere. And R. Hyya is also of the opinion that silver is always considered a circulating coin, and this is to be understood from the following: "It happened that Rabh borrowed dinars from the daughter of R. Hyya; thereafter the dinars increased in value, and when Rabh came to question R. Hyya, he was told to pay with the best dinars, and this decision shows that he held that silver is the right circulating coin; for if it would be considered an article of trade in comparison with gold, it should be considered as if one had borrowed a *saah* of fruit when it was cheap, and returned the same measure when it was dearer, which is not allowed because it appears usurious." (Says the Gemara:) This also cannot be considered as a real support for the above statement, as Rabh at the time he borrowed the dinars from R. Hyya's daughter possessed his own dinars, and in such a case it is analogous to the case stated in a Boraitha: "If one says, Lend me a *saah* of grain, I shall return it to you when

my son will arrive home, as he has the key to my granary, he may return to the lender the same measure, even if it became dearer, because the lender acquired title to it at the same time that he delivered to him the required articles."

Rabha said: "The Tana of the following Mishna holds that gold is considered the right circulating coin. The coin *parutha* mentioned in the Talmud is one-eighth of an Italian *Issar*. [To what purpose is it stated? Concerning the law of marriage, that less than a *parutha* is not considered.] An *Issar* is one twenty-fourth of a silver dinar. [To what purpose is this? Concerning general transactions, that a silver dinar must be of this value, as it is stated further on. And a silver dinar is one-twenty-fifth of a gold one. This is taught concerning the law of redeeming the first-born son [Ex. xiii. 13].]"

Now, if the gold dinar is considered a coin which is always of the same value, it is correct to say that the Tana named this coin for the purpose of redeeming, but if it would be considered an article of trade which increased and decreased in price, would the Tana then name it for this purpose? Is it not a fact that at the time of increasing the priest would give him change of it, and at the time of decreasing the father would have to add the difference? Hence it is inferred from this that it is considered a standard coin.

It was taught: Rabh and Levi: One holds that the law of exchange applies to a coin also, and the other holds that it does not (*i.e.*, although it is said above by drawing the coin, the article is not considered sold unless by drawing the article itself, this is only when it was done in the way of buying and selling, but if it was done in the way of exchange, *e.g.*, if one says: I have an article of so and so, and would like to exchange it for this coin, as soon as he takes possession of the coin, title is acquired to the article by the other party). Said R. Papa: "The reason given by him who holds that a coin cannot be exchanged is that the face of the coin is changeable by the government, and to acquire title by Sudarium, a standard coin is needed. An objection was raised from our Mishna, gold coins give title to the silver one. Is it not to be assumed that it means in exchange? Hence we see that the law of exchange applies to a coin also. Nay, it means in the way of buying and selling for money. If so, it should be stated that one who has drawn the gold one is liable for the silver one? Why the expression, gives title? Read, then, he is liable, etc. And it seems that so is the correct explanation from the latter part, which states that silver coins do not give title to the gold

ones; and this is correct only when it treats of selling for money, as it was said that gold is considered an article of trade, and silver a circulating coin, and the drawing of a coin does not give title to the article; but if you will say that it treats of exchange, then both articles should give title, each to the other. And also from the following Boraitha: "Silver does not give title to gold; also, if one sold twenty-five silver dinars for one gold dinar, although he made a drawing on the silver, the gold is not considered his, unless he draws the gold." And this also is correct only by selling; but if an exchange, title ought to be given. But if it treats for money, how is to be understood the first part of this Boraitha? Gold gives title to silver; also, if one has sold a golden dinar for twenty-five silver ones, the silver belongs to the seller anywhere it may be found, provided the buyer made a drawing of the gold. This would be correct if it treated of exchange, but when it speaks of an ordinary sale, it should state that the *buyer is liable* for it instead of "the silver belongs, etc." Said R. Ashi: "It treats of a sale for money, and the expression, wherever it is to be found, means the place where the coin was made; *e.g.*, if he promised to furnish new coins, he cannot furnish the old ones, although they are more valuable, because the buyer may say, I need them for safe-keeping, and new ones will preserve their surface better than old ones." R. Papa said again: "Even according to him who holds that the law of exchange does not apply to a coin, means that with the coin itself exchange cannot be made, but nevertheless title can be acquired to it by drawing the exchanging article, similar to articles of fruit, in accordance with R. Na'hman's theory, which is, that although exchange cannot be done with themselves, title, nevertheless, can be acquired to it by drawing the exchanging article, and the same is the case with a coin also. This statement was objected to from a Mishna (Maassar Sheni, IV., 5), and the conclusion was that the law of exchange does not apply to a coin under any circumstance; and R. Papa himself retracted from his statement (cf. Baba Kama, p. 236). And so also said Ula, R. Assi, and Rabba b. b. Hana in the name of R. Johanan, that the law of exchange does not apply to a coin. R. Abba objected to Ula's statement from the following: "He whose drivers and employees were summoning him for their wages, and he said to a money-changer, Give me change for a dinar, and I will give you from the money I have at home a good dinar and a *tressith*; if he really possesses money at home, this may be done, but if he has not, it is prohibited, as it appears usurious. Now, if it is borne in mind that there is an exchange with a coin,

then this act is a loan only, and should be prohibited?" Ula was silent. Said R. Abba to him: "Perhaps the money of which the Boraitha speaks was uncoined, so that they are considered articles of trade, which may be acquired by exchange." Said Ula to him: "You are right, and this is to be inferred from the expression, a *good dinar*, and not *a dinar* and a *tressith*, which means, from uncoined money I have at home I will give you the *value* of a *dinar* and a *tressith*." R. Ashi, however, said: The Boraitha treats of coined money, and, nevertheless, it does not contradict the above statement, for as soon as he has the money home, it is to be like the case where one said, Lend me until my son will come with the keys, stated above.

"*All movable articles*," etc. Said Resh Lakish: "Even a purse filled with money may be acquired with another one equal to it." And R. Ah'ha explained his statement, that he speaks of dinars in one purse which were abolished by the ruler, and in the other purse, which were by the country; and both cases are needed, for if he would speak of those which were abolished by the ruler, one might say, because they are useless anywhere, they may be exchanged; but that of the country, which can be used in another country, they are still considered coins in circulation, and the law of exchange does not apply. And if he would speak of the latter, one might say, because they are useless at any rate in this country, they are not considered any more as circulating coins; but if prohibited by the ruler, but privately still circulated, they are yet considered coins; therefore both statements.

Rabba in the name of R. Huna said: "If one were holding some coins in his hand and said: Sell me your articles for the money I have in my hand, and the other agrees, and accepts the money, without asking the amount of it, the buyer acquires title to the article; and if, however, the article was in value a sixth less than the amount, the sale is null and void, because it is fraudulent. The title is acquired to the article because the seller was not particular as to the money; it is considered as an exchange, and the law of fraud applies here, because of the expression, 'sell me,' which means it shall be the value of the amount I hold in my hand." R. Abba in the name of the same authority, however, said: "If one said, Sell to me for the money I have in my hand, no cheating can be claimed."

It is certain that when the seller is not particular as to the amount, the buyer acquires title to the article, even before he drew it, as it is considered an exchange, in which the drawing of

one article suffices for the others also. But what is the law if it is an exchange, and they are particular as to the values—is the drawing needed in both articles or does one of them suffice? Said R. Ada b. Ah'ba: Come and hear: If one was holding his cow in the market, and his neighbor questioned him, Why are you holding the cow here? He answered, I need an ass. Replied the other, I have an ass, and can furnish you with it, but would like to know the price of your cow. The price is so-and-so. And what is the price of your ass? So-and-so; and they agree. Then the owner of the ass made a legal drawing of the cow, but the ass died before the owner of the cow made the drawing; the title to the cow is not acquired by the owner of the ass; hence we see that, although in a case of exchange, as soon they are particular as to the value, title is not acquired unless the drawing of both articles occurs. Said Rabha: "Does then the law of barter apply to fools who are not particular as to the value? All exchanges are very particular, and nevertheless title is acquired by drawing of one of the exchanged articles, and the above Boraitha treats of a case where the exchange was made of an ass for a cow and a sheep, and the owner of the ass made a drawing on the cow only, but not of the sheep, which cannot be considered a legal drawing."

The Master said: "If one said: Sell me for this amount, title is acquired, and nevertheless the law of fraud applies. Shall we assume that R. Huna holds that coins may be exchanged? Nay! R. Huna holds with R. Johanan, who says that, biblically, money gives title, but for what purpose was it so stated that drawing gives title? This was enacted for the purpose that one might say, Your property was destroyed by fire in my attic." (*I.e.*, that R. Huna holds that there can be no exchange with coins, and his above statement is made on the basis that with the money he acquired title, by using the word "sell me," and there is not any need of drawing, because the drawing was enacted by the sages to prevent damage to buyers, who pay the money without taking possession of the article; and if a fire may happen while it is yet in the house of the seller, he will not care to save it, as it does not belong to him any more, therefore the sages enacted that the seller is responsible for the property unless the buyer has made a drawing of it.) And the enactment was made only for a usual selling and buying, but for such a sale as R. Huna stated, which is unusual, this enactment does not apply. Said Mar Huna, the son of R. Na'hman, to R. Ashi: "You taught so;

we, however, have taught plainly, and so said R. Huna, that no exchange is to be made with a coin. How should an exchange of coins be confirmed? Rabh says, with the property belonging to the buyer,* because it is more pleasing to the buyer that the seller shall receive a present from him † for the purpose that he shall decide to transfer the property to him with a good will; and Levi said, with the garment of the seller, as will be explained further on." Said R. Huna of Daskarta to Rabha: According to Levi's theory, that it must be done with the garment of the seller, for he may transfer previously to him real estate with this garment, which shows that the title to real estate can be acquired with personal property, and there is a Mishna which states the contrary: Personal property can be transferred with real estate. And he answered: If Levi would be here, he would strike your face with fiery lashes. Do you think that the garment gives title? For the pleasure he feels on being presented with the article, he concludes to transfer the goods to the other.

The former Amoraim are in accordance with the Tanaim of the following Boraitha (who differ also on this point): It is written [Ruth, iv. 7]: "Now this was formerly the custom in Israel at a redeeming and at an exchanging, to confirm anything, that a man pulled off his shoe and gave it to the other, and this was the manner of testimony in Israel." "Redeeming" means selling, and so it reads [Lev. xxvii. 20]: "It shall not be redeemed any more." "An exchanging" means taken literal, as it reads [ibid., ibid.]: "He shall not alter it nor change it." "To confirm, . . . pulled off his shoe and gave it to the other." Who has given to whom? Boaz gave to the redeemer. R. Jehudah, however, says: "On the contrary, the redeemer gave to Boaz." There is a Boraitha: "This ceremony can be done with any article, even if its value is less than a parutha." Said R. Na'hman: "It must be a utensil, but not fruit." R. Shetheth, however, maintains that this may be done with fruit also. What is the reason for R. Na'hman's statement? Because in the Scripture one reads "shoe," which is a utensil. R. Shetheth, however, bases his opinion upon "confirming anything." And

* It was already explained above that in ancient times the custom of buying and selling was that either the buyer or the seller would take a garment in his hand, and the other party would grasp the size of a span of it with his hand, which is known under the expression *Sudarium*—hence the question in the text.

† The ceremony signifies that the holder of the garment gives it as a present to the other.

what would R. Na'hman say to this? To confirm anything, which was done by the ceremony with the shoe. But according to R. Shetheth, what does the word "shoe" signify? As the shoe is a complete article, so all other articles with which this ceremony is to be performed must be completed, to exclude fruit, which is not fit for a Sudarium.

R. Shetheth b. R. Idi said: According to whom do we write in our legal papers, 'with an utensil which is fit to confirm with'? In accordance with the opponents of R. Shetheth, who said that the ceremony may be done with fruit also, and the opponents of Samuel, who said that a vessel made of *maroka* (baked ordure) may be used for this purpose, and also to deny Levi's theory, which is "with the property of the seller"; we say to confirm "with," but not to give title with it.* R. Papa, however, said: "The expression, with a vessel, means to exclude a coin, which is fit." Said R. Zbid, and according to others R. Ashi: "To exclude such vessels of which no benefit must be derived (as, *e.g.*, devoted to idolatry), there is no necessity of excluding *maroka*, which all agree it is not fit for that purpose."

"*Uncoined money*," etc. How is this to be understood? Said R. Johanan: "*I.e.*, a coin which is counterfeit." And he is in accordance with his theory elsewhere, that R. Dossa and R. Ismael said one and the same thing. R. Dossa in a Mishna (*Idioth*, I., 2): Second tithe must not be exchanged for a counterfeit coin. And R. Ismael of the following Boraitha: It is written [Deut. xix. 25]: "Then shalt thou turn it into money, and bind up the money in thy hand"; to include all the money which can be bound in the hand, so is the dictum of R. Ismael. R. Aqiba said that it includes all coins which have an imprint of the ruler's face on them.

"*How so, if one made a legal*," etc. Said R. Johanan: "Biblically, money paid gives title; why, then, was it said that drawing is needed? For fear that a fire may occur in the house of the seller, where the bought article is placed; and if it is still considered under his control he will trouble himself to save it, but if it would be considered under the control of the buyer he will not care to save it. Resh Lakish, however, said that the drawing is prescribed by the Scripture, viz.: It is written [Lev. xxv. 14]: "And if thou sell aught unto thy neighbor, or buy aught

* As it is explained above, the buyer makes a present of it to the seller, etc., which cannot apply to the seller.

of thy neighbor's *hand*," signifies a thing which goes from hand to hand. R. Johanan, however, says that "hand" excludes real estate, that the law of fraud does not apply to it. Resh Lakish, however, maintains that if it would be as R. Johanan said, the Scriptures would read in the case of selling only. Why is then the case of selling repeated? To verify my statement. An objection was raised to Resh Lakish's statement from our Mishna: "R. Simeon, however, said that he who has the money in his hand has the preference," which means that the seller may retract, but not the buyer; and this is correct only when money paid gives title biblically, therefore the preference is given to the seller that he may retract, in case the article will become dearer for his purpose he should save it from an accident, thinking it is still considered mine, as I may retract and probably the price will be increased; but not the buyer, as the title is acquired with paying the money. But if the money does not give title biblically, why should not the buyer also have the right to retract? Resh Lakish may say, I have nothing to do with R. Simeon's theory, and my explanation is in accord with the rabbis' theory. There is, however, an objection from the latter part. But it was said: He who punished, etc., which would be correct only when money gives title; but if it does not, why should he be punished? Because he retracts his words. Is that so? Have we not learned in a Boraitha: R. Simeon said, although it was said that a garment gives title to a gold dinar, and not *vice versa*, so only is the strict Halakha; but in addition to it, however, it was said that He who took revenge on the generation of the flood, . . . and the people of Sodom and Gomorrah, and on the Egyptians in the sea, He will take revenge on him who retracts his words. And he who is doing business with words only (without money), to him title is not given; however, the spirit of the sages does not please him, and Rabha adds that this is the only punishment for such people, hence we see that word retractors do not stand under the punishments stated above? Yea! They are not under punishment when there were words only, but if there were words with money they are. Said Rabha: "The Scripture and a Boraitha support Resh Lakish. The Scripture, as it is written [Lev. v. 21]: "If he, namely, lie unto his neighbor in that which was delivered to him to keep, or in a loan, or in a thing taken away by violence, or if he had withheld the wages of his neighbor." "A loan"—said R. Hisda, *i.e.*, that the borrower has pledged an article for

his loan (which is then equal to a deposit). "Withheld the wages"—said R. Hisda: This is also in case the employer has separated the amount due to the employee, or the value of it, and told him, from this you will collect your wages. Now, concerning repentance the Scripture reads [*ibid.*, *ibid.* 23]: "That he shall restore what he had taken violently away, or the wages which he hath withheld, or that which was delivered to him to keep." But a loan is not mentioned. Is it not because there was not a drawing on the article pledged (which was still in the hands of the borrower), and therefore he had not yet acquired title? Said R. Papa to Rabha: "Perhaps it is not repeated because wages is repeated, and this is to be deduced from it as the case is similar?" Answered Rabha: "It treats of a case when the employer already took the amount which was assigned to him and thereafter deposited it again." But is it not the same as a deposit? It tells us of two kinds of deposits. If so, should the Scripture repeat also a loan, and should it be explained similarly that the pledge was returned and again assigned?

If it would be so, then it would be no objection and no support; but as the Scripture did not repeat it, it may be considered a support. But is it indeed not repeated? Have we not learned in a Boraitha that R. Simeon said: "Whence do we know that the verse quoted applies to all that was mentioned in the previous verse? Therefore it is written [*ibid.*, *ibid.*, 24]: 'Or any one thing about which he may have sworn falsely.'" And R. Na'hman in the name of Rabba b. Abuhu, quoting Rabh, said that it intends to add that a loan shall also be returned? It may be, but nevertheless the Scripture did not repeat it plainly, and the Boraitha is as follows: If one has given a coin belonging to the sanctuary unintentionally to a bath-house keeper (for using the bath), he has committed a transgression, although he did not use it as yet. And Rabh explained the Boraitha, that the expression bath-house keeper signifies that only in a similar case, where the giver of the coin has nothing to receive in exchange; but in case he has, he committed no transgression, unless a drawing was made on the receiving article. And so also is R. Na'hman's opinion, that money gives title biblically. And Levi searched in the Boraithas which he compiled himself, and found one which stated that if one gave a coin belonging to the sanctuary to a wholesale dealer as a deposit for goods which he should take later, a transgression is committed (hence we see that money gives title without any drawing). But then the Boraitha contradicts Resh Lakish's above

statement? He may say that this Boraitha is in accordance with R. Simeon of our Mishna.

"But it was said that He who had punished," etc. It was taught: According to Abayi, if he retracts, he ought to be notified that he will be punished by Heaven, and according to Rabha the Mishna means he shall be cursed. He who had punished, etc., shall punish you. Said Rabha: "I base my statement upon the following act. R. Hyya b. Joseph accepted money as a deposit for salt to be delivered afterwards. In the meantime the price of it went up, and he questioned R. Johanan what he had to do, and was told that he must deliver the salt, otherwise he must take the punishment stated in the Mishna. Now, if the Mishna means that he should be notified only, is then R. Hyya b. Joseph among those who must be notified (was he not aware of it)? But even according as you say, that he was to be cursed, is it possible that R. Hyya b. Joseph would take for himself a curse from the rabbis? The case with him was thus: He thought that he had to deliver to him the salt according to the sum of the deposit, but not for the whole amount of the sale, and was told by R. Johanan that with the deposit they had acquired title for the whole amount bought. It was taught: A deposit, according to Rabh, gives title only for the sum it contains; and according to R. Johanan, it gives title for the whole article or articles he had bought. An objection was raised: If one has given a deposit to his neighbor, with the condition that if he should retract, the deposit shall be relinquished; and the other said to him, in case I will retract, I shall double the amount of the deposit. These conditions are to be followed, so is the decree of R. Jose. [And R. Jose is in accordance with his theory elsewhere, that the presumption is that it is a good sale.] R. Jehudah, however, maintains that it is sufficient that he should deliver to him the value of his deposit. Said R. Simeon b. Gamaliel: "This is in case he gave him the money as a deposit, but if it was given to him as a part of the payment, as, *e.g.*, if one sold a house or a field for a thousand zuz, and he paid five hundred zuz as a part of it, title to the article sold is acquired, and he must pay him the balance even after a lapse of many years." Is it not to be assumed that the same is the case with movable property, that the deposit gives title to all the movable property he has bought (so if one of them has retracted, he must accept the above curse "of him who had punished," etc.)? Nay! To movable articles title is acquired only for the sum the

deposit contains, and the difference between them and real estate is, that with the latter title is acquired by money only; the deposit gives title to the whole of it; but to movable articles, with which drawing is required, and even if he would pay for the whole, without any drawing, the possessor of the money has the right to retract (as said above), but he must take the curse in question. Hence title is acquired with the condition that the curse will be borne by him. Then this curse can apply only to the article in value as much as the deposit contains, but not for the amount it was bought (*i.e.*, that if he had delivered it to him for the amount of the deposit, the above said punishment does not apply).

R. Kahana had accepted money for flax which he was to deliver thereafter. In the meantime flax became dearer, and he questioned Rabh what to do, and was told, deliver to them for the sum you have in your hand, as the balance was bought relying on words only, for which a loss of confidence is not to be considered, as it was taught: "'Words,' Rabh said, 'if they are not kept, loss of confidence is not to be considered.' And R. Johanan says it may." An objection was raised from the following: R. Jose b. Jehudah said: Why is repeated [Lev. xxi. 36] "just *hin*," is this not included in the word "just ephah," *ibid.*, *ibid.*, to instruct you that your Yea (which is the literal translation of *hin*) shall be just, and your Nay shall be just (hence we see that words must be kept)? Said Abayi: "The cited verse signifies one shall not talk with his mouth differently from what he thinks in his heart." (An objection was raised from the Boraitha, "R. Simeon says," etc., p. 118, and the answer was that on this point Tanaim differ.)

But did R. Johanan indeed say so? Did not Rabba b. b. Hanna say in his name that if one said to his neighbor, I will make you a present, he may retract thereafter. Said R. Papa: "R. Johanan agrees that if one promises to make a present of a small amount, no retraction can take place, as the other party relies upon it. It happened that one gave money for poppy, meanwhile the poppy increased in price, and the seller retracted, and told him, I have no poppy, take your money back; and he did not. Meanwhile the money was stolen, and the case came before Rabha. He said: "Because he was told to take his money back, the seller is not responsible, not only as a bailee for hire, but he cannot even be considered a gratuitous bailee." Said the rabbis to Rabha: "Must not the retractor at least take upon

himself the above curse as his punishment?" And he said: "Yea; if he will not give the poppy, he must bear this punishment." Said R. Papi: "I was told by Rabbina that the case was not so, as he was told by one of the rabbis, who was named R. Tabuth, and according to others Samuel b. Zutra was his name, and he was such kind of a man that he would not change his word, even if all goods of the world were to be delivered to him, and he told me: The above case of poppy happened to me. On one Friday I was sitting in my house, when a man came and questioned me whether I have poppy to sell, and I said no; said the man to me, let then this money I have be deposited with you, as it is nearly twilight; and I said my house is yours, put it wherever you like; he did so, and finally the money was stolen, and when he came to complain before Rabha, he was told that by my words, "my house is yours," I did not take any responsibility even as a gratuitous bailee. And when he was asked, did not the rabbis say to Rabha that this man should take the curse of punishment, etc.? he rejoined: This never occurred.

"*R. Simeon said,*" etc. We have learned in a Boraitha (in addition to our Mishna), R. Simeon said: "This is in case both the article and the money were in the hands of the seller; but when the money was in the hands of the seller and the article in possession of the buyer, he cannot retract, because he already received the value for the money." Is that not self-evident? Said Rabha: "The case was that the attic of the buyer was hired by the seller, and the article was placed there. In such a case no drawing is needed, as the enactment of drawing was for the purpose that the seller shall trouble himself in case of a fire to save it, which does not apply in this case, as the article was under the control of the buyer, and if a sudden fire would happen the buyer would do all things possible to save it." It happened that one paid for an ass, and before he got hold of it he learned that this ass would be taken away by Parsek the *rufuli*. He demanded the return of his money, claiming he had no need for the ass any more. The case came before R. Hisda, and he decided as it was enacted that the seller may retract, so long as the buyer did not make a drawing of the bought article, so it was enacted that the buyer can also retract, so long as he has made no drawing on it.

MISHNA II.: Cheating, which according to law makes the sale null and void, is in case where the sum of which he was cheated counts four silver dinars from the amount of twenty-four silver dinars, which makes a *salah*; i.e., a sixth of the whole

amount. Until what time may the retraction take place? Up to the time that the buyer can show his article to a merchant or his relatives. R. Tarphon decided in the city of Luda that to avoid a fraudulent sale of eight silver dinars from twenty-four, *i.e.*, a third of the whole amount; and the merchants of Luda were pleased with this decision. When, however, they heard his further decision, that the retraction may take place during the whole day, they requested R. Tarphon that he should leave them with the old decision of the sages, and so they returned to the decision of the sages.

GEMARA: It was taught: Rabh said: "The Mishna means the sixth of the correct price of the article." Samuel says: "It means also a sixth of the amount" (the illustration further on). (Says the Gemara:) If one has sold an article of six dinars for five, or for seven, both agree that the price is to be considered; and in both cases there is a cheating of a sixth. If, however, he sold an article of five dinars for six, or seven for six, according to Samuel, who said that the sum of the money must also be taken in consideration, it is considered cheating, as the price was six, and there was cheating in one dinar. According to Rabh, however, who says that the correct price of the article must be considered, if he took six for five, then the cheating was of a fifth, and the sale is void; and if seven for six, then the cheating on the part of the seller was less than a sixth, the sale is valid, and the dinar is considered relinquished. The reason of Samuel's statement is that the sale is considered void only when there is more than a sixth both in the price of the article and in the money paid; and the same is the case with relinquishing, that there is less than a sixth of both; but if there is a sixth part of one of the two, it is considered cheating, and the money which was paid in excess, or less, must be returned by the parties.

There is a Boraitha which supports Samuel, as follows: "He who was cheated has the preference. How so? If one sold an article which was worth five for six, who was cheated? The buyer; he had the preference of choosing; if he likes he may say, return to me my money, or, if he wishes, he may say, give me the dinar of which I was defrauded." And if one has sold the value of six dinars for five, who was cheated? The seller; then he has the preference; he may choose to demand the return of the article, or he shall give him one more dinar, of which he was defrauded. (Hence it is considered a cheating either in price or in the money.) The schoolmen propounded a question: "If

there was a cheating less than a sixth, which, according to the rabbis is considered a relinquishment, does it take place immediately, or does the buyer have time to show it to a merchant or his relatives; and if you would say that so it is, what then should be the difference between a sixth or less? Shall we assume that if a sixth he has the preference, if he likes to make void the sale, or to demand the money he was defrauded of; and if it was less than a sixth the sale is valid, but the sum obtained by cheating must be returned?" Come and hear the last words stated in our Mishna: "and so they returned to the decision of the sages." (That is, that time for showing it to a merchant, etc., was always granted.)

Said Rabha: "The Halakha prevails as follows: If cheating was less than for a sixth of its value, the sale is valid; more than a sixth, the sale is void; and if, however, an exact sixth, the sale is valid, but the amount must be returned to him who was cheated, and in all such cases the time for showing to merchants, etc., is granted." There is a Boraitha supporting Rabha, viz.: "Cheating in less than a sixth, the sale is valid; more than a sixth, the sale is void; an exact sixth, the sale is valid, but the cheating must be returned." So is the decree of R. Nathan. R. Jehudah the prince, however, maintains: "The seller always has the preference; if he likes he may require the price which was agreed, or that the amount of which he was cheated should be returned; in both cases, however, time for showing it to a merchant must be granted to the buyer."

"*Until what time the retraction may take place,*" etc. Said R. Na'hman: "This decision applies to the buyer only, but the seller may retract at any time." Shall we assume that the last words of our Mishna support R. Na'hman, as they are correct only when the seller has the right to retract at any rate; and, therefore, they were not benefited by R. Tarphon's decision; but if you would say that the seller has no more right than the buyer, then they could be benefited by R. Tarphon's decision, in case they have erred in the price of sale. Why, then, have they returned to the decision of the sages? (This is not to be considered a support, as it is not usual that the merchants of Luda should make an error in the sale.)

The host of Rami b. Hama sold an ass and erred in the price, and Rami found him dejected, and questioned him why, and he answered, because of the sale; and Rami told him to retract, but he rejoined that the time for showing it to a merchant, etc., had

already elapsed; then Rami advised him to go into the court of R. Na'hman, and he decided according to his theory stated above (in the beginning of the paragraph). His reason was that the buyer always carries the article with him, and so can show it to all, if there were an overcharge or not; but the seller, who is not in possession, must wait until a similar article is again in his possession to show it, and therefore he may retract. There was a man who had to sell pearls, which were worth five dinars each, and he demanded six. When, however, he was offered five and a half, he accepted it. A buyer who wanted to get the same for five dinars said to himself, if I would give him five and a half I could not sue him any more, as the half-dinar would be considered a relinquishment, as it is less than a sixth; I will, therefore, give him all he demands, and then I will sue him for cheating me of an exact sixth; and he will be compelled to return one dinar. When the case came before Rabha, he said, that the law in question applied only to him who buys from a merchant, but of a private person no cheating is considered. A similar case came before R. Hisda, and he decided the same as Rabha did; and R. Dimi, who was present, said to him: "Even so; you have decided righteously." And so did R. Elazar also say: "Even so!" But is there not a Mishna which states, as the law of fraud applies to a layman it applies also to a merchant; now, is not a layman the same as a private person? Said R. Hisda: "The Mishna speaks of a private person who sells hemp articles; but if he sells the utensils which were used by himself, if not at a good price, he would not sell them."

MISHNA III. : The law of fraud applies to the buyer as well as to the seller, to a private person as well as to a merchant. R. Jehudah, however, maintains that there is no cheating concerning a merchant. The cheated one has the preference; he may demand his money should be returned; or, if he likes, the amount of which he was cheated.

GEMARA : Whence is all this deduced? As the rabbis taught, it is written [Lev. xxv. 14]: "Ye shall not overreach one another"; from this we learn in case the buyer was cheated, but whence do we know that same is the case with the seller? Therefore it is written [ibid., ibid.] : "Or buy aught of thy neighbor"; and both cases were necessary, for if the Scripture would mention the seller only, one might say that, because he is aware of the value of his stock, the cheating is a crime to him, but the buyer, who is not aware of the exact price, the law of fraud does not

apply; and if the Scripture would mention the buyer only, one might say, because he received for his money a valuable article which remains with him permanently. The law of fraud applies here, but the seller, who loses his article and takes money, which is not stationary, "as people say if you sell an article it is lost to you," one might say that the above law does not apply to him, therefore both are mentioned.

"*There is no cheating concerning a merchant,*" etc. Because he is a merchant, no cheating should be considered? Said R. Na'hman in the name of Rabh: "R. Jehudah speaks of a specialist who knows the value, and the reason why he sold it below the price is to be considered that he needed money at that time to buy another bargain and, therefore, he relinquished the greater value of the article sold, and the retraction took place afterwards (therefore it must not be considered). R. Ashi, however, says: "R. Jehudah's decree may be explained thus: Concerning a merchant the prescribed kind of cheating is not to be considered, as he may retract even if it were other than the prescribed kind." There is a Boraitha supporting R. Na'hman, viz.: "R. Jehudah maintains no cheating exists in regard to a merchant, because he is experienced."

"*The cheated has the preference.*" According to whom is our Mishna? Not with R. Nathan, and also not with R. Jehudah the prince, of the Boraitha cited above. For our Mishna states, "if he likes," and R. Nathan's decision is strictly; and R. Jehudah mentioned in his decision "the seller," while our Mishna mentioned "the buyer"? Said R. Elazar: "I, indeed, do not know who taught our Mishna." Rabba, however, said: "The Mishna is in accordance with R. Nathan, and the Boraitha is to be corrected with the addition, 'if he likes.'" Rabba, however, maintains that the Mishna is in accordance with R. Jehudah, and that which was omitted in the Mishna concerning the seller the Boraitha explains. Said R. Ashi: "It seems to be that this explanation is correct, as the Mishna begins, 'to the buyer as well to the seller,' and thereafter it mentions only the buyer, of which is to be seen that something is omitted, and that was the seller." Infer from this that so it is.

It was taught: "If one says, I sell this article to you with the condition you shall not claim any cheating of me, Rabh says that he nevertheless may claim cheating, if there were any, and according to Samuel he may not. Said R. Anan: "Mar Samuel has explained to me his decree as follows: If one says,

with the condition you shall not claim of me any cheating, no claim must be considered; if, however, he say, with the condition that no cheating with the article should be claimed, if there was a cheating the claim must nevertheless be considered."

Said Abayi: "Rabh's decree is in accordance with R. Meier, who holds (in Tract Kedushin) that no condition can be made concerning a law which is plainly written in the Scripture, and Samuel's decree is in accordance with R. Jehudah, who holds that this rule holds only concerning prohibited things, but not in money matters." Rabha, however, maintains that both (Rabh's and Samuel's) statements are in accordance with both mentioned Tanaim, and notwithstanding present no difficulty, as the above Amoraim speaks of a case where the seller did not mention to the buyer that he is certain that the price is higher than the real value of the article, and the Tanaim of the above cited Mishna speak of a case where such was mentioned, as so we have learned in addition to our Mishna in the following Boraitha: "This is only in case where the seller says, I do not think that you will be cheated, but even if you should, you shall not claim cheating; if, however, a condition was plainly made, as, *e.g.*, the seller says to the buyer, this article which I am about to sell you for two hundred, I am aware has a value of only one hundred, and it will be yours for my price, with the condition that you shall not claim cheating; and the same is when the buyer says to the seller, this article I am about to buy from you for one hundred, I know is worth two hundred, and with the condition that no cheating shall be claimed, I give you the money, then no claim of cheating is to be considered."

The rabbis taught: "If one is doing business with his neighbor in trust,* he must not furnish him with bad articles in trust and with good articles according to their value, but both should be equal (if, for instance, there are two kinds of wine, good which can easily be sold wholesale, and bad which can be sold only in retail, the possessor must not offer the good to the agent for the full value, with the condition he shall sell for him the bad to storekeepers at any price he may obtain, and the money for both shall be returned to him after all is sold; that is, that for his trouble he should use the money obtained for the good until the

* He gives articles to his neighbor to sell, as he trusts him on his word. Rashi Tosephath, however maintains that it means, if one is furnishing his neighbor with money to buy articles for him. In accordance with Rashi's explanation, the law of cheating could not be applied.

bad be sold in retail, as this would be indirect usury), and for his trouble he should pay him the usual price. The commissioner, however, may charge him for carrying on his shoulder, for the hiring of a camel, and for storage and hotel, but not separately for himself, as he has been paid already for his trouble in full."

What does it mean that he shall pay for his trouble separately? Said R. Papa: "As, *e.g.*, the sellers of hemp articles get four per cent. 'as their commission.'"

MISHNA *IV.*: How much less of the quantity of the *Sala* should be effaced, that the law of fraud could not be claimed? According to R. Meier, four *issars*, which is one issar to each *dinar*; and according to R. Jehudah, four *pundiuns*, one *pundiun* to each *dinar*. According to R. Simeon, however, eight pundiuns; two pundiuns (which are four issars) to one dinar (and it means an exact sixth of its value). What time is to be given for retracting? In the large cities, time for showing it to a money-changer must be granted; and in villages, until the eve of Sabbath. If, however, there was a sale, even after an elapse of twelve months, he must accept its return without any claim, but he may be angry with him. Such a *sala* may be expended for second tithe without any fear, as he who does not accept circulating money is considered a bad man.

GEMARA: There is a contradiction to our Mishna from the following Boraitha, which states: How much should the *sala* be effaced that the law of fraud should apply? (the same quantity as in our Mishna is given; hence, according to the Boraitha, the law of fraud applies to such quantities, and according to our Mishna it does not?) Said R. Papa: "This presents no difficulty. The Tana of our Mishna comes from the bottom to the top (*i.e.*, an effaced *sala* until what quantity it may be circulated until it reaches the quantity mentioned; but if such a quantity is already reached, it is not any more considered in circulation, and the law of fraud applies); and the Tana of the Boraitha comes from top to the bottom (*i.e.*, if the effaced coin has lost the quantity in question, it is not more fit for circulation, etc., hence both statements have the same meaning)."

Why, then, do the Tanaim differ concerning a *sala* and not with another article, in which all agree that a sixth is the prescribed kind of cheating? Said Rabha: The Tana who holds a sixth is the prescribed kind is R. Simeon, who points to the same kind in a *sala*. Abayi, however, maintains that one usually relinquishes if he was cheated in value less than a sixth; as people say, pay

dearer for the necessity of your dressing, but for your stomach look that you are not overcharged. The text of the Mishna says: How much of the quantity, etc. A Tosephta in addition to this Mishna states that if it was effaced more than the above quantity, he may sell it for its value. What is the prescribed quantity of a diminished coin which one is still allowed to keep? If it was a *sala*, he may keep it if it still contains the value of a shekel; and if it was a dinar, he may keep it when a quarter of the quantity was diminished. If, however, it was less than one issar it is prohibited, and he must not sell it to a merchant, and not to a powerful man, or to a robber, as they may cheat some other persons with it, and therefore it is advisable he shall bore a hole in it, and put it around the neck of his son or daughter.

The master says: "A sala of the value of a shekel, which counts a half; and from a dinar only a quarter; why the difference?" Said Abayi: "The quarter concerning an issar means a quarter of a shekel, which counts a half of a dinar." Said Rabha: "It seems to me so, because it is not stated 'a quarter of it,' but a 'quarter,' which generally means 'of a shekel.'" But why should the prescribed quantity of a dinar be dependent upon a shekel? Herewith he teaches us, by the way, that there is a kind of dinar which came from a shekel (*i.e.*, that the quantity of the shekel was diminished to a half), and this is a support to the statement of R. Ami, who says that a dinar which came from a shekel may be kept for circulation (as every one could recognize that it is only a half of the quantity); but a dinar which came from a sala (*i.e.*, that the sala was diminished to the value of three quarters), it may not be kept in circulation even at the value of a dinar, because it is still a large coin, and can easily be taken for a shekel. The Boraitha states, if, however, it was less than an issar, then it is prohibited. How is this to be understood? Said Abayi: "It means to say, if the sale in question was diminished more than the value of an issar, it is prohibited to be kept." Said Rabha to him: "Why an issar? If the sala in question was diminished even only a trifle of the above quantity, it is also prohibited to be kept? Therefore," says he, "it means if a sala were diminished in quantity as an issar to a dinar, it is prohibited to be kept, and it is in accordance with R. Meier's opinion." An objection was raised: Until what quantity may it be diminished, and still allowed to be kept? If it was a sala, until the quantity of a shekel. Is it not to be assumed that it was diminished little by little, and still it was allowed to be kept until it became of the size of a shekel? Nay, it means that it was

dropped into the fire and diminished all at once. The master says: "He may bore a hole in it and put it around the neck," etc. There is a contradiction from the following: "An uncirculating coin must not be used as a weight, and also he must not use it for an ornament, and also he must not perforate it, and put it on the neck of his son or daughter; but he shall grind or melt it, or cut it in pieces, or throw it away into the Dead Sea" (so that it could not be used by swindlers, hence it states he must not perforate it, etc.). Said R. Elazar, and, according to others, R. Huna in his name: "This presents no difficulty. The statement that he may bore a hole in it means, in the middle of the coin, which spoils it entirely; and the statement that it may not means, on the side" (as a swindler could fix it).

"What time is to be given for retracting," etc. Why concerning a *sala*, it makes a difference between large cities and villages, which is not the case with another article? Said Abayi: "The statement of our Mishna concerning an article means also in the large cities." Rabha, however, maintains "that every one is aware of the value of a common article, but to understand the value of a *sala* one must be a money-changer; therefore, in large cities, where money-changers are to be found, such time is prescribed; in the villages, however, where money-changers are not to be found, time is given until the eve of Sabbath, when usually people go to the market to buy supplies for Sabbath.

"If, however, there was a sala," etc. Where? If in the large cities, there is a money-changer; and if in villages, it is said, "until the eve of Sabbath"? Said R. Hisda: "It is not the strict law, but a meritorious act for pious men is taught here." If so, how is to be understood the latter part, "but he may be angry"? Who should be angry—the pious one? Let him not accept it, and not be angry, or the one who returned it should be angry, why it was accepted? It means to say thus: "That even if he who is not pious, and does not accept it, the one who possesses the coin may be angry, but cannot sue him."

"Such a sala may be expended for second tithe," etc. Said R. Papa: "Infer from this that he who is too particular with the examination of money is considered a bad man, provided he can circulate it easily. Our Mishna may be a support to Hiskiyah, who said that if one came to change a coin of a second tithe for small money, he may take change only for its value; but if he would exchange the second tithe for it, he may take as much of the second tithe as if it would be a good one. How is this to be

understood? He means to say that, although, when changing it for small money, he cannot take more than its value, he may nevertheless take the second tithe for the full value of such a coin.

MISHNA V.: The prescribed quantity for cheating is four silver dinars to each sala; for a claim of which one of the parties must take an oath, no less than the value of two silver dinars. For admitting a debt, which makes him liable for a biblical oath of denying the claim of the plaintiff, a *perutha* is sufficient. In five cases the value of a *perutha* is prescribed—one just mentioned; second, a case of betrothal, for which the value of a *perutha* suffices; third, the one who benefits himself from the goods belonging to the sanctuary, with the value of one *perutha*, he has committed a transgression; fourth, who finds an article worth only a *perutha*, he is obliged to proclaim; and fifth, he who has robbed his neighbor for the value of one *perutha*, and has sworn falsely, and after repented, he must return it to him personally, even should the robbed one be at that time in Madai.

GEMARA: Was this not stated already in Mishna II? It is repeated because of the *perutha* of admission; but even this is already stated in a Mishna (in Kidushin, etc.)? It is repeated here also because of the new statement about the five *peruthas*.

"*In five cases the value,*" etc. Let it teach, also, that there is one more *perutha* of cheating (*i.e.*, that when he sold an article for six *peruthas*, and it was worth only five). Said R. Kahana: "From this is to be inferred that the law of cheating does not apply to *peruthas*; it means that to less than a silver coin no claim of cheating can be made." Levi, however, maintains it does apply, and so he taught in his Boraitha. There are five *peruthas*—cheating, admitting, betrothal, robbing, and the warrant of the judges. Why does not the Tana of our Mishna mention that a warrant can be issued for a *perutha*? Is not robbery the same case, and it is mentioned? But notwithstanding that it mentioned robbery, it does mention a loss worth a *perutha* (which also must be decided by the court)? This was necessary to state, owing to the peculiarity of both. The robbed article must be returned, even if the owner is in Madai, and one must proclaim a lost article even if it was worth only one *perutha*, and after finding it is decreased in value. Why, then, does not Levi mention a lost article in *his* Boraitha? Because he mentioned robbery. But why does he mention the warrant for a *perutha*—is it not the same as robbery? This was necessary to deny R. Ktina's

statement, who maintains that a warrant can be issued even for less than a *perutha*. Rabha objected to R. Ktina's statement from the following: "It is written [Lev. v. 16]: And that in which he hath sinned against the holy thing, he shall pay." That means to include, that even when the value was less than a *perutha*, it must be returned; hence it is only of the sanctuary, but not of common property; therefore if it was taught in the name of R. Ktina, it was as follows: If the court found it necessary to take up the claim of the value of a *perutha*, it may issue a warrant even for less than a *perutha*, as the court does not start a case less than a *perutha*; but if it *was* started, the decision may be even for less.

MISHNA VI.: There are five fifth parts (which must be added to the principal amount) and they are: (1) who eats heave-offering; (2) the heave-offering of tithe (*the tenth part* of which the Levites must separate from the tithe [Num. xviii. 26]); (3) the same which was separated when the grain was bought from a suspicious man; (4) the first dough [Num. xv. 20]; and (5) the first-fruits [Lev. ii. 14]. The same is also the case if one redeems his plants in the fourth year (after planting), he must add a fifth part, or he exchanges his second tithe. The same is also the case if one redeems from the sanctuary the article he has sanctified, and also who had any benefit of the things belonging to the sanctuary, the value of a *perutha*, and also if one robbed his neighbor of the value of a *perutha* and swore falsely, all of them must add a fifth part to the principal amount.

GEMARA: Said Rabha: It was a difficulty to R. Elazar, the statement of our Mishna that a fifth must be added to the heave-offering which was separated when bought from a suspicious man, thus: Is it possible that the sages have given weight to their decision equal to the Scriptures? (The law that heave-offering must be separated when bought from the man in question is only rabbinically—would it not be enough that one should pay the principal amount only, if consumed?) Said R. Na'hman in the name of Samuel: This Mishna is in accordance with R. Meir, who says elsewhere (Erubin, p. 181) that the sages usually do so.

MISHNA VII.: To the following things the law of cheating does not apply: Bondmen, documents, real estate and property belonging to the sanctuary; and also the law of paying the double amount and of four and five fold does not apply to them. A gratuitous bailee does not swear (if lost), and a bailee for hire

does not pay (as they would do on movable common property). R. Simeon, however, says: If one is responsible for the property belonging to the sanctuary, the law of cheating does apply, but not when he is not responsible. R. Jehudah said that there is no cheating to him who sells holy scrolls, animals, or pearls (the reason why will be explained further on in the Gemara), but he was told that there is nothing to add to the things enumerated above.

GEMARA: Whence is this deduced? From what the rabbis taught: It is written [Lev. xxv. 14]: "And if thou sell aught unto thy neighbor or buy aught of thy neighbor's hand," which means things going from hand to hand; excludes real estate, which is not movable, and also bondsmen, who are equalled to real estate; excludes also documents, because it reads, "and if thou sell aught," which means that their body can be sold and bought; excludes documents, which are made only for the eye and of which the contents are for sale, but not their bodies [from this it was said that if one sells his documents for actual use (*i.e.*, for wrapping), the law of cheating does apply. Is this not self-evident? It was said to deny R. Kahana's theory that there is no cheating as to articles of which the value is only a *perutha*]; and things belonging to the sanctuary, because the verse reads, "From *thy brother*," to exclude the sanctuary. Rabba b. Mammal opposed: Is, then, the word *hand* everywhere mentioned in the Scripture literally? Is it not written [Num. xxi. 26]: "From his hand," which is certainly not literally, but from his control? On the other hand, can we then explain the word *hand* everywhere it is written not literally? Have we not learned in the following Boraitha: "It is written [Exod. xxii. 3]: 'If the thing stolen be actually found in his hand,' etc. From this we know when it was found *in his hand* only. Whence we deduce that the same is the case when it was found upon his roof, yard, or his veranda? Therefore it is written *Himatzeḥ Timatzeḥ*, (literally, 'found was found' *), to include the above." We see then, that if it were not for the superfluous word "Timatzeḥ" the word *hand* would be taken literally, provided that in such places (as cited above) where it is impossible to take it literally it is explained *control*.

R. Zera questioned: Does the law of cheating apply to a hire? Shall we assume that the Scripture reads *sale* but not *hire*, or

* Leeser translates according to the sense, but the verse reads as we have translated.

there is no difference? Said Abayi to him: Is it mentioned in the Scripture "a sale for ever"? Sale is mentioned anonymously, and a hire can also be called a sale for the time hired. Rabha questioned: If one bought wheat and sowed it in his field, how is the law? Is it to be compared to putting it in a vessel, and the law of fraud does apply, or, as it is in the earth, is it compared to real estate, to which the law of fraud does not apply? (Says the Gemara: Let us see how was the case? If the buyer said to the seller: "You shall sow six measures," and witnesses testify that he has sown only five, did not Rabha say elsewhere that everything with a measure, weight, or number, even in a quantity to which the law of fraud does not apply, the cheated may retract? The case was that the buyer bought a quantity of wheat needed for his field, with the condition that the seller should sow it, and thereafter it was found that he had not given the quantity needed. Hence the doubt to what case stated above it is to be compared. This question remains undecided.)

Rabha in the name of R. H'assa said: R. Ami propounded the following question: The articles mentioned in the Mishna to which the law of cheating does not apply, how is the law if there was fraud to more than a sixth of the value, where in other cases the sale is abolished? Is it the same with the things of the Mishna, or not? Said R. N'ahman: Thereafter the same R. Hassa said that R. Ami resolved his question, and decided that only the law of fraud does not apply, but the law of abolishing the sale applies. R. Yonah, however, concerning things of the sanctuary, and R. Jeremiah concerning real estate, both in the name of R. Johanan, declared that the law of fraud does not apply, but the law of abolishing does. [He who applies Johanan's statement in regard to things of the sanctuary, applies it also in regard to real estate, and he who applies it in regard to real estate, to the things of the sanctuary, however, does not apply it, as Samuel said that things belonging to the sanctuary, if of the value of a *manah*, were exchanged for one *perutha*, the act is valid.]

An objection was raised from the following Mishna: "A blemished animal belonging to the sanctuary, if it was exchanged for an animal of a commoner, the exchange is valid and the blemished animal becomes ordinary; but if its value was more than its exchange, the money must be added to the sanctuary." And R. Johanan in explaining this Mishna said: It becomes ordinary biblically; the money of its value, however, which is said to be added, is rabbinically only. Resh Lakish, however,

maintains that the money in question is also biblically. Now let us see how was the case? If the exchanging animal was less in value than the prescribed quality of cheating, how could Resh Lakish say that the money must be added biblically? Does not our Mishna state that there is no cheating in sanctuary, and if it was less in value than a sixth, how could R. Johanan say that the money added is rabbinically? He himself said that the law of abolishing applies to it? There is a case of cheating, and they differ if the explanation of the statement, "the law of cheating does not apply." Should it be explained as R. Hisda interprets it, that the Mishna, with the expression "there is no cheating," means the prescribed quality of it does not apply, even if it were less than the prescribed quality it may also be abolished.

Another objection was raised: "The laws of usury and cheating apply only to commoners, but not to the sanctuary?" Should this Boraitha have more weight than our Mishna, which was explained that it means the prescribed quality of it? Interpret, then, this Boraitha in the same manner, namely: Usury and the prescribed quality do not apply to the sanctuary. If so, how should the latter part of it be understood? This is more rigorous in the case of a commoner than in the case of the sanctuary (and as you interpret, then the reverse is the case). This statement applies to usury only. But then it should state: Regarding cheating, however, the reverse is the case? What question is it? It is correct to say that this is more rigorous in case of a commoner, etc., as this is the only case; but regarding the sanctuary, is, then, this the only case in which it is rigorous? All cases of the sanctuary are rigorous.

"*Double amount*," etc. Whence is this deduced? As the rabbis taught: It is written [Exod. xxii. 8]: "For all manner of trespass"—that is, generally; "for an ox, for an ass, for a lamb, for raiment"—that is, *partis* (a special part); "or for any manner of lost thing"—it is again general. And there is a rule that when there is in the Scripture a general, a *partis*, and again a general, it must be judged similar to the *partis*, as the *partis* mentioned is a movable thing, and its body is of value. So also all movable things the bodies of which have a value; excluded being real estate, which is not movable, and also bondmen, who are equal to real estate, and also documents, of which, although they are movable, the bodies are of no value. And concerning the sanctuary there is another verse, which reads, "his neighbor," and the sanctuary cannot be considered a neighbor.

"*And of four and five fold,*" etc. Why so? Because the Merciful One says payment of four and five fold, but not the payment of three and four (*i.e.*, as the double amount is excluded, it would be for a sheep threefold and for an ox fourfold, as explained in First Gate, page).

"*A gratuitous bailee,*" etc. Whence is this deduced? As the rabbis taught: It is written [ibid., ibid., 6]: "If a man do deliver unto his neighbor," generally; "money or vessels," *partis*; "to keep," again generally; and there is a rule that when there is in the Scripture a general, a *partis*, and again a general, etc. (as explained above).

"*A bailee for hire,*" etc. (The same question, "Whence is it deduced?" and the same answer from the same verse cited is repeated here.)

(Again) "*A bailee for hire,*" etc. R. Joseph b. Hama raised the following contradiction to Rabba: In our Mishna it is stated that a bailee for hire does not pay. Is this not a contradiction to the following Tosephta (Sabbath, xix.): "If one hires an employee to take care of his cow or child or his seeds, he has not to pay him for the day of Sabbath; and, therefore, if an accident happens on Sabbath, the bailee is not responsible. If, however, he was hired for the week, month, or year, the payment for the Sabbath-days is not to be excluded; and, therefore, if an accident happens on the Sabbath-day, he is responsible." Is it not meant that he must pay (hence, it contradicts our Mishna, which states that in cases of consecrated things he does not pay)? And he answered: Nay; *i.e.*, he loses the payment for that day. If so, then the statement in the first part, that he is not responsible, means also that he does not lose. Has he, then, anything to lose—is it not stated plainly that he is not paid for that day? And Rabba kept silent. Then Rabba asked him: "Have you heard something in explanation of the Tosephta in question?" And he answered: "So said R. Shesheth: it treats when so was the agreement that the bailee should pay in case something happened; and the same said R. Johanan."

"*R. Jehudah said,*" etc. There is a Boraitha in addition to our Mishna. R. Jehudah said: Also, by him who sells holy scrolls there is no cheating, for there is no fixed price of their value; and as to an animal or pearl, there is no cheating, as they (single ones) are usually bought for the purpose of matching in pairs. And it was said to him that all things are bought for the same purpose (consequently no exception is to be made). R.

Jehudah, however, maintains that the above-named things better answer this purpose. But in respect to what quality cheating is not to be considered? Said Ameimar: To the double amount of its value (but no more). There is also a Boraitha: R. Jehudah b. Bathyra says that also with him who sells a horse, a sword, and a shield *in war-time*, no cheating is considered, as there is a question of life.

MISHNA VIII.: As cheating is prohibited in buying or selling, so it is in words. (How so?) One must not ask the price of a thing when he does not intend to buy it. To a person who has repented one must not say, Remember your former acts. To a descendant from proselytes one must not say, Remember the acts of your parents. As it is written [Exod. xxii. 20]: "And a stranger * thou shalt not vex, nor shalt thou oppress him."

GEMARA: The rabbis taught: It is written [Lev. xxv. 17]: "And ye shall not overreach one the other"—this means, in words. But perhaps it means in business? It is already written [ibid., ibid., 14] concerning business. Hence this verse must apply to words only. How so? To a person who has repented one must not say, Remember your former acts. To a descendant of proselytes one must not say, Remember the acts of your parents. If a proselyte comes to learn the Torah, one shall not say, The mouth that hath eaten carcasses, etc., should utter the words Torah, which was pronounced by the mouth of the Almighty. To a person who suffers from chastisements, sickness, or burying his children, one must not say, as Job's colleagues said to him [Job, iv. 6, 7]: "Is not, then, thy fear of God still thy confidence, thy hope equal to the integrity of thy ways? Remember, I pray thee, who ever perished, being innocent? or where were the righteous destroyed?" Also, one must not send people to any one, telling them that he is a grain seller, who never was so. R. Jehudah says: One must also not inquire the price of an article, having no money to pay, as all that refers to his heart, and in such a thing it is said, "Thou shalt fear thy God."

Said R. Johanan in the name of R. Simeon b. Johai: Cheating in words is more rigorous than cheating in money. As to the former, it is written, "Thou shalt fear thy God," and as to the latter it is not written so. And R. Elazar says: The former is to his body and the latter to his money. R. Samuel b. Na'h-

* The Hebrew expression for this word is "Gher," which has two meanings, *proselyte* and *stranger*.

meni says: The latter can be returned, but the former cannot. A disciple has taught before R. Na'hman b. Itzhak: One who abuses his neighbor publicly is compared to a shedder of blood. And he answered: Your statement is correct, as we see in the man who becomes ashamed, the red color of his face disappears and he becomes white.

Said Abayi to R. Dimi: To what thing do the Western people pay more attention? And he answered: To make pale the face (*i.e.*, putting people to shame). As R. Hanina said: All descend to Gehenna, except three. All! Is it possible? Say, All who descend to Gehenna return thence, except the following three, who descend and do not return: An adulterer, one who makes pale the face of his neighbor in public, and one who applies vile names to his neighbor. But is it not the same as making pale his face? *i.e.*, even when he was already used to be named so.

Said Rabba b. b. Hana in the name of R. Johanan: It is rewarded more leniently that one commit a doubtful adultery than to make pale the face of his neighbor. Whence is it taken? From Rabba's lecture, thus: It is written [Psalms, xxxv. 15]: "But in my downfall they rejoiced, and gathered themselves together . . . they did tear me, and ceased not." Thus said David before the Holy One, blessed be He: "Lord of the Universe, it is known before thee that if they would tear my flesh the blood would not run. Even when they are occupied in the study of *Negaim* and *Ahaloth* they said to me, David, who is an adulterer, with what kind of a death must he be punished? And I answered them, He is to be hanged: he, however, has a share in the world to come, but he who makes pale the face of his neighbor publicly has no more any share in the world to come."

Mar Zutra b. Tubia in the name of Rabh, according to others R. Hana b. Bizna in the name of R. Simeon the Pious, and still to others R. Johanan in the name of R. Simeon b. Johai, said: It is better that one throw himself in a burning furnace than to make pale the face of his neighbor publicly. And this is taken from the act of Tamar, as it is written [Gen. xxxviii. 25]: "When she was led forth, she sent to her father-in-law," etc.

Rabh said: One should be careful with his wife, not to deceive her even in words, for often her tears hasten the punishment. R. Elazar said: Since the destruction of the Temple the gates of prayer are closed. As it is written [Lamentations, iii. 8]: "Also when I cry aloud and make entreaty, he shutteth out my prayer."

However, the gates of tears were not closed. As it is written [Psalms, xxxix. 13]: "Be not silent at my tears."

Rabh said again: He who follows the advice of his wife falls into Gehenna. As it is written [I Kings, xxi. 25]: "But indeed there was none like unto Achab . . . to which his wife incited him." Said R. Papa to Abayi: Is that so—do not people say: "If thy wife is little, bow thyself and listen to her advice?" This presents no difficulty. Rabh speaks about worldly affairs, and the people's saying is about house affairs. According to others, Rabh speaks of heavenly affairs and the others about worldly affairs. R. Hisda said: All gates are closed for prayers except for him who cries upon cheating. As it is written [Amos, vii. 7]: "Behold, the Lord was standing upon the wall of *Anach*, and in his hand was an *Anach*."* Said R. Elazar: All sinners are punished through a messenger, except the cheater, who is punished by the Lord himself, as it reads: "And the *Anach* is in *His* hand." R. Abuhu said: For the following three the petition of the Shekhina is not shut: Cheating, robbery, and idolatry. Cheating, as mentioned above—"Anach in His hand;" robbery, as it is written [Jer. vi. 7]: "Violence and robbery are heard in her; in my presence there are continually disease and wounds;" and idolatry, as it is written [Isaiah, lxv. 3]: "The people that provoke me to anger to my face continually."

R. Jehudah said: One should always be careful about grain in his house, as the quarrel in the house comes often about the grain. As it is written [Psalms, cxlvii.]: "He who bestoweth peace in thy borders, who satisfieth thee with the best of wheat." Said R. Papa: This is what people say, "When the barley is out of the barrel, the quarrel knocks at the door." And R. Hinna b. Papa also said: One should always be careful about grain in his house, as Israel was called poor only because of grain. As it is written [Judges, vi. 3-6]: "And it was when Israel had sown, etc. . . . And they encamped against them . . . and Israel was greatly impoverished."

R. H'albo said: One should always be careful with the honor of his wife, as the blessing in the house usually comes for the sake of the wife. As it is written [Gen. xii. 16]: "And he did well to Abram for *her* sake." And this is what Rabha used to say to the inhabitants of his town, Mahuza: Revere your wives, for the purpose of becoming rich.

* The term for cheating in Hebrew is *Onaah*, hence the analogy of *Anach*.

There is a Mishna (Keilim, V., 10) which treats of an oven which R. Eliezer makes clean and the sages unclean, and it is the *oven of a snake*.^{*} What does this mean? Said R. Jehudah in the name of Samuel: It intimates that they encircled it with their evidences as a snake winds itself around an object. And a Boraitha states that R. Eliezer related all answers of the world and they were not accepted. Then he said: Let this carob-tree prove that the Halakha prevails as I state, and the carob was (miraculously) thrown off to a distance of one hundred ells, and according to others four hundred ells. But they said: The carob proves nothing. He again said: "Let, then, the spring of water prove that so the Halakha prevails." The water then began to run backwards. But again the sages said that this proved nothing. He again said: "Then, let the walls of the college prove that I am right." The walls were about to fall. R. Joshua, however, rebuked them, saying: "If the scholars of this college are discussing upon a Halakha, wherefore should ye interfere!" They did not fall, for the honor of R. Joshua, but they did not become again straight, for the honor of R. Eliezer [and they are still in the same condition]. He said again: Let it be announced by the heavens that the Halakha prevails according to my statement, and a heavenly voice was heard, saying: Why do you quarrel with R. Eliezer, who is always right in his decisions! R. Joshua then arose and proclaimed [Deut. xxx. 12]: "The Law is not in the heavens." [How is this to be understood? said R. Jeremiah: It means, the Torah was given already to us on the mountain of Sinai, and we do not care for a heavenly voice, as it reads [Exod. xxiii. 2]: "To incline after the majority." R. Nathan met Elijah (the Prophet) and questioned him: "What did the Holy One, blessed be He, at that time?" (when R. Joshua proclaimed the above answer to the heavenly voice), and he rejoined: "He laughed and said, My children have overruled me, my children have overruled me."] It was said that on the same day all the cases of purity, on which R. Eliezer decided that they were clean, were brought into the college and were destroyed by fire. And they cast a vote, and it was decided unanimously to *bless* him (to place him under the ban). The question arose, then, who should take the trouble to inform him, and R. Aqiba said: "I will do so immediately, for one who is not fit for such a message may go

^{*} The expression in text is the oven of *Akhnai*, which means in Chaldaic snake. Thosphat, however, maintains that the man who made the oven was named *Akhnai*.

and inform him suddenly, and he will destroy the world." What did R. Aqiba? He dressed himself in black and wrapped himself with the same color, and sat at a distance of four ells from R. Eliezer. And to his question: "Aqiba, what is the matter?" he answered: "Rabbi! it seems to me that your colleagues have separated themselves from you." The rabbi then tore his garments, took off his shoes, and sat on the floor, and his eyes began to flow. The world was then beaten a third in olives, a third in wheat, and a third in barley. According to others, even the dough which was already in the hands of the women became spoiled. A Boraitha states that that day was the severest of all days, as every place on which R. Eliezer had set his eyes was burned. And also Rabban Gamaliel, who had at that time been sailing, was in danger of drowning by a tempest, and he said: "It seems to me that this storm is because of R. Eliezer b. Hurkanus." He then arose and prayed: "Lord of the Universe, it is open and known before thee that not for the sake of my honor or the honor of my parents I acted so, but for thy glory, to prevent a quarrel in Israel." And the sea then became quiet.

Eima Shalum, the wife of R. Eliezer, was a sister of Rabban Gamaliel, and since that time she prevented her husband from falling upon his face.* It happened, however, in a day which was the last of the month, and she erred, thinking that this day was the first of the month (in which the falling upon the face is not customary). According to others, a poor man knocked at the door and she was going to give him some bread, and when she returned she found her husband falling on his face, and she said to him: "Arise, you have already killed my brother!" In the meantime it was heralded by the house of Rabban Gamaliel that he was dead, and to the question R. Eliezer asked her: "Whence did you know this?" she answered: "I have a tradition from the house of my grandfather that all gates are closed for prayers, except for him who cries upon cheating."

The rabbis taught: "He who cheats a stranger transgresses three negative commandments, and he who oppresses him transgresses two." Let us see. Regarding cheating there are three negative commandments [Exod. xxii. 20, Lev. xix. 33 and *ibid.* xxv. 17], as the expression "the other" includes a stranger also. Then there are three negative commandments concerning oppres-

* There was a custom of falling upon the face at a certain prayer daily, except on half-holidays, as Chanukah, Purim, and New-moon.

sion also—namely, Exod. xxii. 20, xxiii. 9, and *ibid.* xxii. 24—which include also the stranger. Hence there are three negative commandments in oppression also? Read, then, in both cases; He transgresses three negative commandments.

We have learnt in a Boraitha: R. Eliezer the Great said: Why does the Scripture in thirty-six, according to others in forty-six places, warn concerning strangers? Because they are of a mischievous nature.* Why is there added [Exod. xxii. 20], “for strangers ye were in the land of Egypt”? There is a Boraitha: R. Nathan says: Do not rebuke your neighbor for a similar blemish to that you have on your body; and this is what people say: To him who has had a hanged one in his family, do not even mention *hang up* a fish.

MISHNA IX.: One must not mix together fruits from two separate fields, if the seller has named the field of which the fruits were to be issued; and even when the fruits of both are new, much less old with new. In reality, it was said of wine that it is allowed to mix old with new, when the new was sold, because the old improves the new. However, one must not mix the yeast of one wine with another wine, but he may give him the yeast of the same. If the wine was mixed with water, he must not sell in his store, provided he informed the buyers; not to a merchant, however, even if he informed him, for he buys only for the purpose of cheating. In the places where it is customary to mix water with wine, he may do so. A merchant may buy grain from five barns and place it in one store-room; he may also buy wine from five presses and put it in one cask, but not with the intention of mixing it.

GEMARA: The rabbis taught: “It is not necessary to state, if the new was sold four measures for one *sala* and the old three measures only that they must not be mixed (if he sold him old ones), as this would be plain cheating; but even when the reverse is the case, he must also not do so, as usually one buys it to keep for a long time (the new becomes old and the old—spoiled).”

“*In reality, it was said,*” etc. R. Elazar said: Ada was the one who said that wherever the expression “in reality” is stated, it means that so the Halakha prevails. Said R. Na’hman: The Mishna treats of a case in which it was done in the time of wine-pressing, as in that time the wine is fermenting, and therefore it is improving; but after the time is over, it spoils. But now it is customary to mix it, even not at that time. Said R. Papa: It is

* An explanation to this will be found in Tract Hrajoth.

because people are aware of it, and relinquish their right. R. Aha b. R. Ika said: They do in accordance with R. Aha of the following Boraitha, who permits to mix beverages which are to be tasted, as the buyer recognizes if mixed.

"But he may give him the yeast of the same," etc. But is it not stated in the first part that it must not be mixed at all? And lest one say that the Mishna means he shall inform him, this would not hold good, as is stated in the latter part, he shall not sell it in his store provided he informed the buyer, from which it is to be inferred that the first part treats even when not informed. Said R. Jehudah, it means to say thus: One must not mix the yeast of yesterday with the wine of to-day, and *vice versa*; he may, however, give him the yeast of the same. We have also learnt this in the following Boraitha: "R. Jehudah said: He who pours wine for his neighbor must not mix wine from yesterday with that of to-day, and *vice versa*, but he may do so with the wines of the same day."

"If water was mixed," etc. It happened that wine was brought to Rabha from a store; he mixed it, tasted, and it was not sweet, and he returned it to the store. Said Abayi to him: "Did not our Mishna state that he must not furnish it to a merchant, even if he was informed?" (how, then, did you return the mixed wine to the merchant)? And he answered: "The wine which I mixed is easily distinguished (because I make it very weak), and lest one say that the store-keeper would add wine to it so that the water will not be recognized, then it would be prohibited to sell even plain water to a wine-merchant, lest he mix it with wine."

"In the places where it is customary," etc. A Boraitha in addition to our Mishna states that he may mix a half, a third, or a quarter, as is customary in that city. Said Rabh: The Mishna, however, treats of the time of wine-pressing (but not otherwise).

MISHNA X: R. Jehudah said: A store-keeper must not furnish little children with presents of nuts, etc., because he accustoms them to buy all their needs at his place. The sages, however, permit this. He also prohibits to lower the prices, for the above reason. The sages, however, say that people may be grateful for such an act. A store-keeper must not take off the shells of beans, in order to raise the price more than if they remained in the shells. The sages, however, permit (as the buyer usually knows the difference of the prices). They, however, agree that one must not do so with the top of the measure

only, for he deceives the eye (as the buyer may think that the contents of the whole measure is so). The embellishment of articles which are to be sold, *e.g.*, slaves, animals, or vessels, is forbidden (further on, the meaning).

GEMARA: What is the reason of the rabbis who permit to give presents to children? Because the store-keeper may say to his competitor: "I distribute nuts; you may do so with plums."

"*To lower the prices,*" etc. For what reason do the rabbis permit this? Because he influences the wholesaler to lower his prices also.

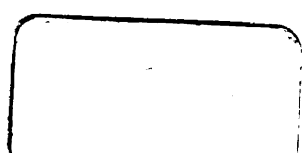
"*To take off the shells,*" etc. Who are the sages mentioned in the Mishna? R. Aha of the Boraitha, who permits to do so with visible things.

"*The embellishment of,*" etc. The rabbis taught: "One must not brush up an animal's hair to give it a delusive appearance of fatness, or make it drink water of bran-flour, which causes its hair to be so."*

It is also not allowed to blow up entrails (for sale, to give them a delusive appearance), also not to soak meat in water (for the purpose of increasing the weight). Samuel has permitted to put silk fringes on a mantle (so as to make it appear more woolly). R. Jehudah did so with fine clothes, to gloss them by rubbing with a substance. Rabba permitted to press hemp garments, and Rabha to paint arrows, and R. Papa baskets (*i.e.*, to give them a better appearance). But does not our Mishna state that embellishment for slaves and animals is not allowed? This presents no difficulty: new ones are to be embellished, but old ones are not allowed, as they may get a new appearance (and the buyer will be cheated).

Concerning slaves, what embellishment can be done? As it happened, one old slave painted his hair and beard and came to Rabha that he should buy him. And Rabha answered him: "Let thy house be open for the poor" (*i.e.*, I have the service of the house done by poor men). When he came to R. Papa b. Samuel, he bought him. One day he told him to bring a drink of water, and he washed away the paint and told him: "See, I am older than your father;" and R. Papa read to himself the following verse [Proverbs, xi. 8]: "The righteous is delivered out of distress, and *another* cometh in his stead."

* The term in the Boraitha is *mesharbtin*, and as to the question of its meaning, Zera in the name of R. Kahana gives the former, and some other the latter.





This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



Library of the Divinity School.

Bought with money

GIVEN BY

THE SOCIETY

FOR PROMOTING

THEOLOGICAL EDUCATION.

Received 11 May, 1901.

Talmud. Engl.

NEW EDITION

OF THE

BABYLONIAN TALMUD

**Original Text, Edited, Corrected, Formulated, and
Translated into English**

BY

MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

**TRACT BABA METZIA
(MIDDLE GATE, PART II.)**

Volume IV. (XII.)

**NEW YORK
NEW TALMUD PUBLISHING COMPANY
1342 CLINTON AVENUE**

MAY 11 1901
Divinity school.

.3M
497.5
.E4
1896
v. 12

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.
2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.
3. When in the original there occur two statements separated by the phrase, *Lishna akhrena* or *Waibayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.
4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.
5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.

COPYRIGHT, 1901, BY
MICHAEL L. RODKINSON.

TO HIM

WHO HAS EVER BEEN AMONG THE FIRST TO GIVE HIS FREE-WILL OFFER-
INGS IN BEHALF OF THE DOWNTRODDEN—A LIBERAL DONOR
TO ALL PHILANTHROPIC INSTITUTIONS—A STAUNCH
FRIEND AND ADVOCATE OF ISRAEL'S PUREST
IDEALS, TRADITIONS, LITERATURE
AND RELIGION—AN ILLUS-
TRIOUS EXEMPLAR

LEONARD LEWISOHN, Esq.

THIS TRACT—BABA METZIA (VOLS. XI. AND XII.)—WHICH TREATS OF ZEDAKAH
(JUSTICE-CHARITY) AND MISHPOT (JUDGMENT), IS MOST
RESPECTFULLY DEDICATED

BY THE EDITOR AND TRANSLATOR

MICHAEL L. RODKINSON

t

New York, in the month Ziv 5661, April 25, 1901.

CONTENTS.*

	PAGE
SYNOPSIS OF SUBJECTS OF TRACT BABA METZIA (MIDDLE GATE)	ix

CHAPTER V.

RULES AND REGULATIONS CONCERNING USURY, IMPRISONMENT, RENTING HOUSES, INSTALMENTS, LOANS FOR HALF PROFIT, APPRAISING, ETC.	145
--	-----

CHAPTER VI.

REGULATIONS CONCERNING HIRING LABORERS, CATTLE, OR TRANSFERRING GOODS, THE RESPONSIBILITIES OF THE DRIVERS, ETC.	188
--	-----

CHAPTER VII.

REGULATIONS CONCERNING THE TIME A LABORER HAS TO WORK, WHAT HE MAY OR MAY NOT CONSUME OF THE ARTICLE HE IS WORKING, AND ABOUT MUZZLING AN OX WHILE LABORING	210
---	-----

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING THE SALE AND HIRING OF ANIMALS, THE EXCHANGE OF THEM, THE SALE AND LEASING OF REAL ESTATE	249
--	-----

* Continuation of previous volume.

CONTENTS.

CHAPTER IX.

	PAGE
RULES AND REGULATIONS CONCERNING THE HIRING OF FIELDS, PAYMENT OUT OF THEIR PRODUCTS OR IN MONEY, THE NEGLECT OF THE HIRER. WHAT HE MAY OR MAY NOT SOW IN THEM	273

CHAPTER X.

RULES CONCERNING HOUSES, GARDENS, AND OTHER REAL ESTATE OWNED IN PARTNERSHIP, AND WHAT MAY OR MAY NOT BE DONE IN PUBLIC THOROUGHFARES . . .	308
---	-----

SYNOPSIS OF SUBJECTS

OF

TRACT BABA METZIA (MIDDLE GATE).

CHAPTER V.

MISHNAS I. TO IV. What is considered usury, and what increase? Why does the Scripture mention separately a negative commandment regarding usury, robbery, and cheating? A small liquid measure one shall not fill up in a manner to make foam. Why is the redemption from Egypt mentioned in the Scripture in conjunction with usury, zizith, and weight? Usurers are equalled to shedders of blood. "That thy brother may live *with thee*" (but shall not die with thee, *i.e.*, the life of thyself is preferred to, etc.). One must not fix a price on fruit before the market prices are announced. The many things which may be done in a sale, but not in a loan, as they may appear usurious. The rule of usury in transactions is: If one sells the article cheaper because it is not yet in his possession, etc. If one has returned robbed money with an account of other money he had to give, he has done his duty. A lender must not dwell in his debtor's house "for nothing," or even for decreased rent. Hiring may be increased, but not sale. How so? One is allowed to increase the price of an article when the money is to be paid at a certain time after delivery (provided he does not say: "If for cash, you will have it cheaper"). There are cases in which the use of the fruit is permitted to both, prohibited to both, permitted to the seller only. Stipulations which may or may not be made in selling real estate. What is to be considered gossip. Does an *asmakhta* (for definition see p. 160) give title or not? There was a man who sold an estate with the security of his very best estates, finally they were overflowed. Is usufruct considered direct or indirect usury? In places where it is the usage for the lender to use the fruit from a pledged estate without any deduction of the debt, and the borrower has a right to return the money at any time, then is the law, etc. A scholar, however, must not do even this. From pledged estates a creditor of the lender has no right to collect in case he dies. Also a first-born of the lender cannot claim the double amount prescribed to him biblically. If the borrower say to the lender: Stop using the fruit, etc. The different customs in pledging real estate at Papuna, Mehusa, Narsha. Why a pledge is called *mashkhantha*

145-166

MISHNAS V. TO XI. The law about giving money or articles for half profit. The proper payment for raising cattle. Why R. Papa decided differently in the cases of the Samaritans who appeared before him. R. Hama used to rent zuzes daily for the smallest coin for each zuz and he lost his money. All animals which are laboring for their food may be appraised, that the increase shall be divided equally. One may say to a farmer: I shall give you twelve kur of grain instead of the ten you demand, if you will lend me some money to manure your field. One may rent a boat on the condition that should it break he shall be responsible. One may say: I take your cow for the price of thirty dinars in case it should die, etc. May money belonging to orphans be lent for usury or not? One who lends money for a business which is very likely to bring profit with little chance of loss is wicked; for one which is likely to bring loss and far from profit, is pious, etc. An iron sheep must not be accepted from an Israelite, etc. (for explanation see Mishna VII). An Israelite may lend to his race money belonging to non-Israelites for usury, etc. The interpretation of verse 8, Prov. xxviii. The meaning of verse 24, Ex. xxii. He who takes usury will lose all his possessions. What is to be done with the usury promised by or to a heathen, after he has been proselyted. A note in which usury is mentioned the lender must not be allowed to collect even the principal, which he must forfeit as a fine. Articles for delivery during the year must not be bought for a certain price before the market price is fixed. If one travelled with stock from one place to another, and while on the road his neighbor asked him to sell to him at the price of the place he intends to go to, etc. What Samuel ordered the grain dealers, who used to advance money for grain to the farmers, to do. Also the order of Rabba to the watchmen. Are the rabbis consuming "usury" by paying in *Tiskri* for the wine they will choose in *Teveth* when it is already in good condition? I call your attention, master, to the rabbis, who pay head-tax charges for those who cannot pay them, etc. Seuram used to compel doubtful characters to carry the palanquin of Rabba. If one of a company of three partners has given money to a messenger to buy something, it is to be considered as for the company, and not as for himself. If the grain was to be finished with two kinds of labor only, one may fix the price, but not if he require three kinds of labor. There was a man who paid a stipulated amount for an outfit to be delivered at the house of his daughter's father-in-law, in the meantime the value of the equipment was reduced, etc. One may lend his gardeners wheat to be returned in the harvest-time the same measure, etc. (for meaning see p. 184). Hillel (the First) says: A woman must not lend a loaf of bread to her neighbor unless a price is stipulated for it, for fear wheat may become dearer, and then the return of the loaf (of the same quality) will appear usurious. The Hala-kha, however, does not so prevail. One may say to his neighbor: Help me in weeding or digging to-day and I will help you on some other day, etc. There is a kind of usury which may be called preceding usury, and another kind which may be named succeeding usury. How so? If one owes his neighbor money and it was not customary for him to greet him first, before the loan, he must not do so after the loan took place. If one is aware that his debtor has nothing with which to pay he must not pass him by. There are three who cry for help and are not heard 166-187

CHAPTER VI.

MISHNAS I. TO IV. He who hired day laborers and they deceived one another, there is nothing but resentment, etc. (see p. 189). Whoever changes his words or retracts them has to suffer for the injury caused. The rabbis hold that the laborers have always the preference. R. Dossa, however, holds that the employer has the preference. Said Rabb: The Halakha prevails in accordance with R. Dossa. Did Rabb indeed say so? If one sold a field for a thousand zuz, and the buyer gave him a deposit of two hundred, and the seller retracts, etc. As to whether a deposit gives title or not Tanaim differ in their opinions in pages 193-4. How a Bill of Sale must be written according to R. Simeon b. G. Payment in installments is valid, though it was not so stipulated. If one hired an ass for use on a mountain, and he used it in a valley, or *vice versa*, although the distance for which it was hired was equal (in both ways), the hirer is responsible for an accident. Who is responsible for an *angaria*? (See p. 195.) If one has hired an ass for the purpose of riding, and it dies while in the middle of the way, etc. If one hires a boat and it sinks in the middle of the way. If one hires a boat for a certain place, and has unloaded it while in the middle of the way. What may or may not be placed upon the ass which was hired for riding only. If one hires an ass to be ridden by a male, the same must not be ridden by a female. If one hires a cow for ploughing on the mountain and he plough in a valley, etc. How is it if the plough-handle breaks, and there has been no change in the agreement, etc.? If one hired an ass to carry wheat and he used it for barley. Which quantity of overloading makes one responsible to the bearing on shoulders, to a skiff, to a larger boat, and to a ship 187-201

MISHNAS V. TO VI. All specialists are considered bailees for hire. One may let out a pledge of a poor man and deduct the amount earned from his indebtedness. If one hires a cow, how shall he pay in case it is lost? (See p. 202 for meaning). If one bought utensils from a specialist to send to the house of one's father-in-law, etc. There was a man who sold wine to his neighbor, and the buyer said: I shall carry it to such a place, etc. Guard for me this article and I will guard yours to-morrow; or, I will lend you, or *vice versa*. All are considered bailees for hire, one to the other. The two cases in which R. Papa and Rabba were embarrassed for their decisions and finally it was found that their decisions were correct. If a depositary said: Leave it here "for you," he has no responsibility whatever, but how is the law if he said: Leave it "anonymously"? On a pledge he is considered a bailee for hire. If one carries a barrel from one place to another and breaks it, he must swear that there was no neglect, etc. R. Eliezer was wondering how such a decision could hold good. What shall he swear? I swear that I broke it unintentionally. There were carriers who broke a barrel of wine belonging to Rabba b. b. Hana, while in his service, and Rabb commanded Rabba to return their garments and pay them for their labor, for this is the meaning of the verse, Prov. ii. 20 201-208

CHAPTER VII.

MISHNA I. One cannot compel his employees to come earlier or depart later than is customary at that place, although it was agreed upon. It hap-

pened with R. Johanan b. Mathea, who said to his son : Go and hire laborers for us, etc. Resh Lakish's advice to laborers in general. The legend, how R. Eliezer b. R. Simeon was appointed by the government to capture thieves. He who would like to see a beauty similar to that of R. Johanan shall take a silver goblet just out of the worker's, etc. The legend of R. Johanan with Resh Lakish, and how the latter married the sister of the former, and how the death of both Johanan and Resh Lakish occurred. The continuation of the legend about R. Eliezer, how he accepted chastisements upon himself, how he was kept unburied, in his attic, many years; how finally he was buried; what his wife answered Rabbi (the prince) when he asked her to marry him; how Rabbi has also accepted chastisements, etc., etc. (wonderful legends from 211-219). He who is a scholar himself and his son and grandson are also, the Torah does not depart from their children for everlasting, etc. R. Zera, when he ascended to Palestine, fasted one hundred days in order to forget the Gemara of the Babylonians, etc. Resh Lakish used to mark the caves of the rabbis. R. Zera's dream. Elijah (the Prophet) frequently appeared in the college of Rabbi. (See the whole legend, pp. 222-224.) The Hagadah about Abraham with the Angels; the names of those Angels. Why did the Lord change Sarah's words when telling them to Abraham? Until the time of Abraham there was no mark of old age; until the time of Jacob there was no sickness; until the time of Elisha there was no one who became cured from sickness. 208-229

MISHNAS II. TO IX. Who are the laborers who have a right, according to the law of Scripture, to partake of the fruits of their labors? Whence is all this deduced? The particular law about muzzling an ox while laboring. How is the law if the animal is sick and the consuming of grain injures it? May it be muzzled? When Gentiles steal bulls and castrate them, and return them to their owners, may the Israelites use them or not? (See footnote, p. 235.) If one has "muzzled" a cow only with his voice, or if one leads two kinds of animals with his voice only, is he guilty or not? R. Papa and also R. Ashi told in their colleges what they were questioned and decided not in accordance with the existing laws and the reasons. Why the labor of a workingman entitles him to consume the fruit of that with which he is laboring. If one is occupied with pressing dates, he must not consume *grapes*, and *vice versa*. A laborer must not consume more than his wages, etc. Does the Scripture add to his wage the consuming of the fruit with which he is engaged? Or is it a part of his wage? A laborer has the right to make a stipulation that he shall not eat what he is entitled to and take money for it instead. Watchmen of fruits are permitted to eat, according to the custom of the country, etc. The following laborers have a right to partake according to the law of Scripture, etc. There are four kinds of bailees: A gratuitous bailee, a borrower, a bailee for hire, and a hirer. For what loss must a hirer pay? What is the extent of the duty of the bailee for hire? Abu placed flocks at Rumnia, and Shabu, who was an errant robber, took them away. Although Abu proved that this was the case, R. Na'hman held him responsible, etc. A single wolf's coming among the flock is not considered an accident. A robbery is considered an accident. A natural death is an accident, but not if it is caused by cruelty. A gratuitous bailee has the right to make a stipulation that in case of loss he shall be

freed from taking an oath. A stipulation made contrary to that which is written in the Scripture is of no avail. A bailee for hire may stipulate that he shall be equal to a borrower. But how shall a stipulation of this kind be made verbally, only? 230-248

CHAPTER VIII.

MISHNAS I. TO IV. If one borrows a cow, and at the same time hires or borrows its owner, etc. There are four kinds of bailees, etc. Whence do we deduce all this? How do we know that he is responsible in case of confiscation also? There is no responsibility when the owner works together with the borrowed article. (Expl., see 252.) If one tells his messenger that he shall substitute him in service to his neighbor, together with his cow, how is the law if the cow breaks or dies while laboring? If one borrows another's slave and cow, how is the law? What should a husband who uses the estate of his wife be considered—a borrower or a hirer? If the body of the animal becomes lean because of the labor, how is the law? Maraimar b. Hanina hired mules from Huzai, and the former overworked them, and they died, etc. If one borrowed a cow for half a day and for the other half a day he hires it, etc. If one has borrowed a cow, and the owner sends it to him by his son, slave, or messenger, or even by the same persons of the borrower, and it dies while on the road? If one borrows a hatchet; if he has done some work with it, he acquires title to it for the time borrowed. Is the law concerning an ordinary man equal to that of the sanctuary? If one exchanges an ass for a cow, and it brought forth young. If one possesses two male slaves or two fields, one large and one small, and the buyer claims: I bought the large one, etc. 249-264

MISHNAS V. TO IX. If one sold out his olive trees for fuel, and there were still bad olives on them. Olive trees which were overflowed, taken out and planted in another's field, etc. If one has planted trees in a field belonging to another without the consent of the owner. If one has rebuilt a ruin of one's neighbor without his consent. If one rents a house (without appointing the time) in the rain season, etc. All the terms are fixed only for giving notice. This notice is to be given by the owner of the house as well as by the tenant. The owner of the house is obliged to give to the tenant a door bolt, a lock, etc. However, things which can be done by any one the tenant has to furnish himself. Whose duty is it to furnish a mezuzah? The manure belongs to the owner, etc. If the year was made a leap year the tenant reaps the benefit of the intercalation. However, if he rented him the house monthly, the intercalation belongs to the owner. In an agreement, which is to be considered, the first expression, or the last? If the renter says: I have paid; and the owner claims: I have not received it, who of them must bring evidence? If one has rented out a house for ten years, and has signed the lease without a date, etc. If a man rents out a house and it falls, etc. . . . 264-272

CHAPTER IX.

MISHNAS I. TO IV. One who hires a field must do as it is customary in that country, etc. If the stipulation was made on wine, etc. They must also prepare together the sticks needed for the vineyard for the next year. In Babylon there is a custom that the gardener is not given any straw. If

one hires a field and it was a dry place, or a group of trees, and thereafter the spring ceases to flow, etc. If the hirer told him : Rent to me this dry field, etc. If one has undertaken to work up a field and he has neglected to do so. Mair, Jehudah, Hillel, Jehoshua, and Jose, these considered the language of the common people legal (although it was not in accordance with the enactment of the sages). If one lends money to some one, he has no right to pledge him through the court for more than he owes him. Rabina used to double the amount in the marriage contract, etc. There was one who undertook to work up a field, and he said : Should I neglect, I will give you one thousand zuz, etc. There was a man who undertook a field for poppy, sowing with wheat, and finally the wheat was worth more than poppy. If one has given articles for business without any stipulation, and took from him two notes, etc. If the gardener did not want to weed the field, saying : I will give you your due, he must not be listened to. . . . 273-279

MISHNAS V. TO IX. If one took a field in partnership and it was not productive. If one hires a field and the locusts destroyed it, or it was burned. If that year was a year of destruction or a year without rain, etc. If this happened once, he has to sow it the second time, etc. If one hires a field for ten kur wheat per annum, and the products are poor. There was a man who hired a vineyard for ten barrels of wine, and thereafter the wine became sour. If one takes a field for sowing barley, he must not sow wheat in it, etc. The explanation of Deut. xxviii. 3-6. Thirteen advantages can be gained by taking the early morning meal, viz., etc. Get up early in the morning and eat, in the summer, because of the heat ; and in the winter, because of the cold ? The advices given by R. Jehudah to the land-surveyor about measuring land, trenches, and the space for anchoring. Correct thyself first, and then others. All the inhabitants of the city must contribute to the repairing of the wall of the city if it is destroyed. If one takes possession of a dock, he is a rascal. If one takes possession of a field which was placed between two brothers or partners, it is considered a piece of assurance. To a presented estate the right of preëmption does not apply, etc. To a pledged estate, and if it is sold for taxes, or for the support of a widow, or for burial, this law does not apply. If one hires a field for a few years (less than seven), he must not sow flax in it. R. Papa hired fields for pasture, and some trees sprouted in them, etc. Because you are descendants of frail people, you speak frail words. Joseph had a planter who planted all his trees for half product, and he died and left five sons-in-law, etc. The planter of Rabbinah did damage and was discharged ; and he came to complain to Rabba, etc. There was a planter who said : " Give me what I am entitled to of the improvements, as I want to go to Palestine." There was one who pledged his vineyard for ten years, and it became old in eight years. There was a note in which was written the year without a number, etc. If the gardener claims : " I worked for the half," and the owner says for a third, who should be trusted ? If orphans claim : " We have made the improvements on this estate," and the creditor claims : " It was improved by your deceased father," for whom is it to bring evidence ? 279-295

MISHNAS X. TO XIV. If one hires a field for the whole sabbatic season for seven hundred zuz, the sabbatic year is included. A day-laborer has to

collect his money the whole night after that day, etc. The transgression of this commandment comes and ceases with the first morning. One who withholds wages transgresses the commandments of five verses, etc. The commandment: "In the same day you shall give his wage," and also the negative, "There shall not abide . . . until morning," applies to men, cattle, and vessels. To a proselyte who promised not to worship idols and not to commit adultery, but not to conform to other Jewish laws, the commandment applies. One who withholds wages is considered as if he would take out the soul. If the storekeeper or the money-changer failed to pay him, may he return his claim to the owner or not? Is piece-work subject to that law or not? If a creditor has to pledge his debtor, he may do so only by court, etc. If things belonging to a debtor are to be sold out, has the court to consider which should be sold and which left to him, or is all to be sold out? If one lends money to his neighbor, he has no right to pledge him, is not obliged to return, transgresses all the commandments which are in the Scripture concerning [pledging]—what does this mean? If the pledge was returned and the borrower died, etc. One who pledges a nether and upper millstone transgresses a negative commandment and is guilty for two articles. There was a man who pledged a butcher knife from his debtor, etc. 295-307

CHAPTER X.

MISHNAS I. TO VI. If one owns a house, the upper chamber of which belongs to another, and it falls. If the attic was ruined, and the owner of the house declined to repair it. When the tenant goes to dwell in the lower apartment, must the owner vacate it for the tenant, or should they dwell together? Must the party doing the damage remove the cause of it, or must the injured party remove the cause of the damage? One is responsible for damage done to his fellow by things which come directly from him (though it is the obligation of every one to keep aloof from damaging things). A house with an attic, belonging to two persons, which becomes ruined; the owner of the upper chamber requires the rebuilding, and the owner of the house refuses, etc. The same is the case with an olive-press which was placed under a garden, etc. A wall or a tree which falls suddenly on a public thoroughfare and causes damage, etc. What time is fixed for such a case by the court? The same is the case with a laborer who was told by his employer to take the articles with which he was engaged for payment. Whether looking gives title to an ownerless article or not, the Tanaim differ. One must not place his manure upon a public ground, unless it is immediately taken away by those who want to use it. If a hewer of stones has transferred them to the polisher, and they cause damage while under his control, the latter is responsible. When two gardens were placed one above the other, and some herbs were grown between them, the upper one may use that which he can reach with his hand, provided he does not exert himself to reach them. This was reported to the King Sabura. 307-316

TRACT BABA METZIA (MIDDLE GATE).

CHAPTER V.

RULES AND REGULATIONS CONCERNING USURY IMPRISONMENT, RENTING HOUSES, INSTALMENTS, LOANS FOR HALF PROFIT, APPRAISING, ETC.

MISHNA I.: What is considered usury, and what is considered increase? If one lends a "sela" (four dinars) to get five, or two "saahs" wheat for three, this is prohibited, because it is biting. And what is considered increase? One buys wheat, a "kur" for a golden dinar (twenty-five silver dinars), which is the market price, and the price of wheat advances to thirty silver dinars; the buyer then requires his wheat, which he desires to sell, and buy wine for it. The seller said: "I accept the wheat for thirty dinars, and you shall have to get wine from me according to the present market price," but he has not wine ready for delivery; this is an unlawful increase.

GEMARA: In leaving out usury, which is biblical, and explaining increase, which is rabbinical only (which is the matter of an exchange), it may be deduced that, biblically, "usury" and "increase" are one and the same thing; and yet both expressions are mentioned in the same sentence [Deut. xxiii. 20]: "Usury of money, and increase of victuals?" Said Rabha: There is indeed not a case of "usury" without an "increase," and *vice versa*. The Scripture, however, mentioned purposely Neshekh (biting) and Tarbeth (increase), to teach us that there are two negative commandments for usury. The rabbis taught: It is written [Levi., xxv. 37]: "Thou shalt not give him thy money upon usury, nor lend him thy victuals for increase." There is mentioned only usury of money, and an increase of victuals; whence we know that even the negative commandment of usury is to be applied on victuals also? There it is said [Deut., xxiii. 20]:

"Usury of victuals." Whence the negative commandment of increase on money? It is therefore said [*ibid.*, *ibid.*], "usury of money." This expression is superfluous, as it is said at the beginning of the same sentence: "Thou shalt not lend upon usury to thy brother," etc., which includes any kind of usury; therefore this superfluous expression is to be applied for the negative commandment of increase (*tarbeth*) on money. As this verse speaks of the borrower only, whence do we know that the same is the case with the lender? From the analogy of expression, "usury," which is used in both cases, we deduce that, as in the former case, there is no difference between money, victuals, usury, or increase. Whence, however, is to be deduced, that any increase is prohibited? From [*ibid.*, *ibid.*] "usury of anything that is lent upon usury."

Rabbina, however, said: The analogy of expressions would be needed if the Scripture would read: "Thou shalt not give him thy money upon usury, and thy victuals," etc.; but as it is written: "Thou shalt not give him thy money, and upon increase," etc., it is not necessary, because we read: "Thou shalt not give him thy money upon usury and increase," and we also read: "With usury and increase thou shalt not give thy victuals." But says the Gemara: Did not the Tana of the Boraitha deduce analogy of expressions! How then can Rabbina, as an (*Amoroi*) oppose the statement of a Tana? There is no opposition, as he means to say, that if it would not be plainly written in the Scripture, it could be deduced from the above analogy of expression. The above analogy, however, is needed to include every kind of usury which is not mentioned in the Scripture, concerning a lender. Rabha said: Why does the Scripture mention separately a negative commandment regarding usury, robbery, and cheating? (Are they not all of one and the same character?) It is necessary, for if it were written concerning usury, only, one might say it is something peculiar, as the borrower (who needs the money) is also forbidden to give usury; hence, robbery and cheating could not be deduced (as there is a rule that nothing is to be deduced from a peculiarity). If concerning robbery only, one might say because there is an act of violence, of which cheating cannot be deduced. And if it were stated concerning cheating only, one might say that because he was not aware of the cheat, and could not relinquish even if he would like to do so, therefore the above could not be deduced. Let us see. If even one from another cannot be deduced, why, then, should not

one of them be deduced from the two others? Which of them! Suppose it should not be written concerning usury, and therefore be deduced from the others. One may say that in both the above cases it was done against his will, which is not the case with usury, as the borrower agrees. And should it be deduced concerning cheating from above two, one might say that buying and selling matters cannot be deduced from a case of violence, etc. But let the Scripture leave robbery, which could be deduced from the above, as what would be the objection? "Usury is a peculiarity!" cheating would prove; and if there would be an objection that in the case of cheating no relinquishment could be made, as it was not known, usury would prove. The same discussion will revolve indefinitely, and though the points of each are different, they are equal, however, in one point: that their acts are considered a robbery; hence, robbery could be deduced? It may be said: That so it is, and the commandment of robbery applies to him who withholds the wages of an employee. But is this not plainly written [Deut., xxiv. 14]: "Thou shalt not withhold," etc.? It is written to show that two negative commandments shall be applied to any act of unjust keeping of wages. If so, why then is theft mentioned? (Could it not be deduced from above?) It is needed, as it is stated in the following Boraitha: "Thou shalt not steal," even with the intention to vex a short time, and returning; "Thou shalt not steal," even with the intention to please your neighbor with the due double amount (instead of charity, which he would probably not accept). R. Yimar questioned R. Ashi: (After all that is said above,) is not the commandment superfluous concerning right weight? And he answered: The commandment applies to him who hides his scales in salt that they should become heavier. But is this not a direct robbery? I mean to say that the transgression comes just with the act (although he had not used it as yet).

The rabbis taught: It is written [Lev., xix. 35]: "Ye shall do no unrighteousness in judgment, in mete-yard, in weight, or in measure." Mete-yard means measuring real estate; one should not measure with the same rope for two heirs, for one in the summer season and for the other in the winter (because the rope, if dry, is shorter). "In weight" means, one should not hide the weight in salt (explained above). A small liquid measure one shall not fill up in a manner to make foam; and from this the following *a fortiori* conclusion is to be drawn: Of a small measure which contains only a thirty-sixth part of a lug, the

Thora is particular that the liquid should not be measured with foam; of a hin or a lug, or a half, third, or quarter of a lug, so much the more the measure must be full without foam.

Rabha said: Why is the redemption from Egypt mentioned in the Scripture in conjunction with usury, zizith, and weight? The Holy One, blessed be He, said: It was I who distinguished in Egypt between a first-born and another one, and it is also I who will punish one who lends money upon usury to an Israelite with the pretext that the money belongs to a heathen; and also him who hides his weights in salt, and finally him who puts thread of *χαλαίγος* in his garment and saying: it is purple-blue prescribed in Scripture for Tshitstits; as in these three things human beings can easily be deceived.

R. Huna happened to come to Sura of Euphrates. On that occasion Hanina of the same place questioned him: Why did the Scripture mention the redemption from Egypt in conjunction with the eating of reptiles? And he answered: "So said the Holy One, blessed be He: I who have distinguished in Egypt, etc., will punish one who mingles the inwards of unclean fishes with the inwards of clean ones and sells them to an Israelite. And he rejoined: What I do not understand is, why is here mentioned "who brought you up," which is not the case in the other place where the redemption from Egypt is mentioned?

Said Rabbina: To that was taught by the school of R. Ismael: The Holy One, blessed be He, said: If the only reason why Israel should be redeemed from Egypt would be that they should not defile themselves with the consummation of reptiles, it would be sufficient [*i.e.*, the expression, Who brought you up, is in the Hebrew *Hamnaleh*, which means also, a higher standing]. To the question, however, Is then the reward for not eating reptiles greater than that of the three things mentioned above (to which the expression, I brought you up, is not used)? he rejoined: The question here is not about reward, as the Scripture means they were brought up in such a manner that they felt disgust to defile themselves with reptiles.

What is considered increase, etc.? Is then all that mentioned before in the Mishna not increase? Said R. Abuhu: The cases of the first part are biblically prohibited, and those of the latter rabbinically only. And so also said Rabha, with the addition that to the first part the verse [Job, xxvii. 17]: "He may prepare it, but the just shall put it on," applies (*i.e.*, that the children, even being upright, are not obliged to return usury taken by their

wicked fathers). But why not so much the more in the second part, which is rabbinical? Say then: The above cited verse applies to the first part also, although the first part treats of direct usury and the second of indirect. R. Elazar said: Direct usury is to be replevied by the court, which is not the case with indirect usury. R. Johanan, however, maintains that even the former is not to be replevied. Said R. Itzhak: The reason of R. Johanan's decision is the following verse [Ezekiel, xviii. 13]: "Hath given forth upon usury, and hath taken increase, shall he then live? He shall not live; he has done all these abominations." Hence such a man is charged with a crime of capital punishment, from whom damages are not collected.

R. Adda bar Ahaba says of the following [Lev., xxv. 36]: "Take thou no usury of him or increase, but fear thy God." Hence nothing is mentioned here about the restoration (as is mentioned in the case of theft or robbery).

Rabha, however, said: It is to be deduced from the first part of the above cited verse itself [Ezekiel, xviii. 13]: "He shall surely die: his blood shall be upon him." Hence the usurers are equalled to blood-shedders; as bloodshed cannot be restored, the same is the case with usury. R. Nachman bar Itzhack said: "The reason for R. Elazar's theory stated above is because it treats in the latter part of the verse mentioned before [Lev., *ibid.*, *ibid.*], that he may live with thee, which means, return him the usury taken, that he may live. R. Johanan, however, applies this verse to the case mentioned in the following Boraitha: "If two were on the road (in the desert), and one of them has a pitcher of water which is sufficient for one only until he may reach an inhabited place, but if both would use it both would die before reaching a village;" and Ben Patturo lectured that in such a case it is better that both should drink and die than one should witness the death of his comrade. (And so it was practised) until R. Aqiba came and taught: It is written: "That thy brother may live *with thee*" (but shall not die with thee, *i.e.*, the life of thyself is preferred to the life of thy brother).

R. Saffra said: Promised usury, which, according to the Persian Law, is collected from the borrower for the lender, according to our Law must be collected from the lender for the borrower; and that which, in accordance with the Persian Law, is not to be collected, is also not to be collected from the lender, according to our Law. Said Abayi to R. Joseph: Is this to be considered a standing rule? Are not then two saahs of grain promised for one

saah, that the Persian court collects from the borrower for the lender, and we do not return such to the borrower? And he answered: They do not collect it because of usury, but because they consider it as a deposit in the hand of the borrower when the grain was dear, and now, as it is cheaper, they collect the value of the deposited grain, which may amount to the extent of two saahs (according to our Law, however, it is prohibited, because it appears usurious). Said Rabbina to R. Ashi: Let us see. A pledge without account (*i.e.*, if one has borrowed money for a vineyard and the creditor used the fruit of it without deducting anything of the debt, but for usury of the money), if the borrower used the fruit for himself, the Persian court collects from the borrower for the lender; and according to our law in such a case we do not collect from the lender for the fruit he has used (as it is not considered direct usury, because it may happen that the vineyard should be sterile)? And he answered, that this also is not because of usury, but because they consider it a regular sale. (The lender paid money for the vineyard, and it is considered his until the borrower repays the amount, which is considered another sale.) Then how is R. Saffra's statement to be understood? His statement is concerning money matters only, direct usury, which is allowed by the Persians, and such a promise is collected by their court; in accordance with our Law, if the lender has already taken charge, it is to be collected from him by a court, and this is in accordance with R. Elazar's theory stated above, and also his further statement that what the Persians do not collect from the borrower speaks of usury which was not fixed with the loan, but taken previously or after it (as will be explained in the last Mishna of this chapter).

If one buys wheat, etc. And if he has no wine, is this to be considered increase? Have we not learned in the following Boraitha: "A price must not be fixed on fruit before the market prices are announced; but when already announced, one may sell it for this price even if it is not in his possession as yet?" Said Rabba: Our Mishna treats when he came to take it for his debt, as is illustrated in the following Boraitha: "If one claims a hundred zuz, and goes to the barn of his debtor, saying: 'Give me my money, as I intend to buy wheat for it,' and he says: 'You can buy it from myself at the existing market price, and I will deliver it to you in monthly instalments during this year,' it is prohibited (although it would be allowed if he would advance him cash now), as the old debt is not considered for cash at the time

of this agreement." (Hence the statement of our Mishna that when he has no wine at the time it is considered an increase, which is prohibited.) Said Abayi to him: If so, then even when he possesses the wine it should be considered an unlawful increase (as the wheat which he claims is an old debt)? Therefore, said Abayi, the Mishna is to be explained as R. Saffra illustrated the law of usury taught in the school of R. Hyia: "There are things which in reality ought not to be considered usury, and nevertheless they are prohibited because they *appear* usurious." How so? (Illustrates R. Saffra:) If one said: "Borrow me a mana" (which is twenty-five selas), and he answered: "I have no money in cash, but I can furnish wheat for a mana," and he accepted, and thereafter the lender buys it from him for twenty-four selas, this is lawful, but nevertheless it is prohibited to be practised, as it appears usurious. And similar to this case may be the case in our Mishna illustrated; namely, if one said: "Borrow me thirty dinars," and he said: "I have no cash, but I can furnish you wheat for this amount," and he accepted, and thereafter the lender bought from him for a golden dinar (which is twenty-five silver dinars) as the market price at that time, but before delivering it to him the price increased to thirty, and when the lender came to require his wheat the borrower said: "I have no wheat, but wine for thirty dinars," then, if he possesses it he may do so, as he took from him a trade article and repays him with a trade article, but if not he will be compelled to give him the value of the wheat at the increased price (*i.e.*, thirty dinars), and this appears usurious. Said Rabha to him: If so, why does the Mishna state, Give me my wheat (the value of which when he bought it was only a golden dinar; the borrower of the wheat is considered now a seller and the buyer has not made a drawing or paid any money for it that he should acquire any title to it, hence the seller may retract and give him back twenty-five dinars; we must then say that the lender claims thirty dinars, the value of the wheat he sold him first):* then let the Mishna state, Give me the value of my wheat? Read, then, "The value of *my* wheat." But does not the Mishna state: "Which he desired to sell," and according to your theory it should state: "Which he sold"? Read, "Which I *sold*." But the further expressions: "I accept it for thirty," "so is the

* The text here is both very short and complicated. The commentators are silent. We therefore were compelled to give our own explanation.

market price," could not be explained in accordance with your theory? Therefore said Rabha: When I will die, R. Oshia will come to meet me, as I try always to explain his Boraithas in accordance with the Mishnayoth. And there is a Boraitha taught by the same, as follows: "If one claims a mana and stands at the barn of his debtor, saying, Give me money, as I desire to buy wheat for it; and he answers: I possess wheat and can furnish it to you at the market price (and the lender accepts it), then, when the time to sell the wheat arrived, and he required his wheat for sale, as he wants to buy wine to sell it in season, and he says: I possess wine, buy it from me at the market price (and he again accepted), and when he came, in season, requiring the wine for the purpose of selling it to buy oil for the season, and he says: I have also oil and you can buy it from me at the existing market price—in all these cases, if he possesses the articles, it is allowed; if not, it is prohibited, because it appears usurious." And the expression in our Mishna: "If one buys wheat," means that he bought it for his previous loan.

Rabha said: From the above cited Boraitha three things may be inferred: (a) That with a loan articles may be bought at the existing price to deliver in instalments although the price may be increased, and it is considered as though he would give him cash—not in accordance with R. Hyia's statement above, that it is not so considered; (b) provided the article is ready by the debtor for delivery; and (c) R. Janai's statement* that there is no difference between the article and the money; as it is allowed to accept an article bought at the existing price even if afterwards the price increased, so is it also allowed to accept the difference in money.

The same said again: As the above theory is correct, there is no difference even if the article is not ready for delivery by the seller to buy of him at the existing market price, provided he takes the money now (as he can buy the article everywhere, it is considered as if it were ready for delivery).

R. Papa and R. Huna b. R. Joshua raised an objection to his statement (*supra*, p. 151): "In all cases, if he possesses; . . . if not, it is prohibited." And he answered: (What comparison is it?) There is a loan and here a sale.

Rabha and R. Joseph both said: The rabbi's decision that one may buy articles to deliver them in instalments at the exist-

* See also First Gate, p. 232, before Mishna V., Rabbi's statement.

ing market price (in the larger cities, without fear that it appear usurious*) is because the buyer may say: I do not consider it favorable even should the price increase during the year, as for the cash I have forwarded to the seller I could buy in the cities of Hini and Shili, at a lower price than in the larger cities, all I need for this year. Said Abayi to R. Joseph: According to thy theory, it should be allowed to lend a saah of grain in the time when it is cheap, to return the same measure to him when it is dear, as the lender can say: I do not see any favor in this, as I could keep the wheat in my store until that time (and it is said above that this is not allowed, as it appears usurious). And he answered: There is a loan, but here is a sale. Said Ada b. Abba to Rabha: After all, it is still an advantage to the buyer, as he would have to pay the broker (*i.e.*, has he not the advantage of saving the broker's fee?). And he rejoined: It treats when he pays the same to the seller. R. Ashi, however, said: A man's money does the brokerage for him (*i.e.*, dealers come to the wholesaler directly).

Rabba and R. Joseph both said: One who buys grain in the time when it is ripe, but before it was harvested (when the market price is not yet fixed, and it is said above that from him who possesses, it is allowed to buy even before the price is fixed), he must convince himself by seeing the grain at the barn of the seller. (Asks the Gemara:) To what purpose? If to acquire title, the seeing would not do (without drawing it)? And if in case of retracting by the seller he should be classified with those who have to accept the curse (mentioned in Chap. iv., Mishna I.), is the same not the case if he has not seen? Yea, it is for that purpose; but, usually, he who buys grain in the above-mentioned time buys it of two or three farmers; and then, if the farmers have seen him at their barns, they are sure that the buyer relies upon them. But otherwise the farmer may say: I thought you found better ones and you did not care any more to take mine, therefore I sold it out. Said R. Ashi: Now, coming to the conclusion that the relying upon him is the reason of the above statement, it is sufficient even if he had told him: I rely upon you at any other place.

R. Nahaman said: The rule of usury in transactions is:

* This also is our own explanation, as without this there is no meaning. Meyer of Lublin tries to give some explanation to this paragraph, but he makes it still more complicated.

If he sells him the article cheaper because it is not yet in his hand, it is forbidden. He said again: If a wax dealer says to the buyer: "I need money and you can get now five wax cakes for a zuz instead of the fixed price, which is four," if these cakes are ready for delivery he may do so, but not otherwise. Is this not self-evident? Lest one say that the same is the case when the wax dealer has to gather his cakes placed with others' in the city, as this is similar to the case: "Lend me . . . until my son will return with the keys," mentioned above, he comes to teach us that this case, that they are not collected as yet, is not to be considered if they would be in his hand.

The same said again: If one found a surplus in the small coins he borrowed, he must return him the surplus, provided such an error is usual. If, however, it could not be supposed as an error, he may consider it a present of his friend. What error is to be considered usual? Said R. Aha b. R. Joseph: To the number of tens and fives (*e.g.*, if he had to give him two score and he found twenty-one or twenty-two, or he had to give him twenty-five and he found twenty-six or twenty-seven; but not if he found twenty-five instead of twenty). Said R. Aha b. Rabha to R. Ashi: But if the lender was a miser, so that a present from him is unimaginable, how then? And he answered: Then it can be supposed that with this he returned him the sum which he robbed him of some time ago, as we have learned in the following Boraitha: "If one has returned robbed money with an account of other money he had to give him, he has done his duty." The former questioned again: But how is it if he never did any business with him? And he rejoined: Even then it may be supposed that another one who robbed him of the same amount told him to do so, when it will occur that he will require a loan from him.

R. Kahana said: I happened to be at the college when Rabh had finished his lecture and I heard him saying: "Melons, melons," and did not know what he said about them. After Rabh left, the college men told me that he had said as follows: If one advanced money to a gardener for melons, to deliver to him thereafter, and his melons usually were the size of a span, the price of which was ten for a zuz, and he promised to give him the same number at the size of an ell for the advanced money, this agreement is of avail. Is this not self-evident? Lest one say that because they are growing from themselves it is allowed, he comes to teach that even then it is only when he possesses such. And according to whom is it? To the Tana of

the following Boraitha: "If one goes to milk his goats, to shear his sheep, or to take out honey and wax from his hives, and he offers to sell the products by the advance of money for a cheaper price, it is allowed. If, however, he says: 'I will sell you the above products to a certain quantity which will be produced in the future, it is prohibited.'" Hence, we see that although they grow from themselves it is, nevertheless, prohibited. Rabha, however, said the articles are not similar to the case of melons, as the same melons which are now small will become big by growing themselves, but milk, wool, or honey of the bees is not grown at all, as he takes the milk out to-day and on the morrow there is other milk instead, and the same is with the shorn wool and the honey. Therefore, the above-mentioned case of the melons is permissible.

Abayi said: One may say to his comrade: "Take four zuz for a barrel of wine you possess, with the condition that if it should become sour you should be responsible, but if it becomes dearer or cheaper it should be charged on my account." Said R. Shrabia to him: Is this not a case in which the profit is to be very likely expected, and little loss from damage (*i.e.*, the increase in price is usual, and its becoming spoiled unusual, and there is a rule that in such cases it must not be done)? And Abayi answered: This would be correct if he would not accept in case it became cheaper, but since he accepted this also, both chances, of profit and damage, are alike.

MISHNA II.: A lender must not dwell in his debtor's house for nothing, or even for decreased rent, as it is usury.

GEMARA: Said R. Joseph b. Menjumi in the name of R. Nahaman: Although it was decided that one who occupies the court of his neighbor without his knowledge need not pay any rent (First Gate, p. 41); if, however, he said to him: Borrow me some money and dwell in my house, he must pay him rent. If however, while dwelling there for nothing he lent him any money, he need not pay. Why so? As the loan was not made previously for this purpose, it does not matter.

Abayi said: If a debtor who sold grain, four measures for one zuz, had to pay a zuz usury, and furnished to his creditor five measures for the same, then the court that levies the usury levies only four measures, as the fifth may be considered a present. Rabha, however, says: All the five must be levied, as all the five together came to hand by usury.

Abayi said again: If a debtor who owes four zuz usury has

furnished a garment to his creditor, when the court levies the usury it levies only four zuz, but not the garment. Rabha, however, maintains that the garment is to be levied, for the reason that people may say that the garment he wears is of usury.

Rabha said: If one claimed thirteen zuz usury, and at the same time he hired a court of his debtor for the same price which is worth only ten, when the usury is levied all the thirteen zuz are to be collected. Said R. Aha of Difti to Rabbina: Why should not the creditor claim: "Because the money was of a profit I did not care to give him three zuz more than the value, but now, when they levy the money, why should I be charged more than others?" And he answered: The owner of the court may say: "There is no difference, as so was my agreement and you accepted it."

MISHNA III.: Hiring may be increased, but not sale. How so? The owner may say to the hirer: "You can have this court for ten selas a year, if you give me the money in advance, but if in monthly instalments you have to pay one sela a month." It is, however, not allowed for the owner of a field to say: "If you advance me a thousand zuz you can have this field, but if by instalments, you have to pay twelve hundred."

GEMARA: Why are the two cases so different? Rabba and R. Joseph both said: Hiring is usually paid afterwards, and so if he pays him monthly he pays only what was due the last day of the month, as during the month he did not owe him anything, consequently there is no reward for waiting for the payment; and the lower price which he offered him, for paying in advance the money for all the year, must also not be considered usury, as the owner has a right to reduce the price for occupying his property. With sale, however, it is different, because the money must be paid with the act of the sale, and he acquires title immediately. Consequently, the increase of 200 for the instalments is usury. Said Rabha: The rabbis have investigated this matter to find its basis in the Scripture, and finally based it upon the verse [Lev. xxv. 53]: "Hired from year to year," which signifies that the hiring of this year is paid at the beginning of the next.

But if by instalments, etc. R. Nahaman said: It is allowed to increase the price of an article when the money is to be paid a certain time after delivering (provided he does not say: "If for cash, you will have it cheaper"). And Rami, according to others Uqba b. Hama, objected to him from the last part of our Mishna; and he answered: There he said plainly: "If you advance me

the money you will have it cheaper" (which certainly appears usurious). Said R. Papa (who was a brewer): I do so with my customers. I sell them on Tishri at the price of Nissan, thinking that to me it is undoubtedly allowed, as my beer would not get spoiled until Nissan and I am never in need of money (so that I should sell cheaper for cash), and I do only a favor to my customers by crediting them. Said R. Shesheth b. R. Aidi to him: Why should the master take the example of yourself and not of your customers? You should consider these circumstances, that if they would have money they would pay you at the price existing in Tishri? Said R. Hama: I do so in my business, and to me it is allowed beyond any question (Rashi explains that he was a wholesale dealer in many articles, and he sold them to the travellers at the market price of the large cities, with the condition that they should pay him when they returned, and he was also responsible for his goods on the way until sold; they, however, were allowed to buy articles for the money obtained and to sell them in other places), as they are pleased that I take all the responsibility of the goods until sold, and also that they are free of duty because the goods bear my name (the Persians used to free the rabbis of duties), and furthermore that my goods have the preference for sale, as it is announced in the market that no one can sell the same goods until mine are sold, because they bear my name.* The Halakha prevails in accordance with R. Hama, with R. Elazar (who says that usury is levied), and also with R. Yanai, who said above (p. 152) that there is no difference between the articles and the money.

MISHNA IV.: If one sold his field, taking a deposit and saying: "You may take possession of the field belonging to you from to-day, when you will bring the balance," such an act is not allowed. If, however, one has borrowed money on his estate with condition that if he will not repay within three years it shall belong to the lender, it belongs to the lender if not paid; and so did Baitus b. Zunin under the supervision of the sages.

GEMARA: But who uses the fruit in case he sold his field by a deposit? According to R. Huna, the seller; and according to R. Anan, the fruit must be deposited until the remainder is paid. And they do not differ. R. Huna speaks in case the seller told him he shall acquire title when he will bring the balance, and

* This was usually done by the Jewish courts when a scholar came to their city with his trade, and with references from other courts.

R. Anan speaks in case he said, When the balance will be paid in time title shall be acquired by you from to-day.

R. Saffra learned in the Boraithas, treating upon usury, taught in the school of R. Hyia, concerning the statement of our Mishna: There are cases in which the use of the fruit is permitted to both, prohibited to both, permitted to the seller only.

And Rabha illustrated it thus: The first case applies when the agreement was that he shall acquire title for the amount of the deposit only; the second applies when he was told that if he will pay the balance in time, title to the property shall be given to him from to-day; the third applies, if he was told, A title will be given to you at the time when you will bring the balance; and the fourth applies if he was told, Title is given to you from now and the balance you owe me should be considered a loan.

According to whom is the statement of our Mishna that both are prohibited? Said R. Huna b. R. Joshua: At any rate, it is not in accordance with R. Jehuda, who said: If there is only one side of usury (*i.e.*, if, for instance, the buyer should not keep his promise, there would be no usury if the seller used the fruit) it does not matter. (The other parts of the above Boraitha, however, are in accordance with R. Jehuda also, as there is a certain usury without any doubt).

If one has pledged his house or field, and the lender said to him: "You may sell it to me for such and such amount, but if you sell it to another, you will have to add such and such an amount to my loan," this is usury. But if he says: "Should you wish to sell for its value, I shall have the preference," it is allowed. The same is the case if one has sold a house or a field with the condition that if he should have money thereafter, the estate should be returned to him; it is considered usury (as the money is considered a loan for which the lender uses the estate until the money is returned). If, however, the *buyer* says: "I will return it to you when you will have money," such an agreement is allowed. [And the above-mentioned R. Huna said that these two Boraithas also are not in accordance with R. Jehuda, as there is only one side of usury (*i.e.*, that should the seller or borrower not have the money necessary, there would be no usury) which is allowed according to his theory.] But what difference is there if the seller made the condition of returning when he will have the money, or the buyer made it? Said Rabha: That is, if the buyer said, "I will do so not as a condition but by my good will."

There was a man who bought an estate without any security—*i.e.*, that the seller did not take the responsibility to return him the money should the estate be taken away from him by the seller's creditors. Seeing, however, that the man looked down-hearted, the seller said to him: "Why art thou grieved? Should it be taken away from you I will collect for you the fruit and the improvement." Said Amimar: This is only a gossip. Said R. Ashi to him: Your reason is, because this condition should be made by the buyer and not by the seller; does not the above Boraitha state that if the seller said, "I will return it to you, etc.," it is allowed, because such a condition ought to be made by the seller and not by the buyer? And Rabha explained this that only when the buyer says: "It is not a condition, etc.," from which it is to be inferred that if he did not add this it would not be considered as a gossip? And Amimar rejoined: Rabha means to say thus: As this condition should have been made by the seller, and it was not, then when the buyer says, "I will do it," it is to be considered as though he would add: "from my good will."

It was taught: It happened that a sick man wrote a divorce to his wife and she heard him sigh. Then she said to him: "Why do you sigh? If you will live I am yours." Said R. Zebid: It is to be considered a gossip only. Said R. A'ha of Difti to Rabina: And should it not be considered so, what harm could there be? Does it then depend upon her to make a condition in the divorce? That depends on the husband only. (And he rejoined:) Lest one say that, hearing her statement, the husband resolved to give the divorce upon this condition, he comes to teach us that it is not so.

If one has borrowed money on his estate, etc. Said R. Huna: The case is if the condition was made at the time the money was paid. If, however, it was made thereafter, title is acquired according to the amount paid only. R. Nahaman, however, maintains that even then title is acquired on the whole estate; and R. Nahaman acted accordingly in a case of the Exilarch. R. Jehuda, however, tore the document, and the Exilarch told this to R. Nahaman, and he said: (It does not matter;) a boy tore it as, concerning jurisprudence, all are considered boys in comparison with me. Afterwards, R. Nahaman retracted from this statement, and said that even when the condition was made at the time the money was given, it is of no avail. And Rabha objected to him from our Mishna: "If he will not repay within three years . . . it is his." And R. Nahaman answered: I say that an

*asmakhta** gives title. Minjumi, however, maintained that it does not. But then our Mishna contradicts Minjumi? He interprets our Mishna as treating of when the seller said: Title should be acquired by you from now. Said Mar the Senior and the Junior, sons of R. Hisda, to R. Ashi: So said the sages of Nahardai in the name of R. Nahaman: An *asmakhta* gives title only in time but not thereafter. And R. Ashi rejoined: This would not be correct, as there is a rule that a thing which gives title in time gives also thereafter. Perhaps you mean to say thus: If the borrower sought him within the time of the loan and told him: Acquire title on it, as I will not redeem it any more, then title is acquired; but if he said the same to him after the time has elapsed, it counts nothing, as it is to be considered that he said so only because he was ashamed for the delay of the payment. (Says the Gemara :) In reality, title is not acquired even within the time, as the saying of the borrower is to be considered as a postponement of time only, as he would not like to be troubled when the time of payment arrived.

R. Papa said: The *asmakhta* sometimes gives title and sometimes does not. If, e.g., he finds his debtor on the day of payment drinking beer, and not caring about the payment of his debt, it is to be considered that the debtor does not intend any more to redeem his pledge, and then title is acquired by the lender; but if he found him on that day searching for money, title is not acquired. Said R. A'ha of Difti to Rabina: Even in the first case title should not be acquired, as it may be the debtor drinks only to drown his grief, or he relies upon some one who assured him that he would furnish him money. Therefore said Rabina: If we see that the debtor does not care to lower the price of his goods for the purpose of collecting the money due, it must be considered that he does not care any more for the pledged estate, and title is acquired. And the above R. A'ha rejoined: Even this proves nothing, as it may be he does not want people to know his circumstances, which would cause a reduction in value of his estate. Therefore it may be assumed that R. Papa's statement was thus: If the debtor was particular on that day with his estate not to have it sold, even for its value, it is certain that he does not care

* The term *asmakhta* is very difficult to translate into English with a term of the same meaning. The literal translation of *asmakhta* is "relying upon," which is to be understood: "He acquires title because he relies upon it"; and therefore we use the term *asmakhta* in the text without explanation. Jastrow tries to explain this term at length in his dictionary. See there, Part I.

for the estate pledged, and title is acquired. R. Papa said again: Although it is decided by the rabbis that an *asmakhta* gives no title, it is nevertheless considered a hypotheca of which he should collect his money. Said R. Huna b. R. Nathan to him: Has then the debtor at the time pledged said: "Acquire title on the estate to the amount of my debt"? Said Mar Zutro bar R. Mari to Rabina: And even if he said so, would the title be acquired? The stipulation of the pledge was that if he does not repay him within three years then he may collect from this estate, and this is again only an *asmakhta*, which gives no title. Therefore the hypotheca mentioned by R. Papa is to be explained, that the stipulation was thus: "From this estate you shall collect your money within three years (*i.e.*, I shall sell out from it for your money). However, should the money not be collected within that time, all the estate shall belong to you after the elapse of above-stated time."

There was a man who sold an estate with security, and the buyer questioned: "Should this estate be taken away by your creditors, will you then repay me from the very best of your estates?" And he answered: "From the very best of my estate I will not, as I need it for myself; your money, however, will be collected of other best estates I possess." Finally it was taken away, and the very best estate of the seller was overflowed. R. Papa (before whom this case was brought) thought to collect the buyer's money from the best estate still left in his possession. (The seller, however, claimed that the agreement was, he should repay him from the best but not from the very best; and as now the very best is overflowed, this next best is now the very best, which he needs for himself, so he has a right to repay him from the estate lower in value.) Said R. Papa to him: "This estate which was secured is still in your possession, and you have to repay from it."

Said R. A'ha of Difti to Rabina: "The claim of the seller (just explained) is a just one, as this estate which is not overflowed is now his very best, which according to the agreement was not security." Rabi b. Shiba was a creditor of R. Kahana, who said to him: "Should I not pay you at a certain time, you may collect your money from this wine." Finally the wine became dearer, and R. Papa was about to say, that the law of *asmakhta*, which gives no title, applies only to real estate which was not for sale. This wine, however, which was for sale, is considered money. Said R. Huna b. R. Jehoshua to him: "So

was said in the name of Rabba: 'Everything made with a stipulation, gives no title.' " R. Nahaman said: "As the rule that an *asmakhta* gives no title is accepted by the rabbis in case of a loan with pledged estate for three years, if the lender took possession of it and used the products he must return both."

(Said the Gemara:) "Shall we assume that R. Nahaman holds that a relinquishment by an error is not to be considered? Was it not taught concerning one who sold out the products of his tree, that, according to R. Huna, he may retract from the sale before the fruits were produced, but not afterward; and according to R. Nahaman he may, even in the latter case?" He, however, said: I admit that if the buyer used already the products in question, it is not to be collected from him (hence we see that a relinquishment by an error is considered?). (The answer was:) There was a sale, but our case is a loan, and the lender used the products for the interest of his loan, which is considered direct usury, which is to be collected by the court.* Rabha said: I was sitting before R. Nahaman at the time he said, "I admit, however," etc. (just quoted), and was about to object to his statement from the law of cheating mentioned above, that the amount cheated must be returned, although it was done willingly. (*Supra*, p. 126.) He, however, looked at me and understood my intention, and he therefore brought as a support to his statement the following Mishna (Kethuboth ii., Mishna 6): "She who refuses to cohabit with her husband, etc., is not entitled to her marriage contract." (The compensation for usufruct, etc.), from which it is to be inferred that although her husband has not any right to use the fruit belonging to her, it is not to be collected from him if he has done so. (Says the Gemara:) In reality, however, both the objection and the support do not hold; there is no objection from cheating of which the cheated one was not aware that there is such, that he should relinquish it; and there is no support from the woman in the Mishna cited, that each of the women mentioned in the cited Mishna would be pleased to be counted among the married ones.

There was a woman who said to a certain man: "Go and buy for me an estate from my relatives." He did so. The seller, however, said to him: "I sell it to you with the stipulation that

* This is the explanation of Rashi. Tosephath, however, objects, saying "that using fruit is not considered direct usury, but indirect, which is not to be collected," and therefore they give another explanation to this paragraph. See there.

when I shall have money, I shall repay you and take back my estate." And the messenger answered him: "You and Navla* are brother and sister and you can settle this matter between you." Said Rabba b. R. Huna: "Such an answer may be considered satisfactory, that the seller should rely upon it, and therefore he doesn't give title." (Questioned the Gemara:) "According to this decision, the estate certainly must be returned; but how is the law with the products if she used them? Is it considered direct usury, which is levied by the court, or indirect, which is not?" Said Rabba to R. Huna: "It seems that it is considered indirect," and so also said Rabha. Said Abayi to Rabba: "How is the law with an estate pledged without any stipulation, when the lender has used the fruit? Shall we assume that the reason, in the above case, which was considered indirect, is because it was not determined at the sale she should use the fruit, and the same is the case here? or it is not to be compared, because there was a sale, and here it is a loan?" And he answered: "This reason holds good, in this case also." Said R. Papi: Rabina acted in his court not in accordance with Rabba b. R. Huna's statement, but has reckoned the value of the fruit used and collected.

Mar b. R. Joseph, in the name of Rabha, said: "In places where it is the usage for the lender to use the fruit from a pledged estate without any deduction of the debt, and the borrower has a right to return the money at any time, then is the law as follows: If the lender has used the products to the extent of the amount of his loan, he may be ejected from the estate; if, however, he has used more than the amount of the loan, the court may not collect from him, neither may it be deducted from another debt which the debtor owes him. If, however, the estate belongs to orphans, then if he has used more than the amount due, it is to be collected, or deducted from another debt they owe him." Said R. Ashi: "As you came to the conclusion that in case he has used more than the amount due we do not collect from him, we do not eject him even if he has collected the amount of the money loaned, unless he is paid the money issued; because the ejecting is the same as if it would be *collected* for the product consumed by means of sale, and not by means of deducting from his loan, and this is not to be done with indirect usury." And R. Ashi

* Rashi says that he has seen in the answers of the Gaonim that Navla is an Aramaic expression, which was used in brotherhood; he, however, maintained that so was the name of the woman who sends the messenger to buy the estate.

acted accordingly in a case of orphans irrespectively of age. Rabha R. Joseph, in the name of Rabha, said: In the places where it is the usage to pledge estates without stipulations, it is advisable that one shall not use the fruit unless by way of deducting something of the debt, as then it is considered as if he would sell him the products for the amount deducted, and it appears not usurious. A scholar, however, must not do even this, but he must determine at the time of the loan how much he may use. But this would be correct only to him who holds that a determined quantity is allowed; but to him who holds that even this is not allowed, what can be said? [And it is known that R. Aha and Rabina are the two who differ on that point.] Let us then see. What kind of a determination is meant? If, *e.g.*, the lender stipulated, "I will use the fruit during five years without any deduction; at the elapse of that time, however, I will credit you with all products." Such a determination, however, is opposed by some sages, who maintain that as soon he uses the products without any deduction it is direct usury; we must therefore say that the determination mentioned by Rabha means, if he said: "During the first five years I will deduct from the amount due so-and-so; at the elapse of this time, however, I will credit you with all products." R. Papa and R. Huna b. Yehosha both said: "The pledged estates in question, a creditor of the lender has no right to collect from in case he dies" (because the deceased has nothing in the body of the estates, and the using of their products is considered movable property, which is not secured to a creditor after the death of the debtor, although it may be collected from him as long as he is alive; and the reason is that as long as he is alive, although movable properties are not secured to the creditor, the court has a right to levy on them for a debt for which the debtor has promised to repay, even from the garment of his body; but after his demise his orphans are not obliged to repay their father's personal debt if it were not secured by real estate). And also a first-born of the lender can not claim the double amount prescribed to him biblically, for the above reason, and the Sabbatical year makes the debtor free, as it is not considered a pledge, since the borrower has a right to eject the lender from the estate after the product was used to the extent of the amount due. In places, however, where it is not customary to eject the lender from the estate in question, a creditor and a first-born may claim their right on it, and the Sabbatical year does not make it free. And Mar Sutra, in the name of R. Papa, said that, as to the estate in ques-

tion, where it is the usage to eject the lender, he may be ejected even from using dates that were blown down by wind on the rush mats. If, however, the lender has already picked them up from the rush mats, and put them in his vessels, title is acquired. And according to him who says that when the vessels of a buyer are placed in the care of the seller for the purpose of putting in them the things bought it gives title to the buyer even in his absence, if the dates in question were put in the vessels of the lender by some one they give title to him even if he himself has not picked them up. It is certain that in countries where ejection is the usage, and the lender stipulates that he shall not be ejected, it is of avail; but how is it when the lender made the stipulation that he may be ejected, in places where ejection is not the usage—is it then necessary to enforce this by the ceremony of a *sudarium* or not? According to R. Papa it is not necessary, and according to R. Shesheth b. R. Aidi it is, and the Halakha so prevails.

If the borrower says to the lender: "Stop using the fruit, as I am about to furnish the money due," he must do so immediately (in places where ejection is usage). If, however, he says: "Stop using the fruit, as I am making efforts to get the money"—according to Rabina, the lender may not listen to him, and according to Mar Sutra, the son of R. Mari, he has to, and so the Halakha prevails.

R. Kahana, R. Papa, and R. Ashi did not use the fruit even by deduction; Rabina, however, used to do so. Said Mar Zutra: "The reason of him who does so is, because he compares this to the biblical case [Lev. xxvii. 16], that although the fruits of the field mentioned there are of great value, he may redeem it for the sum of four zuz a year,* and the same is the case here (he may do so because he is not certain that there will be any products of the estate, consequently, he may buy it for a small price). However, he who does not allow this to be done holds that this case is not similar to the biblical case mentioned above—there is a sanctification for which the Merciful One allows it to be redeemed for such a trifle; but here it is a loan, and it appears usurious." R. Ashi said: "I was told by the elders of M'tha Mechasia (Suria) that an anonymous pledge holds good one year only; *i.e.*, that the borrower can eject the lender only after the elapse of a year, but not earlier." He said again: I was told by the same

* It is according to the estimation prescribed in the Scripture in this paragraph; the Talmud counts it according to the money used at that time.

authorities that a pledge is called *mashkhantha*, as the lender is considered from that time a neighbor (*shakhan*) to the borrower; so that if the borrower has to sell his estate, and the lender is willing to give the same price as offered by others, he has the same privilege as the preëmtor of an estate attached to that of the seller, to whom the laws give privileges to obtain it for himself in case he offers the same price as others.

Rabha said: The Halakha does not prevail, as the inhabitants of Papuna, who sell their goods on instalments for the same reason as R. Papa mentioned above (p. 156), and not as the inhabitants of Mahuza, who used to write in their notes the profit which they supposed the borrower would derive from the money taken on half profit, as who can assure that such a profit would be derived? Said Mar b. Amaimar to R. Ashi: "My father used to do so, and nevertheless when they claim that such a profit was not derived, he trusted them;" and he answered: This holds good only when they came to *him* with that claim; but how would it be in case he should die and the note falls into the hands of his heirs? [R. Ashi's talk was like an error which proceedeth from the ruler (Eccles. x. 5), and Amaimar died.] And also not as the farmers of the city of Narshah, who used to lend money to poor farmers on their land, and thereafter rented it to them for so-and-so many kurs yearly, and so they wrote in their contracts: "So-and-so has pledged his field to so-and-so, and afterwards he rented it for so-and-so many kurs." Had, then, the lenders acquired title on the field to be justified to rent it out? It is then direct usury. However, now that they write in their agreements: "I have bought from so-and-so such a field for so-and-so, and it was under my control such length of time, in which I have used the fruit and have deducted from the money paid, and thereafter I rented it to the former possessor for so-and-so many kurs yearly"—this is allowed, for the purpose not to shut the door for borrowers. (Said the Gemara :) After all, it is direct usury, as it can happen that the field should not yield so much product as agreed, and the lender takes the kurs of grain as interest for his money.

MISHNA V.: One who possesses articles for sale must not give them to a retail dealer to sell, with the stipulation to receive half profit from the sale, charging him the articles at wholesale market price. One must also not furnish some one with money in order to buy and sell articles for it, for half profit, provided he pays him separately as a laborer for his trouble. It is also not

allowed to hatch hens for half profit, and also not to appraise calves and foals, according the value after two years, and making a half of it a compensation for the raising of them. Should it happen, however, that they die (the raiser must suffer half of their loss), provided the raiser is paid separately for his trouble and food. One, however, may accept the above animals without any stipulation for half profit. And then they shall be kept calves until they become threefold and an ass until it is fit for carrying burdens.

GEMARA: A Boraitha in addition to this Mishna states "as a laborer," and Abyi explains "as a laborer of this profession."

The rabbis taught: "How much should he be paid separately? According to R. Meier: More or less, but it must be stipulated between them; according to R. Jehuda, it is sufficient even if he gives him a meal or some fruit. R. Simeon b. Johai, however, maintains that he should receive the amount a laborer is entitled to."

The rabbis taught: "Goats, sheep, and all other animals which are fed but do not labor, must not be appraised for the half. R. Jose b. R. Jehuda, however, says: Goats and sheep may, as the raiser has the milk and the wool for use, and they yield wool by being shorn, by passing through water, and by being plucked (in passing bushes, etc.); and also a hen, because she is laboring for her food (as she lays eggs)." (Says the Gemara:) And according to the first Tana (of the Boraitha), their milk and wool are not sufficient for his trouble and food? If agreement was that the raiser shall use milk and wool for himself, all agree that it is sufficient; the point of their differing is if it was agreed that the raiser should use only the whey of the milk, and whey and refuse of wool; the first Tana holds in accordance with R. Simeon b. Johai, who demands the full payment of a laborer, and R. Jose holds in accordance with his father, R. Jehuda, who says above, that one meal suffices.

The rabbis taught: "A woman may say to her neighbor who has eggs, 'You may give me four eggs and I'll let my hen sit on them for two little chickens she will hatch.' If, however, she says, 'I have the hen and you the eggs, let us divide the little chickens,' it is not allowed according to R. Simeon. R. Jehuda, however, allows this."

The rabbis taught: "In the places where it is the usage to pay the raiser for carrying the calves on his shoulder, it may be appraised, and it is not necessary to act differently to the custom of the country." R. Simeon b. Gamaliel said: "A calf and a

foal may be appraised with their mother and without any separate payment, even in those places where they pay separately for carrying calves (as the mothers are with them, there is no trouble in carrying them, and they are also fed by their mothers)." Said R. Nahaman: "The Halakha prevails in accordance with R. Jehuda, with R. Jose his son, and with R. Simeon b. Gamaliel." The sons of R. Ilish were summoned for a note which was issued by their father for half profit and half loss. Said Rabha: "R. Ilish was a great man, and he would not have issued a prohibited document; the note, therefore, may be explained that if his partner desired to obtain the half profits, then he had to suffer two-thirds of the loss, and if R. Ilish would have to suffer the half of the loss, then his partner would take two-thirds of the profit for his trouble." Said R. Kahana: "I told this to R. Zebid of Nehardae, and he rejoined: (It is not necessary to give the above explanation) about the note of R. Ilish, as it may be R. Ilish had some benefit from his partner, and it is in accordance with R. Nahaman, who said that the Halakha prevails with R. Jehuda; and I answered him: It was not taught by R. Nahaman, 'the Halakha prevails,' but the system of the above-mentioned sages is one and the same, and it seems to be so from his expression, 'R. Jehuda, R. Jose his son, etc.' Should he desire to state that the Halakha prevails according to them, he would teach the Halakha prevails in accordance with R. Jehuda, who is more lenient than all others."

Rabh said: "If one gives a calf for raising, with the stipulation that the profit and loss shall be equally divided, and besides a third increase of the present value should belong to the raiser, it is allowed." Samuel, however, maintains: "How would be the case if there should be no increase? Should then the man labor for nothing? Therefore he must fix a dinar for his labor." But Rabh himself is also of this opinion, as he said that the head of the calf belongs to the raiser. Is it not to assume that the head is an additional compensation to the third increase, said above? Is it not for the purpose that, should there be no third increase as agreed, he takes for his labor the head; hence here is the fixed dinar which Samuel desires? Rabh's decision that a third increase suffices without any other compensation means when the raiser has his own cattle to raise, as people say: "It is the same trouble to feed one as many."

R. Elazar of Hagruniah bought a cow which he gave to his gardener for raising, and gave him besides the half interest also

the head for his trouble. Said his wife to him: "If he would be an equal partner to you by giving the half money of the half cost he would give you the *אליה* * in your share." Afterwards they bought one in partnership and divided the *אליה* and R. Elazar said: "Let us divide also the head." Said his gardener: "When you issued the whole amount for the animal, I took the whole head to myself, and now when I have the half money in it, I shall take a half only?" R. Elazar answered: "When the money was my own, if I would not add a little to your share it would appear usurious; but now we are equal partners, and if you claim you had more trouble than I, the food for it was used from my garden, and while you were engaged therein, there was not much trouble feeding it."

The rabbis taught: Until what time must the raiser trouble himself with the appraised animal given to him for raising? Symmachos said: "With mules eighteen months, with asses twenty-four months, and if one desires to divide within that time, his partner may prevent him, for the years are not equal; as in the second year the trouble of feeding is more than in the first." There is another Boraitha: "Until what time must one trouble himself with the offspring of the appraised animal? With little animals, as goats and sheep, thirty days, and big animals, fifty days." R. Jose, however, said: "With little animals, three months, as their teeth are small, and he has to see what food is fit for them, and from that time further on the raiser takes a half of his value and a half of the increase belonging to his partner (as he takes the same of the mother)."

R. Menasya b. Gadah took his half and half of the increase of his partner; when he came before Abayi, he said to him: Who was the appraiser? [Perhaps the appraisement was not correct, and, secondly, this city is counted among those where it is customary to raise the offspring until grown up, and there is a Mishna that where the custom is to do so no change is to be made.]

There were two Samaritans who had done business with each other. Afterwards one of them divided the money without knowledge of his partner, and the case was brought before R. Papa, and he decided that his act was correct, as R. Nahaman

* The term in text is *alitha*. Rashi explains *aliah*, which means the fat of the tail. However, it seems to us this is correct only of a sheep, but not of a cow; it may be, however, that they bought a sheep in partnership.

said that cash money may be considered as divided. The next year they bought wine in partnership, and one of them divided without knowledge of his partner, and the case came again before R. Papa, who asked: Who has appraised for you? Said the plaintiff to R. Papa: "It seems to me that the master is partial" (as last year he decided in his favor, and also in this case). Said R. Papa: "Why then? Last year you did not complain that your partner took the better coins and left you the worse ones, and as there was cash, which need not any appraisement, he had the right to divide without your knowledge; but in this case, everybody knows that there is a difference between one kind of wine and another. How could you do it without knowledge of your partner and without any appraisement by a specialist?" It is mentioned above, R. Nahaman said money is considered as if it would be divided; however, this is only if the coins were equal, as, *e.g.*, all of them were circulating ones, or if old coins, which have more weight but are not in frequent circulation; but if they were of both kind, it must not be done without knowledge of the partner.

R. Hama used to rent zuzes daily for the smallest coin for each zuz, and he lost his money. [He thought that because he had not given it as a loan, but as a lease, it is allowed to do so as with another erub; in reality, however, it cannot be compared, as the same erub is to be returned, and if it was spoiled it is recognized; but here the same zuz is not returned, as he took it for business and returned him another one, and therefore it is considered a usurious loan.]

Rabha said: One may say to his neighbor: "I will lend you four zuz to keep for a longer time with the stipulation that you shall lend to so-and-so a zuz;" as the law has prohibited only usury that came direct from the borrower to the lender. The same said again: One may pay money to any one for giving a good reference to the money broker in order to borrow money from him. As Abba Mar, the son of R. Papa, used to take wax vessels from the wax dealers for reference to his father, that he should lend them money; and when the rabbis told R. Papa that his son took usurious money, he answered thus: Such a usury he may take; the law has forbidden only usury which comes from the borrower to the lender. Here, however, he is paid for his reference, and this is allowed.

MISHNA VI.: A cow, an ass, and all animals which are laboring for their food may be appraised, that the increase shall

be divided equally. In the places where it is customary to divide the offspring while they are yet small, it should be so done; and where it is customary to raise the offspring until they are grown up, it should be so done. R. Simeon b. Gamaliel said: "That a calf and a foal may be appraised with their mothers." One may say to a farmer: If you would lend me some money which would enable me to manure your field, I shall give you twelve kur of grain for it, instead of the ten you demand; and the farmer may accept it without fear of usury (as the kurs added are considered for the use of a manured field).

GEMARA: The rabbis taught: This which is said above is allowed only with a field, but not with a store, and not with a boat; *i.e.*, the hirer must not increase the price for rent, in case the owner lends him money to buy stock for sale, or to buy a cargo for his boat. Said R. Nahaman, in the name of Rabba b. Abuhu: It may happen that the same should be allowed to be done also with a store if he lends money to paint and decorate it, in order to draw customers; and also with a ship, in order to improve it with masts of which the hirer has the benefit in that it will sail faster; and if he borrows money for this purpose, he may increase the rent of the above-mentioned, and it is not considered usury, as the owner may raise his rent for a decorated store and an improved boat.

Rabh said: "One may rent a boat with the condition that, should it break, the hirer is made responsible." Said R. Kahana and R. Asi to him: "If he takes rent, he, the owner, must be responsible for damage, and when the hirer is responsible for it, then he must not pay rent." Rabh was silent. Said R. Shesheth: Why was Rabh silent? Was he not aware of the following Boraitha, although it was said that an iron sheep must not be accepted from an Israelite, *i.e.*, one must not both be responsible for the article hired, in case it becomes injured while laboring, and at the same time pay rent for it; but he may do so with a non-Israelite. It was said, however: One may say: I take your cow for the price of thirty dinars in case it will die; but all the time it will be alive in my hands I will pay you monthly a salah for her labor. This is allowed, because the appraisement of the cow was in case she is dead, but not when alive. Said R. Papa: The Halakha prevails that a ship may be hired for rent and at the same time the hirer should be responsible, and the custom of the sailors was that they pay rent when they take possession of the boat, and pay the value of the damage in case such occurs. Is

this then depending upon custom (as he must pay for the whole boat in case it breaks, then it is a sale, and the rent paid should be considered usury for awaiting of payment)? Because it was said in the above Boraitha that it may be done with a cow, as the appraisement was after death, the same is the case here. And as this law was accepted, it became customary.

R. Annan, in the name of Samuel, said: Money belonging to orphans may be lent for usury. Said R. Nahaman to him: Because they are orphans should we permit prohibited things for them? Orphans who are consuming that not belonging to them may go to their bequeather; but as you said the Halakha in the name of Samuel tells me the fact, you have seen that Samuel did so (as it cannot be that Samuel would declare that such an unlawful Halakha should be practised). And he answered: There was a copper kettle belonging to the orphans of Mar Uqba, which was under the control of Mar Samuel, who used to weigh it at the time of giving it to the hirer, and did the same at its return; and in case of the weight diminishing, got paid for it besides the payment for using it. Hence if it would not be allowed to lend the money of orphans for usury, how could he demand both to be paid for the diminished weight and at the same time to take rent for using it? Said R. Nahaman: "Such a thing may be done even with bearded orphans, as the copper of the kettle decreased in value by using it, for which the orphans get no separate payment, as they take the value for the diminished copper only." Rabba b. Chila, in the name of R. Hirda, according to others, R. Joseph b. Hama, in the name of R. Shesheth, said: "Money belonging to orphans may be used for a business that is very likely to bring profit, and with small chance of loss."

The rabbis taught: "One who lends money for a business which is very likely to bring profit with little chance of loss, is wicked; for one which is likely to bring loss and far from profit, is pious." Equal to both, this is the custom of every just business man. Said Rabba to R. Joseph: How, then, should be done with money belonging to orphans? And he answered: "It shall be deposited in court, and the court shall furnish them with means for livelihood from time to time, according to their need." But if so, then the whole amount will be consumed? Said R. Ashi: "We look for a man who is rich, trusted, listens to the Law, and never accepts a rebuke from the rabbis, and we give the money to him by the court for use in a business which is likely to bring profit with small chance of loss."

MISHNA VII.: An iron sheep must not be accepted from an Israelite (*i.e.*, to lend money with the understanding that the debtor shall always be responsible for it, and at the same time he shall pay the half profit it brings), as it is direct usury. This, however, may be done with non-Israelites, as it is allowed to lend them, and borrow from them, for usury. This is also allowed to be done with a proselyte who obligated himself not to worship idols, but did not obligate himself to observe the Hebrew laws. An Israelite may lend to his race money belonging to non-Israelites for usury, provided the latter are aware of it, but not otherwise.

GEMARA: Is it to be assumed that the iron sheep in question is considered under the control of the acceptor? Then it would be a contradiction to the following Boraitha: "If one accepted 'iron sheep' from a heathen, the offspring are free from the law of first-born; *i.e.*, that if for the money in question was bought cattle, which brought young ones, the first-born must not be given to the priest, although it was in the hand of an Israelite (hence we see that it is considered under the control of the lender and not of the acceptor, for if it were under the control of the latter, why should the first-born of the half belonging to the Israelite be free from the above-mentioned law?). Said Rabha: The reason is, because, should he not repay the money, the heathen would take possession of the cattle, and if even this would not be sufficient he would also take the young ones; and so it is considered that the hand of a heathen rests in this case, and under such circumstances the law of the first-born does not exist.

It is written [Prov. xxviii. 8]: "He that increaseth his wealth by interest and usury, will gather it for him, that will be kind to the poor." What is meant by the expression, "that he will be kind to the poor"? Said Rabh: For example, as the King Sabura, who collects money from the Israelites for the purpose of distributing it among the poor of the Persians. Said R. Nahaman: Huna told me that not only usury-taking from an Israelite is meant, but also from a heathen; and Rabha objected this statement from [Deut. xxiii. 21]: "From an alien thou mayest take interest"; and he answered: The expression in Hebrew is *tashikkh*, which means you may give him interest if you need money and you cannot get it without; but to your brother (an Israelite) you must not do so under any circumstances. But is it not written plainly further on: "But from thy brother thou shalt not take interest?" It is written to show that he who does so transgresses both a positive and a negative command-

ment. He objected again from our Mishna, which states that with a non-Israelite it is allowed. Said R. Hyya b. R. Huna: The Mishna allows to do so only for the need of his livelihood, but not more than he needs, as the rabbis had prohibited the taking of usury from all mankind.

There are some who applied the above statement of R. Huna to the following: R. Joseph taught: It is written [Ex. xxii. 24]: "If thou lend money to my people to the poor by thee," which signifies, if there is one of thy people, and an alien, the former is to be preferred. If there were a poor and a rich man, the poor is to be preferred; poor of thy city and poor of another one, the former has the preference. And to the question, Is it not self-evident that an Israelite is to be preferred? said R. Nahaman: Huna told me that it means that an Israelite should be preferred even if he can take usury from a heathen, and to the Israelite he must give it for nothing.

There is a Boraitha: R. Jose said: Come and see how the usurers are blind. If one calls his neighbor "wicked," his neighbor tries to take revenge on him as soon as he is able to do so, and the usurers bring witnesses, a scribe, a pen and ink, and write and sign that so-and-so reasons away the God of Israel (who has prohibited the taking of usury).

There is another Boraitha: R. Simeon b. Elazar said: One who has money and lends it without usury, to him applies the verse [Psalm xv. 5]: "That putteth not out his money for interest and taketh no bribe against the innocent. He that doeth these things shall not be moved to eternity." Which signifies that he who takes usury will lose all his possessions. But is it not a fact that they who do not take usury are also stricken with poverty? Said R. Elazar: The latter are to be raised again, but those who take money, if they fall will never rise again.

The rabbis taught: It is written: "Thou shalt not take of him usury or increase" [Lev. xxv. 36], but thou mayest be a surety for him. A surety for whom? For the lender* who is an Israelite? Is there not the following Mishna: The following transgress a negative commandment: the lender, the borrower, the surety, and the witnesses?—*i.e.*, to an alien. But is it not a fact that the aliens summon the surety first? Hence it should be considered that the surety takes usury from him. Said R.

**I.e.*, the lender shall not collect more than is due to him in case the debt is paid in time.

Shesheth : It speaks of when the alien has promised that in case of a suit he shall obey the decision of the Jewish court. But if so, then usury should not be taken from him at all. Said R. Shesheth : He promised only to obey the decision of the Jewish court in case of a suit, but not to observe the law of usury.

An Israelite may lend money belonging, etc. The rabbis taught : One may lend money belonging to an alien with his knowledge, but not otherwise. How so ? If an Israelite borrowed money from an alien for usury, and when he was about to return it another Israelite said to him : Give the money to me and I will pay you the usury you have to pay to the lender ;—this is prohibited. If, however, he takes him to the lender, he may do so ; and the same is the case if an alien has borrowed from an Israelite for usury, and when he is about to return it to him, another Israelite meets him, and asks to have the money lent to him for the same interest he has to give to the Israelite, it is allowed ; if, however, the alien takes him to the lender, it is prohibited. The prohibition of the last part is correct ; but why is it allowed in case the Israelite takes the money belonging to the Israelite and pays usury ? Is it not a fact that in the case of an alien no messenger is to be considered ? Hence, even with the knowledge of the heathen, it should be considered that one Israelite takes direct usury from another Israelite ? Said R. Papa : It means, he takes him to the alien that he may hand him the money personally. Is this not self-evident ? Lest one may say that as the alien does it through the Israelite it is not allowed, he teaches us that it does not matter.

The rabbis taught : An Israelite who borrowed money from an alien for usury, and afterwards added the usury money to the principal amount, and then took a note from him for the whole sum and then the lender became a proselyte : he may collect the whole amount. If, however, the note was taken after he became a proselyte, he collects the principal amount, but not the usury. The same is the case with an alien who borrowed money from an Israelite, and became a proselyte ; if the note for the principal amount including the usury was given by him while he was yet an alien, the whole amount is to be collected ; but if after he became a proselyte, the principal amount only is to be collected. R. Jose, however, maintains that even then the whole amount may be collected ; and Rabha, in the name of R. Hisda, quoting R. Huna, said : So the Halakha prevails ; and he himself declared that the reason of R. Jose's statement is that people

shall not say that he became a proselyte on account of this money only.

The rabbis taught: "For a note in which usury is mentioned the lender must not be allowed to collect even the principal amount, which he must forfeit as a fine. So is the decree of R. Meier. The sages, however, maintain that the principal amount is to be collected." What is the point of their differing? R. Meier holds that the permissible amount may be imposed as a fine for that of the prohibited one, and the rabbis hold that it may not.

There was a man who had pledged his vineyard to a lender, who kept it for three years, and afterwards said to the owner: If you sell it to me, good; but if not, I will hide the document of the pledge, and claim that the vineyard was *bought* by me (and as it is in my possession already three years, I will be trusted according to the law of (*Hasaka*) occupancy. The owner then assigned his vineyard in presence of witnesses to his minor son, and afterwards gave a bill of sale to the lender. This sale is certainly not valid; but the money which the lender has given for the bill of sale, is it to be considered as a loan with a note which is to be collected from an encumbered estate, or is it considered a loan without a note which is not to be collected from such estate? Said Abayi: Is this not the case of which R. Assi said above that when one admits his signature to the note, it is not necessary to have it approved by the court, and it is to be collected also from an encumbered estate? Said Rabha to him: What comparison is it? In the case of R. Assi, where the borrower admits that he owes the money with a note, another note can be written even if the original is lost; in this case, however, the bill of sale was written unwillingly, and another one cannot be written. Mrimar repeated Rabha's statement in the presence of Rabina, who cited to him then the statement of R. Johanan on the explanation of the Mishna, "that notes which were written with a previous date are of no avail"; and to the question, Why should it not be collected from the later date? R. Johanan answered: It is to be feared that he will collect from an encumbered estate at the previous date. Let him then say that the bill of sale is invalid because, if lost, it cannot be rewritten from the date of the first writing. And he answered: What comparison is it to our case? There it cannot be rewritten from the original date, but it can be rewritten with a later date; here, however, it cannot be rewritten at all for the reason said above.

MISHNA VIII.: One must not buy articles to deliver during the year, for a certain price before the market price is fixed. He may, however, do so afterwards—even when the seller does not possess as yet the articles bought—for the price he pleases, as, if he does not possess them, he can buy them from another. If the seller was first in the harvest, the buyer may stipulate the price with him for the sheaves, crop of grapes, vat of olives, clay balls of a potter, and lime when it was already in the kiln, and also for manure of the whole year. R. Jose, however, maintains that he must not do so with manure unless he has it ready for delivery; the sages allow it. For all mentioned above he may make the stipulation that if the price will decrease he shall deliver them for the lower price. R. Jehuda says that to this effect no stipulation is necessary, as the buyer may claim in such a case the existing price or the return of his money.

GEMARA: R. Assi said in the name of R. Johanan: The price for the whole year must not be stipulated for at the existing price of the large cities, as these prices are changeable.

The rabbis taught: "One must not buy articles to deliver during the year before the market price is fixed. If, however, the new articles were four for a *salah* and the old ones three, the price must not be fixed until it will be a standing price for both of them. If mixed grain from different fields sold four measures for a *salah*, and from a single one three, the price must not be fixed until the market price will be fixed for both." Said R. Nahaman: A price may be fixed for the mixed one, as the existing market price for such grain. Said Rabha to him: Why should this differ from grain from a private field? You may say that, if the seller does not possess the mixed grain, he can borrow from another seller of mixed grain; is it not the same with private men? And he answered: A private man would consider that it is humiliating for him to borrow from a dealer of mixed grain, or, if you wish, I may say that one who gives money to a private man intends to get from him the best in the market.

R. Shesheth, in the name of R. Huna, said: "One must not lend money with the understanding that if it is not returned at a certain time the borrower shall furnish him articles at the existing price (*i.e.*, although this is allowed to be done in the manner of buying and selling, with a loan it is not allowed, as it appears usurious). Said R. Joseph b. Hama, according to others, R. Jose b. Abba, to him: Did, indeed, R. Huna say so? Was he not questioned whether it was allowed to be done as the stu-

dents of the college did, who borrowed money in Tishri and repaid with fruit in Tebeth at the price of Tishri? And he answered: There is wheat ready for sale in the cities of Hini and Chili which is always at a low price, and they can buy and repay their debt with that. We see then that he has allowed such a loan? He was previously of the opinion that it must not be so done; afterwards, however, when he heard that R. Samuel b. Hyya said in the name of R. Elazar that this may be done, he retracted from his previous opinion and decided that it may be done.

The rabbis taught: If one travelled with stock from one place to another, and while on the road his neighbor asked him to sell it to him at the price of the place he intends to go to (I will sell it here and will use the money until a certain time)—if the seller takes the responsibility of the stock while on the road it is allowed, but otherwise it is not (because it is considered a loan, and the increase in price appears usurious). If one was about to deliver his fruit to a certain city in which the price of it was higher, and some one told him that he has the same fruit in the above-mentioned city and he will deliver it to him there in exchange for the fruit in his possession here, then, if he really possesses the same in the above-mentioned city at the time he takes the exchange, it is allowed (because the fruit of that city is considered from now under the control of him who gives the exchange for it here). But if the one who offers the exchange has it not ready for delivery as yet, it is not allowed. For the grain dealers, however, it is allowed to borrow money with the understanding to repay it with grain for a lower price than the existing one in that city, without fear that this appears usurious. Why so? R. Papa says: Because with his money he opens the door for them to buy grain at the lowest price at every place it is to be found; so he enables them to repay him with the grain at a lower price, even immediately after the loan, and therefore it is not to be considered usury for the prolongation of time for repayment. R. A'ha b. Iqa, however, says: It is favorable to them for the wholesale grain dealers to know that they sold their grain at a low price, so that the dealers will make the price of their grain still lower, so as not to lose their custom. What is the difference between these two reasons? If the grain seller was a new one who was unknown as yet to the country grain sellers, then, according to R. A'ha b. Iqa's theory, it is not allowed for him to do so. In Sura four measures of grain could be bought for one zuz; in Kahfri there were sold six for one zuz; and Rabh had given money to the grain dealers in Sura

to buy grain for him in Kahfri at the rate of five measures for a zuz, taking the responsibility of the grain while on the road. But if he was responsible for them while on the road, why didn't he take six, as was the existing price in Kahfri? With such a prominent man as Rabh it is different (he allowed them one measure for their trouble). R. Assi questioned R. Johanan: May this be done with other articles besides grain? And he answered: Rabbi was about to do so with frippery, and R. Ismael b. R. Jose restrained him from this. With regard to a vineyard (*i.e.*, to buy the products of it, when they are not as yet ripe, at a low price, by advancing money for the same), Rabh did not allow this, because the price of the ripe fruit will be higher, and it appears as if he were taking usury for his money. Samuel, however, permitted this, as the buyer takes the risk of his money in case the vineyard may not yield the products, or in case they may become spoiled. Said R. Shima b. Hyya: Rabh, however, admits that this may be done with calves* (*i.e.*, to buy the offspring of the cattle for next year), and there is a great risk of miscarriage and other accidents. Samuel said to the grain dealers who used to give money to the farmers for the products of the next year: "I order you to help the farmer in his labor on the field, in order that you may acquire title to the body of the field, as, if you will not do so, your money will be considered as a loan, which is not allowed." And Rabha also said to the watchmen of the crops (who used to receive their payment from the grain when ready for delivery): "I order you to help the farmer in his labor all the time he is laboring, until harvest, as if you were hired for this purpose; for according to the law you would have to be paid only after all the labor is done, and then, when you receive a larger quantity of the grain than your trouble was worth, it would be considered that the farmer lowered the price for you, which is allowed. (If, however, you will not follow my order, the larger quantity would be considered as arising from waiting for the money which ought to be paid to you every day for watching, and appears usurious)." The rabbis said to Rabha: "You, master, consume usury, as usually the farmers hire their fields for the quantity of four kurs for each field, with the understanding they shall harvest it in Nissan, and you wait until Eyor and take six kurs." And he answered: "Your acts are unlawful, as the field is hired to the gardener, and if you com-

* This is in accordance with the explanation of Hananal in Tosphet. Rashi, however, explains otherwise, which is not understood easily.

pel him to harvest in Nissan you are injuring him in many kurs, as the grain is not ripe as yet ; but I am awaiting until Eyor and benefit him, and the two kurs more I take is for hiring the field and not for awaiting the payment of the money." There was a certain alien who pledged his house to R. Mari b. Rachel,* and afterwards he sold the same to Rabha. At the elapse of one year after the pledging took place R. Mari submitted the rent for the next year to Rabha, saying: The reason why I did not submit the rent to you for the first year is because a pledge without a fixed time is a year, and if the alien would like to repay me within the year, he could not do so without my consent ; but now, when the time is over, I have to submit to you the rent for your house. And Rabha rejoined: "I did not know that the house was pledged to you, and if I were aware of it, I would not buy it ; but now we have to act according to the Persian law, which dictates that the buyer has not to collect the rent until he pays the whole amount, and I will also act so. I will not take the rent from the house until the debt on the house will be paid to you by the seller.

Said Rabha of Barnish to R. Ashi: "I call the attention of you, master, that the rabbis are consuming usury, as they pay for wine in Tishri and choose it in Teveth when it is already in good condition, and this appears usurious, as, if they would take it in Tishri, they would suffer the damage if spoiled ; but by advancing the money, the responsibility rests on the seller." And he answered: They advance the money for wine and not for vinegar, and the wine which becomes sour during that time was so already in the beginning of the season, but it could not be so recognized ; it is, therefore, lawful for them to take the wine for which they have advanced their money. Rabina used to give money to the inhabitants by the shore of Shanwatha before the time of wine-pressing, that they should deliver him the wine thereafter, and they delivered him a barrel or two more than he bought. He came to question R. Ashi whether he could accept it or not, as it appeared usurious. And he answered: You may ; as it is only a gift. Said Rabina: But I am afraid this should be considered robbery, as the estates they possess were occupied by

* Rachel was the daughter of Mar Samuel, who was captured by heathens, married a heathen who afterwards became a proselyte, and his name was Issur the Proselyte. Her pregnancy began while he was yet a heathen, and therefore R. Mari was named after his mother, *Rashi*. (There was another Mari b. Rachel mentioned in Sabbath. p. 111, and his father Rabba. See there).

them after the owners of them escaped for not paying taxes, and the possessors paid the taxes to the Government (and as it is a law that estates cannot be considered robbed, they still belong to the previous owners; consequently the products are robbery). And R. Ashi rejoined: The estate is pledged for the taxes, and the Government says that the estate on which taxes were not paid is to be pledged to him who pays; consequently their occupation is lawful.

R. Papa said to Rabha: I call the attention of you, master, to the rabbis, who pay head-tax charge for those who cannot pay them, and they are laboring with them more than ought to be. And he rejoined: If I were to die a day previous you would not be aware of what R. Theshsth said, namely: The surety for these people lies in the archives of the king, and the king has ordained that he who pays no *charge* shall be made the servant of him who pays (for him).

R. Seuram, the brother of Rabha, used to compel doubtful characters to carry the palangin of Rabha, and Rabha approved his act from the following Boraitha: "Whence do we deduce that one, whose habit is not in accordance with the law, may be made to labor?" From the verse [Lev. xxv. 46]: "You may hold them to service forever, and* over your brethren, the children of Israel." Lest one say, however, that the same may be done with one who is acting rightly, therefore it is written: "But over your brethren . . . ye shall not rule with rigor."

R. Hama said: If one gave money to his comrade to buy wine for him, and he neglected to do it, the latter must deliver to him wine at the price current at the dock of Zulschafat (a place where the wholesale wine dealers brought their stock for sale). Said Amimar: I repeated this Halakha to R. Zbid of Nahardea, and he said: R. Hama's decision holds good only when he ordered him to buy any wine for him; but when the order was to buy a certain kind of wine, the messenger has no responsibility, as who can be sure that the wine ordered could be gotten easily? R. Ashi, however, maintains that even if the order was for any wine, he is not to be made responsible, as it is only an *asmachta* . . . which gives no title. But why should this case be different from the Mishna in Chapter IX. of this tract, that if one hired a field for sowing purposes, and did nothing, he must pay according to

* The Scripture reads *ubachiecham*; literally, "and with your brothers." Leeser translates according to the sense, "but." The Talmud takes it literally, and makes this word correspond both to the former and the latter sense, as explained in the text.

the appraisement of the products it would yield when cultivated? Then it was in his power to cultivate the field, and therefore he is responsible; but here it may be that he could not find the wine required.

Rabha said: If one of a company of three partners has given money to a messenger to buy something, it is to be considered for the company, and not for himself. However, this is only in case their money is kept in one sum; but if the money of each partner is tied and sealed separately, the things bought are only for him who gave the money.

R. Papi, in the name of Rabha, said: "The mark which is usually placed on each barrel of wine when sold gives title to the buyer" (even without any drawing). To what purpose was this decision made? According to R. Habiba, to give title so that the seller should have no right to retract; and according to the rabbis, if the seller has retracted, the sale is invalid, but he has to accept the curse of "who has punished the generation of the flood," etc., mentioned in the above Mishna. And so the Halakha prevails in places where it is customary to make such a mark a final act of the sale.

If the seller was first in the harvest, etc. Said Rabh: If the grain was to be finished with two kinds of labor only, he may fix the price; but if he requires three kinds, he must not. Samuel, however, maintains that if the finishing depends upon the efforts of a human being, even if there were a hundred kinds of labor for finishing, he may; but if he depends upon Heaven (as, e.g., rain or sunshine), even if there is only one kind of finishing, he may not. But did not the Mishna state that one may fix the price on sheaves, although he must dry, thresh, and winnow them (hence there are three kinds of labor before it is finished)? It may treat of when the sheaves were already spread in the sun for drying. But according to Samuel, that the price must not be fixed even if one depends upon Heaven, and there is the winnowing which cannot be done without an extraordinary wind. This also can be done with sieves.

Clay balls of a potter, etc. The rabbis taught: "The price must not be fixed on the clay balls of a potter unless they are made." So is the decree of R. Meier. Said R. Jose: "This is in the case of white earth, which is not so frequently in the market; but of black earth, as from the village of Hanania or Shihin and neighborhood, he may do so even before they are made, as, if he does not possess the material, he may find it in the market. Amimar

used to give the money when the earth was brought to the pottery. According to whom did he act? If according to R. Meier, it must not be done until ready; if according to R. Jose, it may be done even before the earth was brought? His act was in accordance with R. Jose's decision. But in the place of Amimar the earth was dear, and not so frequently found; when the earth was brought he relied upon the sellers and gave the money; otherwise, he did not.

And also manure of the whole year, etc. Is not the statement of the sages the same as that of the first Tana? Said Rabha: They may differ concerning the rain-season, in which is allowed to be done, in accordance with the decision of the first Tana; and according to the sages, it may be done only in the sun-season, but not in the rain-season.

For all mentioned above, etc. There was a man who paid a stipulated amount for an outfit to be delivered at the house of his daughter's father-in-law; in the meantime the value of the equipment was reduced (and the father-in-law refused to receive it for the value stipulated), and when the case came before R. Papa he decided that if the price was stipulated at the rate existing when the goods were to be delivered, then he must give for it the existing price, and if this stipulation was not made, he has to accept it at the previous price. Said the rabbis to R. Papa: And even then why should he pay him the higher price? The money paid does not give title? And he answered: My decision also was only concerning the curse mentioned in the Mishna. If it was stipulated, and the seller retracted, *he* has to accept the above curse; and if it was not stipulated, and the buyer retracts, then the above curse applies to the latter.

MISHNA IX.: One may lend his gardeners wheat to return him in the harvest-time the same measure, for the purpose of sowing, but not for consuming. (This was stated because) Raban Gamaliel used to do so with his gardeners, but if afterwards the price changed to a higher or a lower one, he always took the lower price to benefit the gardener, not because so was the Halakha, but because he wanted to act rigorously for himself.

GEMARA: The rabbis taught: "One may borrow his gardener's wheat, etc., for sowing, if he has not started work, but not if he has." Why did not the Tana of our Mishna make a difference, when the Tana of the Boraitha did? Said Rabha: R. Aidi explained to me thus: The Tana of the Mishna speaks of a place where the gardener usually sows the field with his own wheat, and there is no

difference whether he started to work or not. As long as he did not furnish the seed the owner may eject him; consequently, if he lends him his wheat, it is not considered a loan, but as a stipulation that he shall work for the owner of the field, and the owner shall receive from the share of the gardener that measure of grain which was advanced to him (and therefore, no matter if afterwards the price was raised, it is not usury). And the Tana of the Boraitha speaks of a place where usually the owner of the estate furnished the seed, and he (the owner) has changed the custom of his place; because his field was in good condition he made the gardener furnish the seed. Then, if the gardener has not started his work as yet, so that the owner may eject him, the above stipulation may be made, as it is considered a business matter, not a loan; but if his work is already begun, for which reason he cannot be ejected by the owner, and then the gardener is compelled to borrow the seed from the owner, it is considered a loan; and if the grain becomes higher, if he returns him the same measure it appears usurious.

The rabbis taught: "One may be asked by his neighbor for a loan of grain, to return the same at a certain time if the price will not be lower; but if it will, then he shall be paid in money at the price now existing. If, however, such stipulation was not made, if it became lower, he may return him with grain; if higher, he has to pay him in money at the price existing at the time borrowed, according to the explanation of R. Shesheth.

MISHNA X.: One must not lend a kur of wheat that it shall be returned to him from the barn (for fear it may become dearer). He may, however, lend him until his son came with the key. Hillel, however, forbids even this, as he used to say: A woman must not lend a loaf of bread to her neighbor, unless a price is stipulated for it, for fear wheat may become dearer, and then the return of the loaf will appear usurious.

GEMARA: Said R. Huna: "The statement of the Mishna that one may borrow wheat until he found the key: it is allowed only to borrow as much as he possesses; if he possesses a saah, he may borrow one; if two, two." R. Itzhak, however, said that even if he possesses only one saah, he may borrow many kurs (as the title of this saah is not secured to the lender and he may use it for himself; consequently the borrowed grain is to be returned from that of the market, and this saah he possesses remains free; on which he may borrow many saahs). Taught R. Hyya to support R. Itzhak: ("One must not borrow wine or oil if he does not pos-

sess) a drop of wine, a drop of oil." From which it is to be inferred that if he possesses one drop he may borrow upon it many drops.

Hillel forbids, etc. Said R. Nahaman in the name of Samuel: The Halakha prevails in accordance with Hillel. (The Gemara, however, says :) The Halakha does not prevail in accordance with R. Nahaman's statement.

As he used to say, etc. Said R. Jehuda in the name of Samuel: Hillel stands alone with his statement, as the majority of the sages hold that it may be borrowed and repaid anonymously (without any stipulation). The same said again in the name of the said authority: Society men transgress who are not very particular with each other regarding the size, weight, and number of things borrowed and returned (if they borrow from one another, and do not care to make return in kind and in the same manner, they transgress the commandment, "Thou shalt not cheat thy brother in measure, etc.," as they accept more or less than was borrowed). And also as regards violence, Sabbaths, and festivals, if they lend to each other on these days, according to Hillel, they are also accused of usury. The same said again in the name of the said authority: Scholars who know the law of usury may lend each other for interest (as they know the law, they give the interest by means of a present). Samuel said to Abuhu b. Ihi: Lend me a hundred peppus; I will return you a hundred and twenty, and it will be right (not as usury, but as a present). R. Jehuda, in the name of Rabh, said: One may lend to his sons or family for usury, to give them an idea how hard it is to pay usury and to understand the great punishment of it. (Said the Gemara :) This, however, must not be practised, as they may get accustomed to it, and afterwards lend money for usury.

MISHNA XI.: One may say to his neighbor: Help me in weeding or in digging around my vineyard to-day, and in return I will help you on some other day; but he must not say: "Help me in weeding and I will help you in digging, or *vice versa*. All the days of the rainy season are considered alike, and the same is the case with the days of the sunny season; but one must not say: "Help me in the sunny season and I will help you in the rainy season," or *vice versa*.

Raban Gamaliel says: There is a kind of usury which may be named preceding usury, and also another kind which may be named succeeding usury. How so? If one is to borrow money from another, and he sends him a present previously for this

purpose, it is a preceding usury; if one has kept the money of his neighbor for a certain time, and on repaying he sends a present, saying: "This is for the favor you did in leaving the money in my hand for such a time"—this is succeeding usury. R. Simeon says: There is also usury of talk. One must not say: I inform you that such and such a man, whom you are anxious to see, has arrived (and for this information you shall favor me with a loan). The following transgress the negative commandment of usury: The lender, the borrower, the surety, and the witnesses. The sages add also the scribe. They transgress the following commandment [Lev. xxv. 37; also *ibid.* 36, and Ex. xxii. 24, and in the verse: "Ye shall not lay upon him usury;" and finally, Lev. xix. 114]: "Ye shall not put a stumbling block before the blind, but thou shalt be afraid of thy God. I am the Lord."

GEMARA: There is a Boraitha: R. Simeon b. Joa'ling said: Whence do we deduce that, if one owes his neighbor a hundred zuz, and it was not customary for him before the loan to greet him first, he must not do so after the loan took place? From [Deut. xxiii. 20]: "Interest of anything, etc.," *i.e.*, that even a word must not be given as interest.

And the following transgress, etc. Said Abayi: "The lender transgresses all the commandments mentioned; the borrower transgresses the commandments of Deuteronomy mentioned above and of Leviticus, xix. 14. The witnesses, however, transgress the commandment of Exodus, xxii. 24."

We have learned in another Boraitha: "The usurers lose more than they profit (as said above, finally they lose all they possess); furthermore, they make Moses our master a fool, and his law untrue, saying: If he knew that usury brought great profit, he would not have written that it is prohibited."

When R. Dimi came from Palestine, he said: Whence do we deduce that if one is aware that his debtor has nothing with which to pay, he must not pass him by? From the verse [Ex. xxii. 24] cited above. R. Ami and R. Assi both said: One who does so is as if he caused his debtor to suffer from fire and water; as it is written [Psalm lxvi. 12]: "Thou hast caused men to ride on our head; we entered into fire and into water." R. Jehuda said, in the name of Rabh: Who lends money to any one without witnesses transgresses the commandment: "Ye shall not put a stumbling block before the blind." Reish Lakish adds that he who does so draws a curse upon himself, as it is written [*Ibid.* xxxi.

19]: "Let the lying lips be made dumb which speak hard things against the righteous." (Rashi explains this as meaning that in case the debtor denies the entire claim of his creditor, people usually believe the debtor and curse the creditor.)

The rabbis said to R. Ashi: Rabina adheres strictly to all that the rabbis ordained. (And to try whether it is so,) R. Ashi sent to him on one eve of Sabbath: Let the master send me ten zuz, as I have a chance to get a bargain. And he answered: Let the master appoint witnesses or write a note. And R. Ashi sent to him: Do you demand this also from *me*? And he answered: In much the more from you, master, who are always engaged in your study. It can easily escape your mind, and I would draw a curse on myself.

The rabbis taught: "The following three cry for help without being heard: Who lends money without witnesses, who buys a lord to himself, and he over whom his wife rules." What is meant by "who buys a lord to himself"? Who assigns his possessions to his children while he is still alive. Other number among the cries for help which are not heard, that of him who suffers in one city and does not try to find his livelihood in another.

CHAPTER VI.

REGULATIONS CONCERNING HIRING LABORERS, CATTLE, OR TRANSPORTING GOODS, THE RESPONSIBILITIES OF THE DRIVERS, ETC.

MISHNA 1.: He who hired servants (for the daytime), and they deceived one another, there is nothing but resentment. (The explanation is given farther on.) If one hired a driver or a carrier to bring trumpets, flutes for a wedding or funeral, or day laborers to take out flax from its steeping, or to do things which, if not done on the day of hiring, would cause damage, and they retracted: if there were no others to be hired for the same price, the employer may increase the amount of their hire, or deceive them (*i.e.*, promise an increase, but pay only according to the first agreement). If one hired servants, and they retracted, they have to suffer; if, however, the employer retracted, he has to suffer. (This is the rule :) Whoever changes or retracts his words, has to suffer for the injury caused.

GEMARA: The Mishna does not state that the servants have retracted, but that they have deceived one another, which is to be understood, the servants have deceived one another. How was the case? The employer appointed one of his servants to hire laborers for him, and he deceived them. (Let us see.) How was it? If the employer told him to hire men for four zuz a day, and he hired them for three, they have agreed for the price, and what has resentment to do here? On the other hand, if the employer told him to hire men for three zuz, and he promised four, then, if he told them that they would receive their payment from himself, let him pay the difference from his own pocket, as we have learned in the following Boraitha: "If one hires a laborer to do his work, and thereafter instructed him to do the work of another, he must pay him the full payment, and the reward for his labor he may demand from the employer?" The case was, he said to the laborer that the employer will pay, *i.e.*, he has not fixed any price. But let them see how the price for a day for laborers stands? The case was that there were some employers who paid three, and some who paid four, and the laborers may claim: "If

we did not understand from your words that we were to get four, we would take the trouble to look for other employers who pay four." And if you wish, it may be said that the Mishna treats of servants who possess their own fields (and they do not hire themselves unless for a higher price than the ordinary), and they may claim: "If we did not understand that we were to get four, it would be a humiliation for us to hire ourselves for a lower price." It can also be explained that the Mishna treats of laborers who are doing work only for others, and nevertheless they may claim: "Because we understood that we were to get four zuz, we troubled ourselves to make a good job." But, then, their work should be examined? The case was, they were engaged in digging a trench which was filled with water, and could not be examined. And if you wish, it may be said that the employer told the servant to hire laborers for four zuz a day, and he hired them for three; and although they agreed to work for the price, they may be angry with the hirer, saying: "Do you not hold to the verse [Proverbs, iii. 27]: 'Withhold not a benefit . . . when it is in the power of thy hand to do it'?" After all, it may be said that the Tana of our Mishna by the expression "deceived" means also "retracted" (and he treats of a direct agreement between the employer and the servants), as we have learned in the following Boraitha: "If one has hired laborers, and they have deceived the employer, or *vice versa*, they have nothing but resentment, provided they did not go to work at all. But if the drivers went for grain and did not find any, or field laborers went to work and found that the field was as yet wet, they get the full payment. However, the hire of a driver who loads his wagon and delivers it to the proper place is not to be the same as the hire of one who did not find any load; and the same is the case with laborers who are engaged in work all day compared with those who are idle the whole day. All this, however, relates to when they had not yet begun the labor; but if they began, their labor must be valued for what they have done. How so? If they agreed to cut stalks or to weave a garment for the price of two salas, and they left their work, having done the half of it, the work done must be appraised; if, *e.g.*, their work was worth six dinars, they may be given one sala (which is eight dinars), or they may be let finish their work, and take two salas. And if it was worth only one sala, they get a sala. R. Dossa, however, says the *remaining* work must be appraised, and they get the difference; *e.g.*, if the *remaining* work can be done for less than six, they get only one-half a sala (although they have

done the half of the work), or they may be let finish their work, and take two; but if the remaining work could be done for a sala, the laborer who has done the half gets a full sala. However, all this is said of such things as do not become spoiled if the work is done later; but in cases in which the work may become spoiled, he may hire other laborers on their account, or he may deceive them. How so? He may say to them: "I made the agreement with you to work for one sala; now, however, I raise it to the amount of two." To what amount *may* he increase the hire? To the amount of forty to fifty zuz, provided there are no other laborers to hire for a lower price; but if there are, and the retracting laborers tell him to get his work done by them, he has nothing but resentment.

A disciple taught before Rabh that the full amount must be paid, but Rabh said: My uncle (R. Hyga) said: "If I were the hirer, I would pay only for the loss of time," and thou sayest that he must pay the full amount. The Gemara questioned: Does the above Boraitha not add: The hire of a driver who loads his wagon, etc., is not to be the same as the hire of one who did not find any load? (Why, then, did not Rabh refer him to this Boraitha, and not to his uncle?) Rabh was not aware of the above addition. According to others, he was aware of it; and concerning this Boraitha he says: My uncle said: "If I were the hirer, I would pay nothing," and thou sayest that loss of time must be paid. But, if so, there is a difficulty. It might be said that R. Hyga speaks of laborers that he appointed yesterday to come to work early in the morning, and rain made the field wet at night, so that it was unfit for work; and in such a case the laborers ought to know it, and not come to work at all. The Boraitha treats of a case where both the employer and the laborers were not aware of the fact that the field was unfit for work at that time. And so also declared Rabh elsewhere: If one hired laborers to dig a trench, to begin their labor on the morrow, and at night rain filled the trench with water, then, if at the time he hired them he notified them of the place where the trench was to be found, the laborers have to suffer the loss (seeing the rain, they ought not to come to work); but if at the time he hired them he did not notify them of the place where the trench was to be found, he must pay for the loss of time (as they may say: How were we to know that the trench was placed where it was raining?). The same said again: If one hired laborers to wet his fields, and in the meantime rain came, the laborers suffer the damage. If, however, they become

wet by the overflow of a river, the employer must pay them for the loss of time. He said again: If one hired laborers to wet his fields, and in the middle of the day the river from which the water was to be taken ceased to flow, if this was an accident the laborers have to suffer. If, however, this happens with the river frequently, the employer must suffer; provided the laborers were strangers and did not know the nature of this river. He also said: If the work for which the laborers were hired for a day was finished at the middle of the day, he may engage them with other similar or easier work, but not with harder. And if he has not such, he nevertheless must pay them the full amount. Why so? Let him pay them for the loss of time only? Rabha speaks of carriers of Mahuza (his city), who used to become weak when they had nothing to do (in the daytime).

The master said: The labor already done must be appraised, and if it was worth six dinars, they get a sala (eight dinars). Hence the rabbis hold that the laborers always have the preference.

"Or let them finish their work, and take two salas." Is this not self-evident? The case was that the labor became dearer, and the laborers and the employer became reconciled. Lest one claim that the laborers may say: "We accepted your reconciliation with the intention that you will raise our wages" (and as, according to the rabbis, the laborers always have the preference, their claim should be taken into consideration), he comes to teach us that the employer may say: "My intention in becoming reconciled was to give you a good meal."

"If the labor were worth one sala, they get it." Is this not self-evident? The case was, that at the time he hired them the labor was cheaper. He, however, promised to raise one zuz. Thereafter the labor became a zuz higher: lest one say that the laborers may claim that they were promised a zuz over the existing price, consequently they have to get two zuz more, he comes to teach us that the employer may say: "I was aware that the labor is worth a sala, and it will be increased to this extent sometime. I therefore promised to pay you the proper price, but not to add a zuz above the proper price."*

"R. Dossa said," etc. As he holds, the employer has the preference. But to what purpose does he add: "Or let them finish the work and take two salas"? Is this not self-evident?

* Rashi explains this passage in another manner, which is somewhat complicated. Our translation seems to us to be the right one.

He treats of a case where the labor became cheaper and the employer locked them out, and afterwards the laborers became reconciled to him: lest one say that the employer may claim that he accepted the reconciliation with the intention to lower the price, he comes to teach us that the laborers may say they have become reconciled to him with the intention of making a good job. But to what purpose does he continue, that if a sala, etc.? Is this not self-evident? Said R. Huna b. R. Nathan: He speaks of a case where the laborers have lowered the price a zuz, and thereafter the labor became a zuz cheaper: lest one say that the employer may claim: "My agreement was to give a zuz less than the current price, consequently I have now to pay two zuz less," he comes to teach us that the laborers may claim: "We were aware that the labor may become cheaper, and were willing to work for the proper price, but not lower than that."

Said Rabh: The Halakha prevails in accordance with R. Dossa. Did, indeed, Rabh say so? Has he not said that a day laborer may retract even in the middle of the day? And lest one say that R. Dossa makes a difference between a day laborer and a piece-worker, the following Boraitha shows that he makes no difference, namely: "If one hired a laborer, and in the middle of the day the latter heard that one of his relatives died, or he became ill from sunstroke, whether he was a day laborer or a piece-worker he gets the full payment." Now, according to whom is it? Shall we assume it is according to the rabbis? Why, then, need it to be said that it was accident? Even without this the rabbis hold that the laborer always has the preference. It must therefore be in accordance with R. Dossa; hence he makes no difference between the above two kinds of laborers?

Said R. Nahaman b. Itzhak: The Boraitha treats of a case where the work would be lost if not finished in the same day, and therefore only in case of an accident does he get the full payment in accordance with all of them; but in other cases there is a difference between the two kinds of laborers mentioned above (according to R. Dossa). And if you wish, it may be said that the statement of our Mishna, that "he who retracts his word must suffer the damage," is to be interpreted as we have learned in the following Boraitha: "Whoever retracts." How so? If one sold a field for a thousand zuz, and the buyer gave him a deposit of two hundred, if the seller retracts, the buyer has the preference; he may insist upon the return of his money, or he shall furnish him with the best estate for the value of his deposited money. If,

however, the buyer retracts, the seller has the preference; he may return him the money, or give him the worst estate he has for the value of his money. R. Simeon b. Gamaliel, however, says (that in case one buys an estate by instalment), an agreement must be written to prevent any retraction. How so? The seller writes: "I, so-and-so, sold such-and-such a field to so-and-so for one thousand zuz, of which two hundred were paid, and the balance of eight hundred is to be paid afterwards," then the agreement is in full force even for many years.

The master said: "Or best estates for his money." At the first sight it is to be understood the best estate the seller possesses. Why so? Let him be considered a creditor, of whom a Mishna states that he has to collect from the middle one; and, secondly, he has given the money for a certain estate which is still in existence? Said R. Nahaman b. Itzhak: The Boraitha means to say, in both cases, from the best and the worst of the field in question. R. Aha Aiga, however, says: There is no contradiction even when it means from the best estate he possesses, as usually a poor man who buys an estate for a thousand zuz has to sell out his personal property or small estates for a cheap price, so that if the seller retracts the buyer suffers damage, and there is a Mishna that all damages must be appraised from the best estate.

R. Simeon b. Gamaliel said: "The seller writes," etc. We see, then, that the buyer acquired title only because of the agreement, and not otherwise; but did not a Boraitha state: "If one gave a deposit to his neighbor, and said: Should I retract, my deposit shall be relinquished to you, and the seller said: Should I retract, I shall return you the deposit in double, the stipulations are of avail; so is the decree of R. Jose." [R. Jose is in accordance with his theory that an *asmakhta* gives title.] R. Jehuda, however, said: It is sufficient that the buyer should acquire title to the amount of his deposit. Said R. Simeon b. Gamaliel: All this is only in case the buyer said: My deposit shall give me title. If, however, there was sold to him a field for a thousand zuz, and in payment thereon he gives him five hundred zuz, title is given to the buyer to the whole field, and he has to give him the remainder even during many years (hence we see that according to him title is acquired even if it was not so written as stated above). This presents no difficulty. The Boraitha speaks of when the seller agrees to wait for the remainder, and the Mishna speaks of when the seller was in need of money, and insisted upon immediate payment (which shows that he sold him the article only because he

was in need of money, and would not like to give him title until the whole amount was paid; as Rabha said elsewhere: If one has sold an article, when he was in need of money, and received a deposit from the buyer, title is not acquired unless the whole amount is paid; but when the seller was not in need of money, and did not insist upon immediate payment of the remainder, title is acquired).

Rabha said again: "If one lends a hundred zuz to his neighbor, and he returns the sum in instalments by single zuzes, although it was not so stipulated, the payment is valid, and the lender has nothing but resentment, as he may say that the borrower had harmed him, for he could have done business with the money if it were paid to him in one payment.

There was a man who sold an ass while he was in need of money, and the buyer paid him the whole amount less one zuz. R. Ashi was deliberating if in such a case title is acquired or not. Said R. Mordechai to him: So said Abimi of Hagraunia in the name of Rabha, that one zuz is considered the same as many, and title is not acquired. Said R. A'ha b. R. Joseph to R. Ashi: But we have heard in the name of Rabha that title is acquired; and he answered: The Halakha you have heard in the name of Rabha must be interpreted, in case it was certain that he has sold his field on account of its infertility, and the insisting upon the payment of the remainder was only because he was afraid he shall retract.

It is certain that if one was in need of a hundred zuz, and could not find any one to buy an estate for this amount, and sold out for two hundred (and received a deposit of one hundred zuz), and insisted upon the immediate payment of the remainder, then title is not acquired. But how is it when, if the same would trouble himself to find a buyer for one hundred zuz, he could get one, but he did not, and sold out for two hundred zuz, and was insisting upon the immediate payment of the remainder? Shall we assume that this case should be considered as the case of selling a field on account of infertility, stated above; or is it not because, after all, he sold out this field unwillingly, owing to the need of money? This question remained undecided.

If one hired a driver . . . or he may deceive them. But to what amount may he hire others on their account? Said R. Na'hman: To that amount which the employer owes them for the labor done already. Rabha objected to this statement from

the Boraitha stated above (p. 190), that he may hire on their account to the sum of from forty to fifty zuz ; and R. Na'hman answered : The above Boraitha speaks of a case where the laborers place their instruments to such an amount in the house of the employer.

MISHNA II.: If one hired an ass for use on a mountain, and he used it in a valley, or *vice versa*, although the distance for which it was hired was equal in both ways (as, *e.g.*, ten miles), and the ass dies, the hirer is responsible. If he hired it to use it on the mountain, and he used it in a valley instead, and the ass slipped, he is free (because this could surely occur on the mountain, upon which such a case is more frequent) ; if, however, it was overheated, he is responsible. The reverse is the case when he used it on the mountain instead of in the valley : if it slipped, he is responsible ; and if it is overheated, he is free. If, however, it was overheated because of the ascending to the top of the mountain, he is responsible. If one hired an ass and it became blind, or it was taken for an *angaria* (*i.e.*, taken by the Government for labor), the owner may say : " Yours (which you have hired) is before you." If, however, it dies, or broke a foot, he must furnish him with another ass.

GEMARA : Why does the Mishna make a difference in the second part between slipping and overheating, and does not do so in the first part ? In the school of R. Yanai was said : Because in the first part the plaintiff may claim the animal dies owing to the air of the mountain ; (if it was hired for a valley,, he may say that it was not used to the air of a mountain, and if for a mountain, he may claim it was not used to the air of a valley. R. Jose b. Hanina, however, said : The Mishna treats of when it dies owing to overwork, and Rabba says : The Mishna treats of when it dies from the bite of a snake (so the plaintiff may claim : If you had used it for the place hired, such would not have occurred). R. Hyya b. Abba, in the name of R. Johanan, said : The Mishna is in accordance with R. Meier, who holds that one who has done contrary to the agreement with the owner is considered a robber, and is responsible. Where is to be found such a statement by R. Meier ? In the following Boraitha : " If one has given a dinar to a poor man for the purpose of buying himself a shirt, he must not buy a garment, and if for the purpose of a garment, he must not buy a shirt, because this would be contrary to the intention of the donor."

But perhaps there is another reason ; namely, people shall not say : " So-and-so has promised to furnish a garment for the poor so-and-so," and did not keep his promise ? Then R. Meier should state : Because of suspicion. Why, then, his reason, " because it is contrary to the intention," etc. ? Hence he holds that every change of the intention of the owner is considered robbery. Infer from this that so it is.

Or it was taken, etc. Said Rabh : The case is only when it is an angaria which is to be afterwards returned ; but if it is an angaria which is not to be returned, he must furnish him with another ass. Samuel, however, maintains : There is no difference what kind of an angaria it was ; if it was taken for using to the same place where the hirer intends to go, the owner may say to him : " Yours is before you." If, however, it was taken in a contrary direction, then the owner must furnish him with another ass. An objection was raised from the following : If one hired an ass, and it became blind or mad, the owner may say : " Yours which you have hired is before you." If, however, it dies, or it was subject to an angaria, he must furnish him with another ass. This would be correct in accordance with Rabh's theory, as the Boraitha may treat of an angaria which is not to be returned ; but Samuel's statement it contradicts. And lest one say that the Boraitha speaks of when it was taken away in a contrary direction, so that it could agree with Samuel's statement also, it cannot hold good, because of the latter part of the same Boraitha, which states : R. Simeon b. Elazar said that if it was taken away for use in the same direction, the owner may say : " Yours is before you " ; and if in a contrary direction, he must furnish him with another ass. Now, from the statement of the latter it is to be inferred that it makes no difference to the first Tana in what direction it was taken ? Samuel may say : Is there not a Tana who is in accordance with my theory ? I hold with R. Simeon b. Elazar, and if you wish, it may be said that the whole Boraitha is in accordance with R. Simeon b. Elazar, but it is not complete, and should read thus : If one hires an ass, which becomes blind or mad, the owner may say : " Yours which you hired is before you." If, however, it dies or becomes subject to an angaria, he must furnish him with another ass. This, however, was said if it was taken away in another direction ; but if it was taken away in the same direction he intended to go, the owner may say : " Yours is before you " (you may accompany this one until the officers of the

Government will meet another ass, and yours will be returned to you). So is the decree of R. Simeon b. Elazar, as he used to say that only if it was taken in another direction must he furnish him with another ass, and not otherwise. But how can you interpret the Boraitha in accordance with him? Have we not heard him stating that if one has hired an ass for the purpose of riding upon it, and it becomes blind or mad, the owner must furnish him with another one, which contradicts the statement of the Boraitha in question? Said Rabba b. R. Huna: For the purpose of riding, it is different (as he cannot ride upon a blind or mad animal, but as for carrying burdens, he can do so even with the same). Said R. Papa: If he had hired the ass for the purpose of carrying glassware, the case is the same as if he hired it for riding.

Rabba b. Huna, in the name of Rabh, said: "If one has hired an ass for the purpose of riding, and it dies while in the middle of the way, he has to pay the half of the agreed price, and he has nothing but resentment." Let us see. How was the case? If the carcass of this ass would pay for delivering the burden to the place to which it was hired, what had resentment to do here? Let him sell the carcass, and deliver the goods, and if this is not the case, why should not the owner deliver the goods to the place? The case was such that one could not be found, to be hired for delivery; and the owner may claim payment from the place from which it was taken, to the place directed. But let us see. How was the agreement? If it was for any ass to carry the goods, then certainly he must furnish him with another one, and if for this ass, then let him sell the carcass for the purpose of carrying his goods. This was when the sale of the carcass would not yield the amount needed. But even if the carcass would pay, may he do so? (Did, then, the owner *sell* him this ass? The decision of the Mishna is that he shall furnish him with another ass; consequently he has not given him any title for this one?) Rabh is in accordance with his theory who said elsewhere that the principal amount must not be totally consumed, as it was taught: "If one has hired an ass, and it dies while in the middle of the way," Rabh said, that if the carcass would pay to buy another one instead, he may do so; but if it would pay only to hire another one, he must not. Samuel, however, maintains he may, and the point of their differing is the total consumption of the principal amount of the thing hired. According to Rabh, it must not be consumed

(and the statement of the Mishna, that he must furnish him with another ass, is in case it dies while yet under the control of the owner, so that if he sells the carcass he adds to this amount and buys another ass, and so the principal amount is not wholly consumed as in case of selling the carcass for the purpose of hiring another one); and according to Samuel, even the total consuming of the principal amount is allowed.

The rabbis taught : " If one hires a boat, and it sinks in the middle of the way, R. Nathan said : If he has paid, the money remains with the same owner ; but if he has not paid, he has nothing to pay." Let us see. How is the case ? If the agreement was " for this boat in which I shall carry wine to a certain place," why, then, should he not collect what he paid for ? He should claim for another boat for delivering wine, and if it was for any boat, for delivering *this* wine, why should he not pay, even if he has not done so until now ? Let the owner claim for the wine he has agreed to deliver, and he will furnish another boat ; and if the wine is lost, and the hirer cannot keep his agreement, let him pay. Said R. Papa : R. Nathan's decision can be explained only in case the agreement was " for this boat and this wine," but if the agreement was " for *any* boat and *any* wine," the loss must be divided.

The rabbis taught : " If one hires a boat for a certain place, and has unloaded it while in the middle of the way, he has to pay for the half way, and the owner has nothing but resentment." How is the case ? If the owner has the opportunity to let it, why then resentment ? And if not, why should he not get pay for the whole way ? The case was, the owner had an opportunity to let it. He claims, however, that the loading and unloading, which must be done twice, damages the boat. But if so, the claim is a just one, and he has to be paid. Read in the Boraitha thus : In the middle of the way he loads more, and the agreement was that he may load as much as he likes, and shall be paid according to the weight of the load ; and if he adds more in the middle of the way, he has to pay him for this loading for the half way only. But, then, what is the resentment for ? For the losing of time.

The rabbis taught : " If one hires an ass for the purpose of riding, the hirer may place on it his garment, his bottles with beverages, and food for himself for that day. More than this, however, the driver may prevent. The driver may also place hay and barley and food for himself for this day only.

More than this, the hirer may prevent." How is it? If on the way, food can be bought, why should not the driver prevent the hirer from placing more food than for one day? And if it could not be bought, why should the driver be prevented from taking food for more than one day? Said R. Papa: The case was, that food could be obtained at the inn only, and for a driver it is customary to trouble himself, in the city, to find out who is selling food for the ass and himself, which is not the case with the hirer.

The rabbis taught: "If one hires an ass for the riding of a male, the same must not be used for a female; if for a female, a male may ride on it. There is, however, no difference whether the female was tall or short, pregnant or nursing." If you say that a woman nursing a child, which are two bodies, may, is it not self-evident that a pregnant woman, which is only one body, may? Said R. Papa: It means even when she was both pregnant and nursing.

MISHNA III.: If one hires a cow for the purpose of ploughing on the mountain, with all the implements belonging to it, and he plough in a valley, if the plough-handle breaks he is free; if *vice versa*, and it breaks, he is responsible. If to thresh pulse, and he threshes grain, he is free; but if to thresh grain, and he threshes pulse, he is responsible, because pulse becomes slippery (and thus the plough-handles can easily break).

GEMARA: But how is it if the plough-handle breaks without any change of the agreement: who has to pay for it? Said R. Papa: He who holds the handle of the plough (because it breaks owing to his carelessness); and R. Shesha b. R. Idi says: He who manages the handle in such a manner that the plough digs deeper in the ground than it ought to, and so the Halakha prevails. In a place, however, which was known to them as strong ground, etc., both the holder of the plough-handle and the manager are responsible.

R. Johanan said: If one sells a cow to his neighbor, saying: "This cow is a gorer, a biter, a kicker, lying down while laboring," and in reality it was afflicted with only one of these defects, the sale is invalid (as the buyer, on examining it, may not find one or two of the defects he was told of, and thinks the seller is only jesting, and the cow has no defects at all). If, however, he says: It is afflicted with one of the defects mentioned above, and it has also some other defects, although it was afflicted with only this one, the sale is valid (because it was the buyer's duty

to search for such defects as were mentioned to him). So, also, we have learned in the following Boraitha: "If one sells a female slave, telling the buyer that she is an idiot, epileptic, and becomes confounded, and she was afflicted with only one of these, the sale is invalid (for the reason stated above). If, however, he says she is afflicted with one of the defects mentioned above, and she has also other defects, the sale is valid." R. A'ha b. Rabha questioned R. Ashi: How is it, if she has indeed all those defects (and the buyer claims that because the seller mentioned all the defects separately, he thought he was jesting, but if he had been aware that she was afflicted, he would not have bought her)? Said R. Mordechai to R. Ashi: So was it said in the name of Rabha, that in such a case the sale is valid.

MISHNA IV.: If one hired an ass for carrying wheat, and he used it for barley (of the same weight as the wheat he had spoken of, and the ass becomes injured), he is responsible. For grain, and he used it for straw, he is responsible, because an increase of volume makes the load harder for the animal. If for half a kur of wheat, and he used it for half a kur of barley, there is no responsibility. If, however, he has increased the size (although it was equal in weight to the half kur of wheat), he is responsible. How much must the load be increased to make him responsible? Symmachos, in the name of R. Meier, said: One saah for a camel, and three kabs for an ass.

GEMARA: It was taught: Abayi said: We read in the Mishna: "The volume of the load is *like* the weight (*i.e.*, loads of the same volume are considered of the same weight as regards the stress on the animal, and if he added these kab to the volume bargained for, he is responsible for any injury to the ass). Rabha, however, said: We read in the Mishna: It is as hard *for* loading—*i.e.*, weight is weight, and the volume is an addition, and if he changed the load for a more voluminous one, although of the same weight, he is responsible for the additional volume.

There is an objection from our Mishna if it were hired to carry half a kur of wheat, and he used it for half a kur of barley: "If he has increased the size, etc., is it not meant three kabs" (as the explanation of Abayi)? Nay; it means a saah (and the Mishna is interpreted thus: If for carrying a half kur of wheat, and he used it for a half kur of barley, he is free, although he changed the article, as the change was lighter; if, however, he had increased the barley to the weight of wheat, he is respon-

sible, owing to the increase of size). But does not the Mishna state further on: "How much must the load be increased . . . a saah for a camel," etc.? This is not a continuation of the former, but a separate statement; thus, when there was no change in the article, and weight was added to the usual load, how much should be added in order to make him responsible? Symmachos says, etc.: Come and hear (another objection): "If it were for carrying a half kur of wheat, and he used it for sixteen saahs of barley, he is responsible." From which is to be inferred that if he added only three kabs he is free? Abayi explained that this Boraitha speaks of a load counted by stricken measures; according to others, reduced in weight by being worm-eaten.*

The rabbis taught: "An addition of one kab makes one responsible when he has hired one to carry a burden on his shoulders. A *lethakkh* (a half kur) is an addition to a skiff, one kur for a larger boat, and three kurs are an addition for a ship (*i.e.*, if the above were added to the usual loading of the vessels named, the one who hires is responsible for damage)."

The master says: One kab for him who carries on his shoulders: but if he is a man with sense let him throw it off if it is too heavy? Said Abayi: For example, when he became sick soon after he was loaded with his burden. And Rabha said: Even if it has not occurred so, as the Mishna's statement is for the purpose of an additional payment also—*i.e.*, for this addition he has to pay him separately. R. Ashi maintains that the carrier need not throw it off, because he may have thought: "I am too weak now, but I will become stronger, and able to carry the usual weight for which I am hired," as he was not aware that the size of a kab was added. It was said above: "One kur for a larger boat," etc. Said R. Papa: Infer from this that the usual weight for a large boat is thirty kurs. To what purpose is it stated? For the purpose of business—*i.e.*, if one has hired a boat for carrying without any stipulation, thirty kurs is the usual load.

MISHNA V.: All specialists are considered bailees for hire. If, however, they have notified the owners that the work is ready and they may take it, and the payment should be made thereafter, they are considered from that time gratuitous bailees. If one

* This is the explanation of the Goanim, but Rashi does not agree, because it does not lessen the increase of size; he therefore interprets this in the first explanation; both, however, are too complicated, and it is difficult to understand the real meaning without a correct knowledge of the custom, weight, and measure used at that time.

says: "Guard for me this article, and I will guard yours," the depositary is considered a bailee for hire. If one says: "Guard for me this article," and the depositary answers: "Leave it with me," he is a gratuitous bailee. If one has lent money on a pledge, he is considered a bailee for hire. R. Jehudah, however, said that if he has lent him money on a pledge (without interest) he is considered a gratuitous bailee; if, however, he has lent fruit on the pledge, he is considered a bailee for hire. Aba Saul said: "One may let out a pledge of a poor man, and the money he takes for it he shall deduct from the debt of the pledger, because this is considered as if he would return a lost thing."

GEMARA: Shall we assume that our Mishna is not in accordance with R. Meier* of the following Boraitha: If one hired a cow, how shall he pay in case it is lost? (The question is asked because the law of a gratuitous bailee, a bailee for hire, and a borrower is to be found in the Scripture. A hirer, however, is not mentioned; hence the question: To whom of the above named shall he be compared?) R. Meier says: To a gratuitous bailee (as he pays for the labor done by the animal, and takes no compensation for guarding it). R. Jehudah, however, says: To a bailee for hire. (As he hired the animal for his benefit, although he pays for the labor, he is considered a bailee for hire. Now, a specialist who takes the article for his own benefit is compared to a hirer, and R. Meier considers him a gratuitous bailee.) It can be said as Rabba b. Abuhu, who has changed the names in the above Boraitha and taught: R. Meier said, To a bailee for hire; and R. Jehudah said, To a gratuitous bailee.

If, however, they have notified, etc. There is a Mishna (in Chapter VIII. of this tract): "If the borrower told the lender to send through a messenger, and he did so, he is responsible for an accident; and the same is the case when he returns it in that way." Said R. Na'h'man b. Papa: We have learned the same in our Mishna; if they all said: "Take yours, and the money you may pay afterwards," it is considered a gratuitous bailment. Is it not to be assumed that the same is the case if he has notified the owner that the work is ready (without adding something to it)? Nay; "Take yours" is different.

Huna Mar b. Mrimar, in the presence of Rabina, raised a contradiction between the two Mishnayoth mentioned above,

* Elsewhere it is explained that all anonymous Mishnayoth are in accordance with R. Meier, and this Mishna being anonymous, hence the question,

and afterwards explained them as follows : In our Mishna it is stated: If they said, "Take yours," etc., they are considered from that time bailees for hire ; and the same is the case if they have notified the owners that the work is ready for them. Is it not a contradiction from the above-cited Mishna that if the borrower told him to send, etc., he is responsible ? (Hence we see that it is considered under the control of the borrower even when he returned it, and this contradicts the statement in our Mishna, which is, that as soon as the specialist has notified the owner of the article that it is ready for delivery it is considered under the control of the owner.) And he himself answered that Raphram b. Papa said, in the name of R. Hisda, that the cited Mishna treats of when the borrower has returned the loan through his messenger before the agreed time has elapsed (consequently it was under his control unquestionably); but if he did so after the elapse of the agreed time, he is free.

The schoolmen propounded a question: What is meant by the expression "free" ? Is it meant free of the responsibility of a borrower (who is responsible for an accident also), but that he is still responsible as a bailee for hire (who must pay for theft and loss), or does it mean entirely free from any charge ? Said Amimar: It seems that he is free only from the responsibility of a borrower, but not from the responsibility of a bailee for hire ; as he has derived benefit from it, he is considered such.

There is a Boraitha supporting Amimar as follows: "If one bought utensils from a specialist to send to the house of his father-in-law, with the understanding that if they are accepted he will pay their value, if not, he will pay according to the benefit he shall derive from the pleasure they will give to the house of his father-in-law because of their being sent as presents: if an accident happens to the utensils while on the road thither, the buyer is responsible. If, however, the accident occurred while the utensils are being returned, he is free, for he is considered a bailee for hire (for he derives them from the benefit mentioned above), who is not responsible for an accident (and this is in accordance with the theory of Amimar).

There was a man who sold wine to his neighbor, and the buyer said : "I shall carry it to such a place : if I sell it there, you will be paid ; if not, it will be returned to you" ; and an accident occurred while returning it. When the case came before R. Na'hman, he made him responsible. Rabha objected from the above-cited Boraitha, which states that if an

accident occurred while on the road thither, he is responsible, and while returning, he is free ; and R. Na'hman answered : " This returning is to be considered as if it were on the road still for sale, because common sense says that if he could sell it while returning he would certainly do so."

Guard for me, etc. Why so ? Is this not to be considered a guard in the presence of the owner (as at the same time the article guarded was stolen, the owner of it was caring for the article entrusted to him in return, and the Scripture plainly reads [Ex. xxii. 14]: " But if the owner thereof be with it," etc.; and this is explained further on to mean, if the owner is with him in the same labor) ? Said R. Papa : The Mishna means to say : " You guard for me to-day, and I will do so for you to-morrow."

The rabbis taught: If one say: " Guard for me this article, and I will guard yours to-morrow ; or, lend me, and I will lend you " ; " guard for me, and I will lend you," or *vice versa*, all are considered bailees for hire, one to the other.

There were sellers of spices who agreed that each one of them should be engaged one day in each week in preparing food for the whole company. One day they said to one of their number : " Go and bake bread for us," and he replied : " Then guard for me my garment." They, however, neglected to do so, and the garment was stolen ; and when the case came before R. Papa, he made them responsible. Said the rabbis to R. Papa : Why should they be responsible ? Was not the neglect in the presence of the owner ? And he was embarrassed. Finally it was learned that at the time the garment was stolen its owner was not occupied in baking, but was drinking beer (consequently the decision of R. Papa was a just one). But why was R. Papa embarrassed ? There is a different opinion between the Tanaim in such a case. According to one, he is free ; and according to the other, he is not. Could not R. Papa say that he agreed with the latter ? The case was, the day on which he was told to bake for the company was not the day appointed for him, and he was asked to do this as a favor. He, however, says : " For this favor you will favor me by guarding my garment," and it was not owing to wilful neglect that it was stolen. And R. Papa made them responsible according to the law of a bailee for hire ; and the rabbis told him that the company ought not to be held responsible, because of the law concerning a guard in the presence of the owner, to which *all* agree that there

is no responsibility, and therefore he was embarrassed ; but finally it was learned that his decision was correct as stated above.

There were two men on the road ; one was tall and the other was short. The tall man was riding an ass, and had with him an ironed sheet for a covering, and the short one was covered with a cloak (a woollen one). When they came to cross a stream, the short man placed his cloak upon the ass, and instead of it took the sheet of the tall man and wrapped himself up in it, and the water carried it away. When the case came before Rabha he made him responsible. Said the rabbis to Rabha : Why should he be responsible ? Was it not in the presence of his owner (*i.e.*, at the same time the sheet was lost, the lender was crossing the stream with the borrower's cloak ; is this not equal to the case, "guard my article, and I will do so with yours," of which it is said above that if it was at the same time there is no responsibility) ? And Rabha was embarrassed. Finally, it was learned that the short man took it without the consent of his comrade, and he also placed his cloak upon the ass without consent.

There was a man who let his ass to his neighbor, and told him : "See that you do not take the way by the river of Paqud, owing to its marshy road ; take the way of the city of Narsh, which is dry." The man, however, took the way by the river of Paqud, and the ass died ; when he returned he said : "It is true I took the way by the river mentioned, but there was no marsh." And when the case came before Rabba he said : This man may be trusted, as, if he were to tell a lie, he would say, "I took the way of Narsh." Said Abayi to him : Such a supposition cannot hold good when there are witnesses (*i.e.*, it is known to all that the way by the mentioned river is marshy).

Guard this, etc. Said R. Huna : If the depositary said : "Leave it here for you," he is not a gratuitous bailee and not a bailee for hire (*i.e.*, he has no responsibility whatever, as it can be understood to mean : "You, yourself can guard it in this place"). The schoolmen propounded a question : If he said : "Leave it anonymously," how is the law ? Come and hear : "Guard it for me," and he answered, "Leave it here for me," he is considered a gratuitous bailee ; from which is to be inferred that, if an anonym, he is not considered a bailee at all. On the other hand, from the above decision of R. Huna, that

the one who said "Leave it for you" is not considered as any bailee, it is to be inferred that if he said "Leave it" only, he is considered a gratuitous bailee. Therefore, nothing is to be inferred from the cited Boraitha. But shall we assume that on this point the Tanaim of the following Mishna differ? If he has brought him his things with the permission of the owner of this court, the owner is responsible. Rabbi, however, maintains that in all mentioned cases the owner is not responsible unless he accepted it for the purpose of guarding. Nay, perhaps the reason for the decision of the rabbis is because a court is usually a place where things are safe, and when the owner gave the permission to bring in the things, he did so with the intention of guarding them; but in our case, which concerns a public place, the expression "Leave it" may be understood to mean, "Leave it and guard it yourself." On the other hand, the reason for the rabbis' decision may be because usually one must have permission to enter a court belonging to a private person, and when he asked leave to place his things in the court, he answered, "Enter"—*i.e.*, "enter and guard your things yourself"; but in a public place the expression "Leave it" may be understood to mean, "Leave it and I will take care of it," as, otherwise, does the man have to ask permission from him to leave it there?

On a pledge, he is a bailee for hire, etc. Our Mishna is not in accordance with R. Eliezer of the following Boraitha: "If one lends money on a pledge, and the pledge was lost, he may take an oath that there was no wilful neglect in guarding it, and collect his money from the borrower; so is the decree of R. Eliezer." R. Aqiba, however, maintains the defendant may claim, "You have lent me the money only on this pledge, and as the pledge is lost, so is your money." But if he lends a thousand zuz on a note, and also added a pledge, then all agree that he loses his money in case the pledge is lost (as then the pledge is not for any other purpose than to collect the money *from it* in case of default; otherwise the note would be sufficient even from an encumbered estate. Hence we see that R. Eliezer considers the possessor of the pledge a gratuitous bailee, contrary to our Mishna).

Shall we assume that the above-mentioned Tanaim speak of a case in which the pledge was not worth the amount lent upon it, and their point of differing is in a case which is similar to Samuel's following theory: "If one lends to his neighbor a

thousand zuz, and pledges for them the handle of a scythe only, if the handle is lost, the thousand zuz are lost (as he accepted it as a pledge for his money, he intends to collect his money only from it)? Nay, when the pledge was not worth the amount lent, none of them agrees with Samuel, as they speak of a pledge worth the amount lent, and the point of their differing is R. Itzhak's following decision: Whence do we deduce that a creditor acquires title to the pledge? From [Deut. xxiv. 13]: "And unto thee shall it be as righteousness before the Lord thy God." Now, if the lender does not acquire title to the pledge, what righteousness is there? But how can you understand it in this way? Was, then, R. Itzhak's decision in a case where the article was pledged at the time the money was lent? The above verse cited by him treats of a pledge taken by the court (as explained elsewhere). Have you ever heard that he said the same when it was pledged at the receipt of the money? Therefore, we must say, that all agree with R. Itzhak, and they speak of a case where it was pledged at the time of receiving the money, and the point of their differing is in regard to a guardian of a lost thing [*supra*, p. 00], of which R. Joseph's decision was that he is a bailee for hire.

But is it to be assumed that as to the above decision of R. Joseph the Tanaim differ? Nay; all agree with his decision. Here, however, they differ in case the lender uses this pledge for the purpose of deducting from the debt. According to one, a meritorious deed was done by him by lending the money (for which he will be rewarded), and he is therefore considered a bailee for hire; and according to the other, the using of the pledge is for his own sake, and there is no meritorious deed, and therefore he is considered a gratuitous bailee.

Aba Saul said, etc. Said R. Hannan b. Ami in the name of Samuel: The Halakha prevails in accordance with Aba Saul; and he also decided so only for a hoe; a stone-cutter's chisel and a hatchet, which are frequently used, pay, the wearing off of them being very little.

MISHNA VI.: If one carries a barrel from one place to another, and breaks it, whether he was a gratuitous bailee or for hire, he must swear (that there was no neglect), and is free. Said R. Eliezar: I have also heard that in both cases he has to take an oath, but was wondering how such a decision could hold good.

GEMARA: The rabbis taught: If one carries a barrel from

one place to another for his neighbor and breaks it, whether he was a gratuitous bailee or for hire, he must swear ; so is the decree of R. Meier. R. Jehudah, however, says : If he was a hired man, he must pay.

R. Eliezar said, etc. Shall we assume that R. Meier holds that stumbling is not considered wilful neglect ? Have we not learned (First Gate, p. 62) that if one has not removed his broken pitcher or his fallen camel from a public thoroughfare, and upon it some one is injured, R. Meier makes him responsible. And the sages, however, maintain that he is free in civil court, but responsible in heavenly court, and we are aware that the point of their differing is whether stumbling is considered a wilful neglect ? Said R. Hyya b. Aba in the name of R. Johanan : This oath is an enactment of the sages, as, if it would not be made, no one could find a man to carry a barrel for him.

What shall he swear ? Said Rabha : " I swear that I broke it unintentionally " ; and R. Jehudah comes to teach us that the oath is only for a gratuitous bailee, but that a bailee for hire must pay, each according to the law applicable to them (as in my opinion stumbling is not considered a wilful neglect, but between a neglect and an accident, therefore it must be compared with the law of stolen or lost, and there was no enactment of the sages at all) ; and R. Eliezar (of our Mishna) comes to teach that he has a tradition that R. Meier is right in his decision, but I do not understand how an oath could be given to both kind of bailees, as an oath is correct only concerning a gratuitous bailee, who has to swear that he has not neglected (as I also agree with R. Jehudah that stumbling is not considered neglect). But what should a bailee for hire swear ? That he has not neglected ? He must pay even then. And also concerning a gratuitous bailee, an oath would do if in the place where he had to pass was a declivity in the middle of the alley ; but if not, how can he swear that he has not neglected, when he was stumbling on an even way ? (and this, as said above, " is considered between neglect and accident "). And finally, in case of a declivity also, an oath should be given only when there are no witnesses that such was in the way ; but if there are witnesses, why an oath ? Have we not learned in the following Boraitha : Aissi b. Jehudah said : The Scripture reads [Ex. xxii. 10, 11] : " No man seeing it, then shall an oath of the Lord be between them both. " But if there was a man who had seen it, then he must testify, and the defendant is acquitted.

There was a man who carried a barrel of wine on the main street of the city of Mahuza, and broke it on a beam projecting from a wall. When he came before Rabha he said : In the main street many people are passing ; go and bring witness that there was no neglect on your part and you will be acquitted. Said R. Joseph, his son, to him : Is your decision in accordance with Aissi (mentioned above) ? And he answered : Yea ; as I hold with him.

There was a man who sent a messenger to buy for him four hundred barrels of wine, and he did so, but thereafter he informed the sender that the contents of all of them became sour. When the case came before Rabha, he said : If such a considerable quantity of wine became sour, people would talk about it, and become aware of where the barrels were placed, and what was the reason the wine became sour. You are therefore responsible, unless you bring witnesses to show that at the time you bought it the wine was good, and was spoiled by an accident. Said R. Joseph, his son, to him : Is your decision in accordance with Aissi ? And he answered : Yea ; as so the Halakha prevails.

R. Hyya b. Joseph enacted in the city of Sikhra that the carrier who carries his burden by means of carrying poles, if he carries barrels of wine, and they break, he has to pay half damages only. Why so ? Because with a burden which is too heavy for one and too light for two, it is to be considered between neglect and accident. They, however, who carry by means of trimmer beams must pay the whole (because taking such a heavy burden, which needed the strength of two, is considered a wilful neglect).

There were carriers who broke a barrel of wine belonging to Rabba b. b. Hana, while in his service, and he took their garments for the damage caused ; and they came to complain before Rabh, who commanded Rabba b. b. Hana to return their garments. And when the latter questioned him : Does the law prescribe so ? He answered : Yea ; as it is written [Prov. ii. 20] : " In order that thou mayest walk in the way of good men." Rabba b. b. Hana did so. The carriers, however, complained again : " We are poor, we were working the whole day, we are hungry and have nothing to eat." And Rabh told Rabba he must pay them for their labor. And he asked again : Is so the law ? And he answered : Yea ; as it is written [*ibid.*, *ibid.*] : " And observe the path of the righteous."

CHAPTER VII.

REGULATIONS CONCERNING THE TIME A LABORER HAS TO WORK,
WHAT HE MAY OR MAY NOT CONSUME OF THE ARTICLE HE IS
WORKING, AND ABOUT MUZZLING AN OX WHILE LABORING.

MISHNA I.: One cannot compel his employees to come earlier or depart later than is customary at a place, although it was agreed upon. Where it is customary for the employees to get food, the employer must do so. In places where it is customary to furnish them with vegetables, he must do so, and all according to the custom of that country (although it was not stipulated in the agreement).

It happened with R. Johanan b. Mathia, who said to his son : Go and hire laborers for us. He did so, with the understanding that they should be fed ; and when he came to his father, he said to him : " My son, if you should provide them with meals like the banquets of King Solomon at his time, you are not sure that you have done your duty, as they are children of Abraham, Isaac, and Jacob. Therefore, go and tell them, before they begin their labor, that they are to be fed with bread and pulse only." Said Rabban Simeon b. Gamaliel : It was not necessary at all, as all must be done according to the custom of the country.

GEMARA : Is this not self-evident ? The Mishna means to say, that even when he has increased their wages he cannot say that he did so that they should begin earlier and depart later than customary, as the employees may claim that the increase of wages was for the purpose of making a good job.

Resh Lakish said : " It is advisable for a laborer that when he departs from his labor he should relinquish a little of his time for the employer (*i.e.*, that if the custom was to work from morning until dark, he shall not manage to come home at twilight, but to stay at his work until dark). In the morning, however, he has not to leave his home before sunrise (*i.e.*, that from the time of leaving home to his place of labor he should be considered as laboring). "

But to what purpose was this statement ? Let them observe the custom of that city ? He alludes to a new city. But even then let him observe the custom where they come from ? He means when the laborers were hired from different cities with different customs. And if you wish, he speaks in case the agreement between the employers and employees was that they shall do their work as a laborer mentioned in the Scripture [Psalm civ. 22, 23] : "The sun ariseth. . . . Man goeth forth unto his work and to his labor until the evening."

R. Zera lectured ; according to others, R. Joseph taught : It is written [*ibid.*, *ibid.* 20] : "Thou causest darkness, and it becometh night, wherein creep forth all the beasts of the forest." This world is compared to the darkness of night. All the beasts, etc., means the "wicked," who are compared to wild beasts. "The sun ariseth in the world to come," means to the upright. "They withdraw to their lairs," means the wicked to Gehenna. "And lie down in their den," means the upright, as each upright one has a dwelling in the world to come, according to his honor. "Man goeth forth unto his work," means the upright are going to receive their reward. "And to his labor until the evening," means he who has completed his work, while alive, until the day of death.

R. Eliezar b. R. Simeon met the chief of police who was engaged in capturing thieves, and said to him : How can you capture them ? Are they not compared to wild beasts (according to others, he quoted to him the following verse [*ibid.* x. 9] : "He lieth in wait in a secret place like a lion in his den," etc), and perhaps you capture respectable men, and the wicked remain at large ? And he answered : What can I do ? I am so ordered by the king. Then he rejoined : I will instruct you how to do. Enter a wine-house at the fourth hour of the day (first meal-time), and if you will see a man drinking wine, holding his goblet and slumbering, make an investigation about him. If he is a scholar, he was certainly engaged in his studies at night ; if he is a laborer, it may be he was engaged in his labor at night ; and if he was a night laborer, and it was not heard that he was working at night, still it must be investigated—perhaps he has done such labor that causes no noise ; but if this man is nothing of this kind, he is surely a thief, being engaged the whole night in his miserable work, and you may capture him. This advice was heard in the ruler's house, and it was decided *that the reader of the letter himself should be the messenger.* (This

was the parable at that time, which means that the adviser himself should be engaged for the same purpose.) R. Eliezer was brought and appointed to capture the thieves, and so he did. Sent to him R. Jehoshua b. Kar'ha : " Vinegar descending of wine " (this parable was also applied to men of reputable origin who turn to bad habits), " how long will you deliver people of the Lord for slaying ? " And he answered : " I weed the thorns of the vineyard. " And the above R. Jehoshua sent to him again : " Leave it for the owner of the vineyard ; he himself will weed the thorns. " One day he was met by a washman, who called him " Vinegar descending of wine " ; and he thought, because the man was so brazen he must be wicked, and gave orders to capture him, which was done. When his wrath abated he tried to release him, but he could not, and he applied to himself the verse [Proverbs, xxi. 23] : " Whoso guardeth his mouth and his tongue, guardeth his soul against distresses. " Finally the prisoner was to be hanged, and R. Eliezer stood under the gallows and wept. Said the prisoner to him : " Rabbi, do not be sorry ; I and my son have committed adultery on the Day of Atonement. " The rabbi, placing his hand on his abdomen, said : Rejoice mine entrails ; if your doubts are so, how is your certainty. I am sure that no worms shall consume you after death. The same case happened with R. Ismael b. R. Jose, that he was ordered by the Government to capture thieves. Elijah met him and said : " How long will you deliver the people of the Lord for slaying ? " And he answered : " What can I do ? So is the order of the king ! " And Elijah rejoined : " Your father escaped to Assia ; you can do the same to Ludqia. "

[Both R. Ismael b. R. Jose and R. Eliezer b. R. Simeon were so big-bellied that when they were standing face to face a yoke of oxen could pass under them.] R. Johanan said : I am a remainder of the beauties of Jerusalem.

He who would like to see a beauty similar to that of R. Johanan shall take a silver goblet just out of the worker's hands, with the mark of the flame still to be seen on it, and shall fill it with the germs of scarlet " rumna, " put on its top a crown of red roses, and place it between the sun and the shadow ; and in the reflection from it one may see but a part of R. Johanan's beauty.

Is that so ? Did not the master say that the beauty of R. Kahana is similar to R. Abuhu ? The latter beauty is likened to that of Jacob the patriarch, and his is likened to the beauty

of Adam the first ; hence R. Johanan was not mentioned among the beauties ? Because he had no beard.

R. Johanan used to sit by the gate of the bath, so that when the daughters of Israel would return from taking their legal bath, they should meet him, and bear children like to him in beauty and scholarship. And when the rabbis questioned him : Are you not afraid of an "evil eye" ? he answered : I am a descendant of the children of Joseph, and no "evil eye" can do harm to them ; as it is written [Genesis, xlix. 22] : "Joseph is a fruitful bough, a fruitful bough by the eye."* And R. Abuhu said : Do not read "by the eye," but "above the eye" (which means that no eye can do harm to him). R. Jose b. Hanina said : He infers this from the following verse [*ibid.* 48] : "And let them grow into a multitude" (like fish, etc.).† As the water covers the fish in the sea, so that the eye can do no harm to them, so is it with the descendants of Joseph.

One day R. Johanan was bathing himself in the Jordan. When Resh Lakish saw him, he jumped into the Jordan, and came to him. Said R. Johanan to him : Your strength shall be devoted to the study of the Torah. Rejoined Resh Lakish : Your beauty is fit for women. Said R. Johanan : If you will repent (and leave your profession), I will give you my sister, who is still more beautiful than I am. Resh Lakish accepted this proposition [and when he was about to jump for his garment, he could not do so (Rashi explains this by saying that because he accepted the yoke of the Torah he lost his strength)]. R. Johanan then instructed him and made a great man of him. One day there arose a dispute in college about the time at which different new iron weapons, as swords, knives, etc., became subject to defilement. R. Johanan said : From the time they were taken from the furnace ; and Resh Lakish said : From the time they are taken out of the cooling water. Said R. Johanan : The former robber understands his handicraft (knows the nature of deadly weapons). Rejoined Resh Lakish : And what good have you done me ? When in my old profession, I was also called master, as in my new profession. Rejoined R. Johanan : I have done much good to you, as I brought you under the

* The term in the Scripture is עַיִן, which has two meanings, "eye" and "spring." Leecer translates it by "spring" ; the Talmud, however, takes it literally.

† The expression in the Scripture is דָּג *veyidgao*. Dag in Hebrew means fish ; hence the analogy in text. Leecer, however, translates it according to the sense.

wings of the Shekhinah. R. Johanan was nevertheless dejected, and Resh Lakish became ill. The wife of Resh Lakish, who was the sister of R. Johanan, came to the latter and wept, saying: Pray for his health, for the sake of my son. And in response he cited the following verse: "Leave thine orphans to me, I will give them their livelihood" [Jerem. xlix. 11]. She continued weeping: Do pray, for my sake, that I am not left a widow. And he cited to her in answer the end of the same verse. Finally, R. Simeon b. Lakish's soul went to rest, and R. Johanan grieved very much after him. And the rabbis of the college were searching for a man who would be able to soothe him, and decided that R. Elazar b. Pdath, whose decisions are original, would be fit for this task. And he went to R. Johanan's college and sat before him, and when R. Johanan said anything, he used to say: There is a Boraitha which supports you. Then R. Johanan exclaimed: Is it you who desires to replace bar Lakish? In his time, when I said anything, he raised twenty-four objections, and I had to make them good with twenty-four answers, so that the discussion became very animated. You, however, say to everything: There is a Boraitha which supports you. Am I not aware that my saying has a good basis? Finally, R. Johanan tore his garments, wept, and cried: "Where art thou, bar Lakish? Where art thou, bar Lakish?" He continued crying until he became demented, and the rabbis prayed for his death, and his soul went to rest everlasting.

Notwithstanding that R. Simeon b. Eliezar said above that he is sure all his deeds were just, he was not satisfied, and prayed for mercy from Heaven, and invoked upon himself chastisements, and became so afflicted that in the night they had to spread under him sixty felt spreadings, and in the morning they removed from him sixty basinfuls of blood. In the morning his wife used to make for him sixty kinds of pap, which he ate, and became well. His wife, however, would not allow him to go to the college, in order that he might not be troubled by the rabbis; and so he used to say every evening to his afflictions: "Come, my brothers," and in the morning, "Go away, for I do not want to be prevented from studying." One day his wife heard him call the afflictions, and she exclaimed: You yourself bring these afflictions upon you! You have exhausted the money of my father (through your illness). She left him and went to the house of her father. In the meantime it happened

that sailors made him a present * of sixty slaves, each of them holding a purse with money ; and the slaves prepared for him daily the sixty kinds of pap he used to eat. One day his wife told her daughter : Go and see what your father is doing. And she went. Her father then said to her : Go and tell your mother that we are richer than her parents. And he applied to himself the verse [Prov. xxxi. 14] : " She is become like the merchant ships, from afar doth she bring her food." Finally he ate, drank, became well, and went to the college, and there he was questioned about sixty kinds of blood of women, and he purified all of them.† The rabbis murmured, saying : Is it possible that of such a number there should not be a doubtful one ? And he said : If it is as I have decided, all of them shall bring forth male children ; if not, then there shall be at least one female among them. Finally, all of the children were born males, and were named Eliezar after him. [There is a Boraitha, Rabbi said : " Woe to the wicked Government which has prevented R. Eliezar from attending the college, and, because of this, the multiplying of Israel."] When he was about to die, he said to his wife : I know the rabbis are angry with me (for I have captured many of their relatives as thieves), and they will probably not attend my funeral as they ought to do. You shall therefore leave me in my attic, and you shall not be afraid of me. Said R. Samuel b. R. Na'hmani: I was informed by the mother of R. Jonathan that she was told by the wife of R. Eliezar that no less than eighteen and no more than twenty-two years after his death she kept him in his attic. She used to ascend every day to examine his hair, and found nothing, and when it happened that one hair fell out, blood was visible. One day she found a worm in his ear, and she was dejected. But he appeared to

* Rashi explains that while sailing they were in danger of being wrecked by violent storms, and they prayed to be saved because of the merits of Eliezar, and they were saved miraculously, and therefore they made him this present.

† There is a custom even now among the orthodox Jews, that when a blood-stain is found on the sheet of a married woman, it is carried to the rabbi to determine if it is that kind of blood for which the woman must be separated for two weeks, and after that time to take a legal bath ; or whether the stain is not that kind of blood for which she must be separated ; as there is a Mishna [in Tract Nida, Chap. II.] that five colors of blood are considered unclean (*i.e.*, for which she must be separated), and the other kinds are not considered blood, and she may have intercourse with her husband without taking the prescribed legal bath. Hence the sixty kinds of blood mentioned in this legend. The number " sixty " seems to be a favored number with them for exaggeration.

her in a dream, telling her : It is nothing to be dejected for, as this is a punishment for allowing a young scholar to be insulted in my hearing, and not protesting against it, as I ought to have done. When two parties had a law-suit, they used to come and stand by the door, and each of them would explain his cause. Thereafter a voice was heard from the attic: You, so-and-so, are just with your claim; or, You, so-and-so, are unjust. It happened one day that his wife was quarrelling with a neighbor, and the latter exclaimed: It may occur to you, as to your husband who is not buried. And when the rabbis heard this, they said: When this conduct goes to such a length, it is an insult to the deceased. According to others, R. Simeon b. R. Jo'hai, his father, appeared to one of the rabbis in a dream, and said: There is my little dove among you, and you do not care to bring it to me. And the rabbis decided to employ themselves with his funeral. However, the inhabitants of Akhbria would not let them remove R. Eliezar from his attic, because during all the years R. Eliezar slept in his attic not a wild beast had come to their city. On one eve of the Day of Atonement the inhabitants of the city mentioned were troubled, and took away the guard from R. Eliezar's house; and the rabbis hired some men of the village of Biri, and they took the corpse with the bed and brought it to the rabbis, who removed it to the cave of his fathers. They, however, found the cave surrounded by a snake, and said: Snake, snake, open thy mouth, and let the son enter to his father. And it did so. Rabbi then sent a message to the widow that he would like to marry her, and she answered: An object which was used by a holy man should not be used by an ordinary man. There is a parable: Should the hook which was used by the hero to hang up his weapon be also used by Kulba the shepherd to hang up his knapsack? Sent Rabbi to her: Let it be granted that he was greater than myself in wisdom. Was he also greater than I in meritorious acts? And she answered: You admit, then, that he was greater in wisdom than you, of which I was unaware. I am, however, aware that in meritorious acts he was greater than you, as he submitted to chastisements, which you did not.

Where is it known that R. Eliezar was greater in wisdom than Rabbi? When Rabban Simeon b. Gamaliel and R. Jehoshua b. Kar'ha were sitting in the college on benches, R. Eliezar and Rabbi were sitting before them on the floor, objecting and answering (discussing the Halakhas taught). And once the

sages said : We are drinking the water of the two young men, and we let them sit on the floor! They prepared benches for them, and they occupied them. Said R. Simeon b. Gamaliel to Rabbi: I possess only one little dove (only one son), and you want me to lose it (he was afraid of an "evil eye," as Rabbi was then too young). And they made him descend to his former seat on the floor. Then R. Jehoshua b. Kar'ha said : Is it right that he who has a father shall live, and he who has not shall die? (*i.e.*, because R. Eliezar was an orphan, we shall leave him on the bench without fear of an "evil eye," even though he was of the same age as Rabbi). They therefore made R. Eliezar also take his former seat on the floor. Eliezar became dejected, saying: They compare me to him. Until that time, when Rabbi said anything, R. Eliezar used to support him; from that time, however, when Rabbi used to say: I have to object, R. Eliezar would say to him: You mean to object from this and this; here is the answer to your objection, and also to an objection you intend to raise from this and this, and so you are surrounding us with lots of objections which are of no value. Rabbi became dejected, and came to complain before his father, who answered: You should not be angry, as he (Eliezar) is a lion, the son of a lion, and you are a lion, the son of a fox. And this is what Rabbi said elsewhere: There were three modest men, my father, the children of Bathyra, and Jonathan the son of Saul. My father, as said above, that he compared himself to a fox; the Beni Bathyra, as it is said (Passover, p. 127), that they who were princes themselves have left their places to Hillel, as he was greater in wisdom than they; and Jonathan b. Saul, as it is written [I. Samuel, xxiii. 17]: "And thou wilt be king over Israel, and I will be next unto thee." [But perhaps Jonathan said so because he had seen that the whole world was sympathizing with David; and also the Beni Bathyra, because they were compelled to do so, as they could not answer the questions submitted to them; therefore R. Simeon b. Gamaliel was certainly one of the modest men of the world.]

Said Rabbi : I see that chastisements are favored. And he accepted for himself afflictions for thirteen years, six of them with cold chills, and seven of them with scurvy.

The riding-master of Rabbi was wealthier than King Sabur. When he used to feed the animals of Rabbi, the voices of the animals were heard for three miles. And he used to do this at the time Rabbi was doing the necessary of men, and he was

crying so from pain that his voice was heard all over the neighborhood ; and notwithstanding the voice of the animals, his voice was heard farther, so that even the sailors on the sea heard him. (Says the Gemara :) Nevertheless, the afflictions of R. Eliezar b. R. Simeon were of more value than Rabbi's, as the former's were caused by love, and went away for the same reason ; and Rabbi's were caused by an act, and went away also in the same manner. Caused by an act, as follows : There was a calf which was about to be taken for slaughtering, and it ran away, and put its head under the garment of Rabbi, and cried. And Rabbi answered : Go ; you are created for this purpose. Then it was said by Heaven that, as he has no mercy with creatures, he shall be afflicted with chastisements. And the afflictions also disappeared because of the following act: One day his female servant was about to dispose of kittens, and Rabbi said to her : Leave them alone ; it is written [Psalm cxlv. 9]: " And his mercies are over all his works." Then it was said by Heaven : Because he has mercy with creatures he shall be dealt with mercifully and relieved from his chastisements.

During all the years R. Eliezar was suffering from his afflictions, men were not dying before mature age ; and during all the years Rabbi was suffering from his illness, it never happened that the country was in need of rain. It chanced that Rabbi came to the place where R. Eliezar used to dwell, and asked whether that upright man had left a son. And he was told that there was a son, and every prostitute whose price was two dinars paid *to him* four dinars. And Rabbi sent for him, surrendered him to R. Simeon b. Aissi b. Lqunia, the brother of his mother, and left for him a diploma as rabbi, against the time that he should be able to graduate. The first few days the youth used to say : I will return to my place. And his uncle tried to persuade him to give his attention to study, saying : People want to make you a scholar, and you will be rewarded with a golden candlestick, and named Rabbi, and you say you will return to your former place. He persuaded him so much that he swore never to mention it again. When he grew up he went to the college of Rabbi, and when the latter heard his voice he said : The voice of this young man is similar to the voice of R. Eliezar b. R. Simeon. And he was told that this youth was his son. Rabbi then applied to him [Prov. xi. 30] : " The fruit of the righteous is the tree of life, and the wise draweth souls to himself." " The fruit of the righteous means R. Jose b. R.

Eliezar, and the wise, etc., means R. Simeon, his uncle." When this R. Jose died, they brought him to the cave of his father, and found it encircled by a snake. The rabbis said : " Akhna, akhna (snake), open thy mouth, and let the son enter to his father. But it did not listen to them. They thought it was because his father was a greater man. A heavenly voice, however, was heard : Not because the father was greater than the son, but because the father was suffering with his father in the cave,* which was not the case with R. Jose b. Eliezar.

It happened once that Rabbi came to the city where R. Tarphon used to dwell, and asked whether the same, who used to swear by his children (I shall bury my children if it is not so-and-so), left a son. And he was told that he left no son, but a grandson of his daughter, and he is such a beauty that the prostitutes paid him. He sent for him, and told him : If you will repent I shall give you my daughter. And he did so. According to some, he married Rabbi's daughter, and thereafter divorced her; and according to others, he did not marry her at all. People should not say that he repented only for the sake of this woman. [But what was the reason that Rabbi troubled himself so much in such cases? It was because it was said by R. Jehudah, in the name of Rabb; according to others, R. Hyya b. Abba, in the name of R. Johanan; and still according to others, R. Samuel b. Na'hmani, in the name of R. Jonathan : He who teaches the law to the son of his neighbor is rewarded by becoming a member of the heavenly college; as it is written [Jeremiah, xv. 19] : " Behold, thus said the Lord : . . . Thou shalt stand before me, and if thou bring forth the precious from the vile, thou shalt be as my mouth." And he who teaches the law to the son of a commoner, even if there was an evil heavenly decree against the world, it is abolished for the sake of this meritorious act, as it is written in above-cited verse.

R. Parnakh, in the name of R. Johanan, said : He who is a scholar himself, and also his son and also his grandson, the Torah does not depart from his children for everlasting; as it is written [Isaiah, lix. 21] : " And my words which I have put in thy mouth shall not depart out of thy mouth, nor out of the mouth of thy children, nor of the mouth of thy children's children, said the Lord, from henceforth and unto all eternity." The repetition, " said the Lord," in the same verse signifies that the Holy One,

* See Sabbath, p. 58.

blessed be He, says : " I am the surety that so it will continue." What is meant by eternity ? Said R. Jeremiah : In the later generations the Torah returns to its old inn.

R. Joseph fasted forty days, and he heard a heavenly voice : " It shall not depart out of thy mouth." He fasted another forty days, and heard : " It shall not depart out of thy mouth and out of thy children." He fasted then forty days more, and he heard : " Also out of the mouth of thy children's children." He then said : For the later generations I have no more to fast, as the Torah usually returns to its old inn.

R. Zera, when he ascended to Palestine, fasted one hundred days in order to forget the Gemara of the Babylonians, to the end that he should be no longer troubled by them. Then he fasted another hundred days, that R. Eliezar might not die during his life, as then he would have to bear all the troubles of the congregation. Then he fasted another hundred days more, that the fire of Gehenna might not affect him. Every thirty days he used to examine himself by a heated oven, and the fire did not affect him. It happened, however, one day, that the rabbis gave their eyes to this, and he burned his hips, and henceforth he was named " the little one with the burned hips."

R. Jehudah said in the name of Rabh : It is written [Jeremiah, ix. 11, 12] : " Who is the wise man that may understand this ? And who is he to whom the mouth of the Lord hath spoken, that he may declare it ; for what is the land destroyed ?" etc. The beginning of the verse was questioned by the wise, but without a result. The continuation of the verse was questioned by the prophets, and also without any result, until the Holy One, blessed be He, explained it himself in the succeeding verse : " And the Lord said : Because they forsook my law, which I had set before them."

Said R. Jehudah in the name of Rabh : " The words which I have set before them" (which are superfluous, as it is written above, " my law") signifies that even when they were occupied in the study of the law, they have not pronounced the prescribed benediction for it (and with this they have shown that the law is not respected by them as it ought to be).

R. Hama said : It is written [Prov. xiv. 33] : " In the heart of the man of understanding resteth wisdom," which means " a scholar a son of a scholar" ; " but (the little which is) in the bosom of fools is made known" means " a scholar the son of a commoner." Said Ula : This is what people say : A single issar

in a pitcher makes kish-kish. (A single coin in a pitcher proclaims its presence.) Said R. Jeremiah to R. Zera : What is the meaning of [Job, iii. 19] : " The small with the great is there, and the servant free from his master " ? Are we ignorant that the great and small are there ? It must therefore be interpreted thus : He who makes himself little for the purpose of studying the Law in this world, he becomes great in the world to come ; and also he who hires himself for a slave to the Law in this world, he becomes a lord in the world to come.

Resh Lakish used to mark the caves of the rabbis (to the end that priests might not step on them, as it is prohibited to them to defile themselves by graves). When he was about to do so with the cave of R. Hyya, it was concealed before him, and he became dejected and said : " Lord of the Universe ! Have I not occupied myself with the discussions of the Torah like R. Hyya ? " And a heavenly voice answered him : Yea, thou hast occupied thyself as much as R. Hyya, but thou hast not multiplied the Torah as much as he did.

When R. Hanina and R. Hyya were quarrelling, said the former to the latter : Are you quarrelling with me, who am able to renew the Torah, should it be forgotten, by means of my ingenious discussions ? And he answered him : Are you quarrelling with me, who have caused that the Torah should not be forgotten in Israel ? I did thus : I have sown flax, prepared nets of it, caught deer, made of their skins parchment, and with their meat I fed orphans. I wrote on the parchment the five books of the Pentateuch, each on a separate roll, and used to go to a city, taking five little boys, instructing each of them in one of the above books until they knew the contents by heart. I took also other six boys, and instructed each of them in a different section of the Mishnayoth, saying to the boys, " Until I return, each of you shall teach the others the book which is known to one of you and not to the other " ; and so I have caused the Torah not to be forgotten in Israel. And this is what Rabbi exclaimed : How great are the acts of Hyya ! Said R. Ismael b. R. Jose to him : Are they then greater than yours, master ? And he answered : Yea ! Greater also than my father's ? (Questioned R. Ismael again.) And he said : Nay ! No one could bear such in his mind.

R. Zera said : Yesterday night R. Jose b. Hanina appeared to me in a dream, and I questioned him : Where are you placed in

the heavenly college? And he answered: By the side of R. Johanan. And where is R. Johanan placed? By the side of R. Janai. And where is R. Janai placed? By the side of R. Hanina. And R. Hanina? By the side of R. Hyya. I then said: Is not R. Johanan worthy to be placed by the side of R. Hyya? And he answered: To a place which is illuminated and from which rays come forth, who will dare to bring into it the sun of Napha? R. Habiba said: I was told by R. Habiba b. Surmkhi, who has seen one of the rabbis to whom Elijah frequently appeared, that in the morning his eyes were nice and in the evening they were red, as if burnt by fire. And to the question, What is the matter? he told me: I have asked Elijah to show me the rabbis while ascending to the heavenly college. And he rejoined: At all of them you may look, but toward the palanquin of R. Hyya you must not look. And how shall I recognize it? All the rabbis are accompanied by angels when ascending and descending, except the palanquin of R. Hyya, which does so of itself. I, however, could not restrain myself, and gazed upon it. Then two rays blinded my eyes. On the morrow I went to the cave of R. Hyya, fell upon it, and prayed, saying: I am studying the Boraithas of you, O master! and I occupied myself with their explanations; then I was cured.

Elijah used to appear frequently in the college of Rabbi. On one of the days during new-moon, it was a bright day, and Elijah did not appear; and when he questioned him thereafter the reason why, he rejoined: It takes time until I awake Abraham, wash his hands, await until he prays, and bring him afterwards to sleep again. The same I do with Isaac, and the same with Jacob. Rabbi questioned him again: Why do you not awake all of them at the same time? "This I am not allowed, as it is to be feared then, if they should all pray together, they would bring the Messiah before his time." And Rabbi asked him: Is their equal to be found in this world? And he said: Yea! There are R. Hyya and his sons. Rabbi then ordered a fast-day, and placed R. Hyya and his sons on the altar, and when they came to the benediction, "He who causes the wind to blow," a wind came, and when they came to the words, "He who causes rain," rain came. When, thereafter, they were about to say the benediction of "resurrection," the world began to tremble, and in heaven it was questioned, "Who has revealed the secret to mortals?" And Elijah was found guilty,

and they punished him with sixty fiery lashes. He then appeared on the altar as a fiery bear, and scattered them.

Samuel of Ir'hina was the physician of Rabbi. When Rabbi had sore eyes, he was about to inject some medicine into them, and Rabbi said : I cannot endure it. He then wanted to apply salve to the eyes, but Rabbi prevented him, as even this he would not endure. He then poured some medicine into a tube under his head in bed, and he was cured. Rabbi troubled himself to invest Samuel with the title " Rabbi," but never had the opportunity, and Samuel said to him : Let the master not be so sorry. I have seen the book which was shown to Adam the first, and there it is written : " Samuel of Ir'hina will be named a sage, but not a rabbi, and Rabbi will be cured through him." It is also written there : " Rabbi and R. Nathan are the finishers of the Mishnayoth. R. Ashi and Rabina will be the finishers of the Gemara." *

R. Kahana said : I was told by R. Hama, the son of Hassa's daughter, that R. b. Na'hmani's death occurred by conspiracy, namely : It was denounced to the Government that there was a man among the Jews who prevented thirteen thousand Jews from paying head-tax one month in summer and one month in winter time (*i.e.*, that in the months of Nissan and Tishri about thirty thousand men went to hear Rabba's lectures for the holidays, and the officers of taxes could not find them at home to collect the taxes. The Government sent an officer to take him, but could not find him at home. He went in search of him from Pumbaditha to the cities of Aquara, Agina, Ch'him, Tripha, and Eina Damim, and from Eina Damim back to Pumbaditha. It happened that the officer took the same inn in which Rabba was concealed. There was a set table for the officer, and after he drank two goblets of wine the table was taken away, and it happened that the face of the officer was turned backwards. The host came to Rabba, and questioned him what to do, as he was

* Rashi explains this, that until their time the Gemara was not in any order, as in the colleges a Mishna was discussed only in relation to money matters, food, etc., the Halakha thereof being questioned in a college ; and then there was discussion, and each gave a reason for his opinion, and the same was done if some one questioned the reason of such and such a Mishna, without a practical act ; and so the whole Gemara was mixed together, without any order in sections or tracts, and Rabina and R. Ashi were the first who gathered all the discussions of the colleges until that time, and also at that time arranged them into sections and tracts in accordance with the Mishnayoth ordained by Rabbi in sections and tracts. See footnote, Chap. II., pages 79, 80.

afraid of trouble because of the misfortune which happened to the officer of the king ; and Rabba ordered that a table should be set again with one goblet of wine, and thereafter to take the table away. They did so, and the man was cured. Then the officer said : I am now certain that the man I want is here. And he searched for him and found him, saying : I will go from here and report that I could not find him. Should they put me to death, I will not disclose it ; but should they torture me, I will tell the truth. He then took Rabba, locked him up in a chamber for men, and took the key with him. Rabba prayed, and the wall fell miraculously ; he ran away and went to Agina, sat down on a *crudum* of a tree, and was starving. In the meantime there was a dispute in the heavenly college about a case of purity, in which some of them decided that it is impure and some of them pure, and it was decided that R. b. Na'hmani should decide the case, as he used to say that he was the only one who knew the law of Nagaim and the only one who knew the law of Oh'loth. They sent the angel of death for him, but he could not touch him, as he did not cease studying one moment. In the meantime a wind blew and made noise with the trees of the forest, and Rabba thought that the officers were after him and said : It is better for me to die than to be taken by the Government. And when he was dying, he was questioned about the dispute in the heavenly college, and he decided it was pure. Then a heavenly voice came forth, saying : Well is it with thee, R. b. Na'hmani, that thy body is pure, and that thy soul left thy body while thou wast saying "pure." A *pitiacium* (writing) fell in the city of Pumbaditha : " Rabba b. Na'hmani was taken to the heavenly college." Then Abayi, Rabha, and all rabbis of the college went to occupy themselves with his funeral ; but they did not know where to find his body, and they went to Agina, and they saw a swarm of birds which made a shade under them, and they remained so, without moving, and the rabbis understood that this was the place where the dead was to be found. And they lamented for him three days and three nights. Another *pitiacium* was found : " He who will separate himself will be put under the ban." And they lamented for him seven days more. Then another *pitiacium* (from heaven) fell : " Go to your houses in peace."

On that day that Rabbi died a storm arose and threw a certain merchant who was riding on a camel on one side of the River Papa to the other side of the same. Being astonished, and ask-

ing, What is it? he was answered: Rabba b. Na'hmani is dead. He then arose and said: "Lord of the Universe! The whole world is thine, and Rabba b. Na'hmani is also thine. Thou dost love Rabba, and Rabba loveth thee—why, then, shouldst thou destroy the world?" And the storm abated.

R. Simeon b. Halaphta was a fat man.* On one hot day he ascended to the top of a mountain to cool himself, with his daughter, telling her to fan him, promising her therefor a talent's worth of nard. In the meantime a wind began to blow, and he said: How many talents' worth of nard is to be given to the Lord of the winds?

And all according to the custom of the country, etc. What does the Mishna mean by adding the word "all"? It means in places where it is usually the custom to give the laborers, after their meal, a certain measure of beverage, so that the hirer had no right to say to the laborers to bring vessels for this purpose, but provide for them himself.

It happened with R. Johanan b. Mathia, etc. Is not this fact a contradiction to the Mishna's statement? The Mishna is not completed, and must read thus: If, however, the hirer has promised them food in such places as it is customary to furnish them with food without any promise, it must be considered that he has to furnish them with something better than customary, as it happened with R. Johanan b. Mathia, who said to his son: Go and hire laborers for us. He did so, with the understanding that they should be fed, and when he came to his father, he said to him: "My son," etc., . . . "as they are children of Abraham, Isaac, and Jacob."

Shall we assume that the meals of Abraham were better than those of Solomon? Is it not written [I. Kings, iv. 22, 23]: "And Solomon's provision for one day was thirty kors of fine flour and sixty kors of meal, ten fattened oxen, and twenty pasture oxen, and a hundred sheep, besides harts, and roebucks, and fallow deer, and fattened fowl." And Gurion b. Astirin, in the name of Rabh, said that the fine flour and meal were only for skimming the foam; and R. Itz'hak said, that each wife of the thousand Solomon had, used to prepare such a meal, thinking that he would come to partake his meal with her. And concerning Abraham it is written [Gen. xviii. 7]: "And Abraham ran unto the herd, and fetched a calf tender and good." And R.

* Because in the beginning of this legend it was spoken of fat men, this legend was also brought in (Rashi).

Jehudah said in the name of Rabh: A "calf" is one; "tender," two; and "good," three? Abraham took three oxen for three men (which makes an ox for each man). And concerning Solomon there were for the many people of Israel and Judah, as it is written [I. Kings, iv. 20]: "Judah and Israel were numerous as the sand which is by the sea," etc.

What is meant by fatted fowl? Rabh said: Crammed fowl. And Samuel said: They were fat without cramming. And R. Johanan said: An ox fed without doing any labor, and a hen that is not occupied with hatching.

R. Johanan said: The best of cattle is an ox, and the best of fowls is a hen. Said Ameimar: R. Johanan meant a black hen that feeds herself in the vineyard with the seeds of grapes.

It is written [Gen. xviii. 7]: "And Abraham ran unto the herd," etc. Said R. Jehudah, in the name of Rabh: A "calf" is one; "tender," two; and "good" is three. [Why not say one, as people say tender and good? Then it should be written, a "good, tender calf." Why "and good"? To signify that it was another one. But then there are only two? As the words "and good" signify another one, so signifies also the word "tender."] Rabba b. Ula, according to others R. Hoshia, and still according to others R. Nathan b. Hoshia, objected. Is it not written [*ibid.*, *ibid.*]: "And gave him to a young man, and he hastened to dress *him*" ?*—*i.e.*, that each of them he gave to a separate man for dressing. Farther on it is written: "And he took cream and milk, and the calf which he had dressed," *i.e.*, that each which was ready first, he placed before them. But why were three necessary. Was not one sufficient? Said R. Hanan b. Rabha: He wanted to give to each of them a whole tongue with mustard.† Said R. Tan'hum b. R. Huilar: One must not change the custom of that place where he abides, as Moses, when he ascended to heaven, did not eat; and the angels of heaven, when they descended to earth, ate and drank. Ate and drank! Have they then a stomach? Say: it seemed — as if they were eating and drinking.

R. Jehudah said in the name of Rabh: All that Abraham did for the angels by himself, the Holy One, blessed be He, did for his children by himself; and what Abraham did through a messenger, the Holy One did the same for his children through a

* The expression in Scripture is *Outhon*, and means "him," which is singular. The translators of the Bible translate "it," according to the sense.

† Rashi explains that such a meal was only prepared for kings.

messenger : " And *Abraham* ran unto the herd " ; " and a wind went forth from the *Lord* " [Numb. xi. 31]. " *He* took cream and milk " ; " *I* will let rain for you bread from heaven. " " And he stood by them " ; " *I* will stand before thee " [Ex. xvii. 6]. " And Abraham went with them " [Gen. xviii. 16] ; " And *the Lord* went before them " [Ex. xiii. 21]. " *Let* a little water " ; " and *thou* shalt smite the rock " [Ex. xvii. 6]. And the same (Rabh) differs with R. Hama b. Hanina, who said that in reward for three things which Abraham had done his children got three things ; namely, for the cream and milk they were rewarded with *mannah* ; for that " he stood by them " under the tree, his children were rewarded with the pillar of cloud ; and for " let a little water, " etc., they were rewarded with the well of Miriam.

" *Let a little water, " etc.* Said R. Janai b. Ismael : The angels said to Abraham : Do you suspect us to be Arabs who bow themselves to the dust of their feet ? Thou hast a son, Ismael, who is doing so.

" And the Lord appeared unto him in the grove of Mamre . . . in the heat of the day " [Gen. xviii. 1]. What does this signify ? Said R. Hama b. Hanina : This day was the third of Abraham's circumcision, and the Holy One, blessed be He, made him a sick call ; and to the end that Abraham should not trouble himself with guests, the Lord caused the day to be intensely hot, so that no one should go out. He, however, sent out his servant, Eliezer, in order to search for guests. He went, but found none. Abraham said : I do not trust you (this is what people say, there is no trust in slaves), and went out himself. Seeing the Lord, blessed be He, standing by the door, for that it is written : " Pass not away, I pray thee, from thy servant " [Gen. xviii. 3] (and to favor him, the Lord sent three angels), and for that it is written : " And he lifted up his eyes and looked, " etc. [*ibid.*, *ibid.* 2]. " He ran to meet them. " But is it not written, he stood near them ? Why, then, did he run after them ? Previously they were standing near him, but seeing that he was afflicted with pain, they withdrew, and he ran after them.

Who were these three men ? Michael, Gabriel, and Raphael. Michael came to give the message to Sarah, Raphael to cure Abraham, and Gabriel to destroy Sodom. But is it not written [*ibid.* xix. 1] : " And two angels came to Sodom " ? Michael accompanied Gabriel, in order to rescue Lot, and so it seems to

be as it is written : " And *he* overthrew," etc. [*ibid.*, *ibid.* 25]. It is not written they have done so. Why is it written concerning Abraham : " So do as thou hast spoken " ? [*ibid.* xviii. 5] ; and concerning Lot it is written, " and he pressed upon them " ? [*ibid.* xix. 3]. Said R. Elazar : Infer from this, you may decline an offer from a person inferior to yourself, but not from a superior. It is written : " And I will fetch a morsel of bread " ; and after this it reads : " And Abraham ran unto the herd." Said R. Elazar : Infer from this, that the upright promise little and do much, and the wicked promise much and do nothing. And where do you take it from ? From Ephron [*ibid.* xxiii. 15] : " A land . . . what is between me and thee " ; and farther on it reads : " And Abraham understood the meaning of Ephron . . . four hundred shekels of silver current with the merchant " [*ibid.* xix. 16]. Hence they did not take any other money but such as was current with merchants.

" And they said unto him, Where is Sarah thy wife," etc ? Said R. Jehudah, in the name of Rabh, according to others in the name of R. Itz'hak : Did the angels not know that Sarah was in her tent ? Why did they ask for her ? In order to increase her grace in the eyes of her husband. R. Jose b. Hanina, however, said : For the purpose of sending her a goblet of benediction.

It was taught in the name of R. Jose : Why are the letters א j v of the word אֵלָם pointed in the Holy Scrolls ? The Torah teaches us to be kind in worldly affairs, that when one comes as a guest, he may make inquiries of the host for the health of his wife.

" After I am waxed old," etc. [Gen. xviii. 12]. Said R. Hisda : After her body was wrinkled, and the folds increased, the body was again made smooth, the wrinkles of age were straightened out, and beauty returned. It is written [*ibid.*] : " My lord being old " ; and farther on it is written : " I am old." Hence, the Holy One, blessed be He, did not refer to Abraham, as she said. From that the disciples of R. Ismael said : Great is the peace, as even the Lord changed her words for the purpose of peace, as it is written : " She said my lord is old . . . since I am old."

It is written : " Who would have said unto Abraham that Sarah should have given children suck ? " [Gen. xxi. 7]. How many children did Sarah suckle ? There was only one. Said R. Levi : That day on which Abraham weaned Isaac, he made a

great banquet ; and his neighbors of all nations murmured, saying : Behold, an old man and an old woman took a child from the market, proclaiming him for their own son. And this is not enough for them, but they are giving banquets, to convince people that it is as they say. What did our father Abraham ? He had invited all great men in his generation, and Sarah our mother invited their wives, and every one of them brought her child along, but without their nurses, and a miracle occurred to Sarah, that her breasts opened like two springs, and she nursed all the children there. But it was still murmured and said : As Sarah was only ninety years old, it is possible that she had borne a child miraculously ; but Abraham, who is over a hundred years, how is it possible that he should be able to beget children ? Then the face of Isaac at once changed, and became of the appearance of Abraham, so that every one proclaimed that Abraham begot Isaac. Until the time of Abraham there was no mark of old age, and he who wanted to talk to Abraham spoke to Isaac (when he was grown up), or *vice versa* ; then Abraham prayed, and the mark of old age was visible, as it is written [*ibid.* 47] : " And Abraham was old." Until the time of Jacob there was no sickness (and death occurred suddenly) ; and Jacob prayed that sickness would come before death ; as it is written [*ibid.* xliii. 1] : " Behold, thy father is sick." Until the time of the prophet Elisha there was no one who became cured from sickness ; but Elisha, however, prayed and was cured ; as it is written [II. Kings, xiii. 14] : " Elisha was sick of the sickness whereof he had to die," which signifies that previously he was sick and cured.

The rabbis taught : Three times was Elisha sick. First at the time he discharged Gekhsee from his service, and secondly when he set the bears on the children [II. Kings, ii. 24], and the third time when he died.

With bread and pulse only. Said R. A'ha b. R. Joseph to R. Hisda : Does the Mishna state bread of pease or bread and peas ? And he answered : By God the letter " Vahv " (which means " and ") is required to be as large as a rudder of the Labroth.

Rabban Simeon b. Gamaliel, . . . all must be according, etc. What does he mean by the word " all " ? This was learned in the following Boraitha : " If one hires a laborer, to pay him in accordance with the custom of this city, he may pay him according to the smallest scale of wages ; so is the decree of

R. Jehoshua. The sages, however, say the payment must be at a middle rate, neither too high nor too low."

MISHNA II. : The following laborers have a right, according to the law of Scripture, to partake of the fruits of their laboring: They who are engaged with the growing of produce may partake of that which is ripe, but is still attached to the ground, and also of the produce which is already cut off from the ground, but not yet ready for delivery. However, the above must be produced from the ground. They must not, however, partake of the fruits of their laboring if the produce is attached to the ground, but not ripe, and also if it is cut off and ready for delivery; neither may they partake of the fruits of labor of which the products do not grow in the ground (as, *e.g.*, the milking of cattle or the making of cheese).

GEMARA: Whence is all this deduced? It is written [Deut. xxiii. 25]: "When thou comest in thy neighbor's vineyard, thou mayest eat," etc. This is only concerning a vineyard. Whence do we know that the same is the case with other places? We infer it from the case of the vineyard, thus: As in a vineyard, the products of which come forth from the ground, a laborer may eat of its fruits when they are ripe, the same is the case with other things brought forth from the ground, when they are ripe. But it can be said that this law is only concerning a vineyard, because the law of gleaning [*ibid.*, *ibid.* xxiv. 21] applies only to gleaning; therefore we may infer this from stalks [*ibid.* xxiii. 26]: "When thou comest into the standing corn of thy neighbor, thou mayest pluck," etc. But even to this there is a separate law, which applies to stalks only; namely, to separate the first dough. Then we turn again to the vineyard, and to the former question it is answered that there is a separate law of gleaning; we turn again to the stalks, and the conclusion is that both cases have separate laws which apply each to itself specially, and one to the other specially. In one thing, however, they are alike, the products of both are brought forth from the ground, and when ripe a laborer may partake of them. The same is the case with all products that are brought forth from the ground, and when they are ripe the laborer engaged in producing them may partake of them. But their likeness is further seen in that they are brought to the altar (wine to the offerings, and fine meal to meal-offerings)? Therefore, olive trees may also be inferred from this, as oil from the olives is also brought to the altar with the meal-offering. [Is it, then, necessary to

infer olives from vineyards and stalks? Are the olives themselves not called a vineyard; as it is written [Judges, xv. 5]: "And burnt up both shocks and standing corn, as also olive-yards"?* Said R. Papa: It is named a vineyard of olives (*Kerm Zayith*), but not indefinitely a "vineyard," which does not include olives. And the above-cited verse reads, "when thou comest in the vineyard," therefore olives are to be inferred from above.]

But, after all, whence do we deduce about all other products which cannot be inferred from what is mentioned above, as all are distinguished by separate laws applying only to them? Therefore said Samuel: We infer all from the words of above-cited verse [Deut. xxiii. 26]: "But a sickle shalt thou not move," which means that to all products under a sickle the same law applies. But is this verse not needed to teach that one may partake of them as long as the sickle is used, but not thereafter? Nay; this is inferred from the previous verse [25]: "But into thy vessel shalt thou not put it." But according to Samuel's theory, whence do we deduce about products which are not under the sickle (as, *e.g.*, dates, etc.)? Said R. Itz'hak: It is to be inferred from the words "standing corn" that the same is the case with all products which are standing. But was it not previously said that this cannot be inferred from stalks, as they are distinguished with the law of the first dough? This was said before it was learnt that it may be inferred from the words "under the sickle"; but after it was learnt of all products which go under the sickle, the same is said of all standing products.

If so, to what purpose is written the above-cited verse 25? Could it not be deduced from the 26th? Said Rabha: It is needed to infer from it the Halakhas of the following Boraitha: It is written *Khe Th'bhau* (when thou comest), and in xxiv. 15 is written *Lou Th'bhau*, as there the verse applies to a laborer. So the verse xxv. 23 applies also to a laborer. It reads, "in thy neighbor's vineyard"; but not in a vineyard of the sanctuary. "Thou mayest eat grapes," but not drink the wine of them (*i.e.*, one shall not take the grapes, make wine, and drink it). Grapes only, but not with something else (*i.e.*, one shall not mix them with something else which might increase the appetite for them). "At thy own," *i.e.*, as if thou wouldst be the owner of

* The term in Hebrew is *Kerm Zayith*, literally, a vineyard of olives; hence the question.

them: as the owner may partake of them before the tithe is separated, so may the laborer also. "Till thou have enough," but not more; "but into thy vessels thou shalt not put"—*i.e.*, that at the time you put them in the vessels of the owner you may eat, but not when you are not so engaged.

Rabbina, however, said: There is no necessity to deduce from verses in the Scripture concerning a laborer when he is engaged with the products when they are already cut off from the ground, and also for an ox that it may eat from the attached products of the ground, because it is written [Deut. xxv. 4]: "Thou shalt not muzzle the ox when he thresheth out the corn." Now let us see! This law applies to all animals, as it is stated in First Gate (p 127). It ought to read: "Thou shalt not thresh with a muzzled ox." Why, then, is ox mentioned? To compare the muzzled with the muzzler (*i.e.*, the man who muzzles the cattle). As the muzzler may eat of the attached article when it is ripe, the same is the case with the muzzled animal; and as the muzzled one may eat all that which is not still attached to the ground, so also may the muzzler.

The rabbis taught: It is written "threshing" [Lev. xxvi. 5]; as the threshing is only upon products brought forth from the ground, of which the laborer may eat, the same is the case with all products of the ground, excluding him who milks, and makes cheese and butter, which are not products from the ground, and of which a laborer must not eat.

Was it not deduced already from the verses stated above? Why then this Boraitha? Lest one say that because all the products which are standing were included, as stated above, therefore the products not brought forth by the ground should also be included, it comes to teach us that it is not so. There is another Boraitha: "As threshing applies only when the product of which a laborer may eat is ready, the same is the case with other products which are ready, excluding those who lop garlic and onions (for the purpose of making more room for the good plants to grow)—a laborer may not eat of these, as they are not yet ripe." And still another Boraitha: "A threshing applies to grain which is not yet fit for separating tithe, and a laborer may eat of it; the same is the case with other things which are not yet fit for separating tithes, excluding those who separate dates and dry figs, which are fit already for separating tithes—the laborer must not eat thereof." But did not another Boraitha state that a laborer who does so may eat thereof? Said

R. Papa: That Boraitha speaks of unripe dates which are taken off the trees in vessels made of palms, and are soaked in oil until they become ripe, and at that time they are not yet fit for separating tithes. There is still another Boraitha: "As threshing applies to such things as are not yet ready for separating the first dough, a laborer may eat thereof; but he who kneads or bakes must not eat of that which he handles, because it is already fit for the first dough; and this Boraitha speaks of countries which are out of Palestine, to which the law of tithe does not apply."

The schoolmen propounded a question: May a laborer roast the grain on fire and eat it? Shall we say that this is the same as grapes with something else, which is not allowed, or is this different? Come and hear! It is allowed for the owner of a vineyard to give to his laborers wine, that they do not eat too many grapes; and the laborers also may soak their bread in herring-pickle, that they may eat more grapes thereafter (hence we see that such things are allowed). (Says the Gemara:) The schoolmen did not question whether the men prepare *themselves* to eat more or less; their question was only whether it was allowed to prepare the fruit by sweetening it, that it might become better for eating? Come and hear! Laborers may wait until the sun warms the grapes before eating of them; they are not allowed, however, to heat grapes over fire (hence it is not allowed). From this nothing is to be inferred, as it may be it is not allowed because of the loss of time, and the question of the schoolmen refers to when he has with him his wife or children, who may heat the grapes for him? Come and hear! A laborer who is engaged in separating spoiled figs, dates, grapes, or olives may eat of them, though tithe is not yet separated; to eat them with their bread, however, they are not allowed, unless they do so with the consent of the owner. Neither may they use salt in eating them (hence to heat over fire is all the less allowed). (Says the Gemara:) Neither from this is anything to be inferred, as salt is certainly equal to grapes with something else, which is not allowed, as stated above.

The rabbis taught: Cows which are engaged in separating the shells from barley that has been dried in an oven, or which are threshing grain of heave offering or of tithe, there is no transgression when one muzzles them. However, that people who are not aware the grain is of such a kind may not be misled, a handful of the grain may be taken and put in a sack and

hung on their necks. R. Simeon b. Johai, however, said: He may put spelt in sacks and hang them on their necks, as spelt is better for the cow in every instance. There is a contradiction from the following: "Cows that are engaged in shelling grain when they are muzzled, there is no transgression; if, however, they are threshing heave offering or tithe, there is transgression if they are muzzled. The same is the case when an Israelite does the threshing with the cow of a Gentile; if, however, a Gentile threshes with the cow of an Israelite, there is no transgression." Hence there is a contradiction in the statements of the Boraithas in the case of heave offerings and tithes? It presents no difficulty. One Boraitha treats of the heave offering of the tithe, which is not doubted; and the other treats of a suspicious one (De Mai).

The schoolmen questioned R. Shesheth: "How is the law if the animal is sick and the consuming of grain injures it? May it be muzzled?" Shall we assume that, when commanded not to muzzle the animal, it is because what it may consume is good for it, so that, in the case questioned, muzzling is allowed; or is the above commandment because of the suffering of the animal on seeing the grain and not being able to eat of it, in which event the muzzling is prohibited even in the case mentioned? And he answered: This we have learned in the Boraitha mentioned above, as Simeon b. Johai said: "He may bring spelt, etc., because spelt is better for the cow." Hence we see that the reason for prohibiting muzzling is because the grain is good for the cow.

The schoolmen propounded a question: "May one say to a Gentile: Muzzle my cow and thresh with it? Shall we assume that the rabbinical prohibition to do through a Gentile what is prohibited for an Israelite to do himself is only concerning Sabbath, the violation of which is a crime, but that the prohibition of muzzling, which is only a negative commandment, does not exist in such a case, or is there no difference?" Come and hear! "When a Gentile threshes with the cow of an Israelite, the Israelite does not transgress if the animal was muzzled." Is it not to be inferred that he does not transgress the commandment, but that, nevertheless, the muzzling is prohibited? Nay; from this expression nothing is to be inferred, as it may be that it is used only because of the same expression in the case of an Israelite threshing with the cow of a Gentile, in which it was necessary to state that he commits a transgression. (Then) come and

hear! A message was sent to the father of Samuel with the following question: When Gentiles steal bulls and castrate* them, and return them to the owners, may the Israelites use them or not? And his answer was: "There is craft used in doing this thing. Use the same with the owners, and make them sell the animals" (to Gentiles, so that the owners may not use them for ploughing. Hence we see that the violation of even a negative commandment, which is not a crime, must not be committed through a Gentile). R. Papa, however, said: "The people of the west, who sent the above question, hold with R. Hidga, who maintains that the children of Noah (*i.e.*, others than Jews) are warned biblically against castration, and the owners of the above-mentioned castrated oxen transgressed the commandment [Lev. xix. 14]: "Thou shalt not put a stumbling-block before the blind." Rabbi meant to say that the answer of the father of Samuel, "Make them sell them," meant that they were to be sold for slaughtering, so that no one should use them any more. Said Abayi to him: "It is sufficient fine for the owner that he must sell them for any purpose, and to any one, Israelite or Gentile."

There is no doubt that a son of full age is considered a stranger to his father that he may sell to his son; but how is the law with a minor son? R. A'hi prohibits, and R. Ashi allows. Maremar and Mar Zutra, according to others, two certain pious men, used to exchange between themselves the oxen in question for other ones. Rami bar Hamai questioned: "Does one transgress if he has placed the young one of the cow on the outside of her for the purpose of keeping the cow from consuming the grain while threshing, or if he has engaged it while it is thirsty, or if he has spread a *καταβολή* on the grain?" One of the questions at least may be resolved from the following Boraitha: The owner of the cow is allowed to make it hungry that it may eat more while threshing; he may also give it sufficient food beforehand, that it may not consume much while threshing (and this can be compared to spreading a *katabole*, hence it is allowed).

R. Jonathan questioned R. Simai: "How is the law if he has muzzled the animal outside of the field? Shall we assume that the Scripture prohibits muzzling it while threshing only, or

* Castrating is prohibited to Israelites biblically, and the Gentiles, who were friends of the Israelites, used to steal the bulls for this purpose, and return them afterwards. Hence the question.

does the Scripture mean that grain shall not be threshed with a muzzled animal?" And he answered: "This can be deduced from [*ibid.* x. 9]: "Wine or strong drink shalt thou not drink, . . . when you go in unto the tabernacle"; from which it could be inferred that this is prohibited when you go in, but not previously. However, it reads [*ibid.*, *ibid.* 10]: "So that you may be able to distinguish between the holy," etc., which means you must not go in while drunk (no matter when you have used the strong drink). The same is the meaning here: there shall be no muzzling while threshing.

The rabbis taught: "He who muzzles a cow and he who pairs two kinds of animals in one wagon is exempt from the punishment of stripes, as it applies only to the threshers and the leader of them."

It was taught: "If one has muzzled a cow only with his voice (*e.g.*, when the animal is about to eat of the grain he stops it with his voice), or if one leads the two kinds of animals with his voice only (without holding the bridle), according to R. Johanan he is guilty, because his voice is considered an act, and according to Resh Lakish he is free, as the voice is not considered an act. R. Johanan objected to the decision of Resh Lakish from the following Mishna (Themura): "One is not allowed to exchange; but if he has done so, the exchange is valid, and he is punished with forty stripes" (hence we see that though it was done by mouth only, it is considered an act, for which he is punished with stripes). And he answered: This Mishna is in accordance with R. Jehuda, who holds that one is to be punished with stripes for violation of a negative commandment, even if there is no *physical* act; but how can this Mishna be explained in accordance with R. Johanan? Did not the same state in its first part that the law of exchange applies to every one, male as well as female? And to the question: What does it mean by adding the expression "to every one" (would not "he" be sufficient for male or female)? The answer was: To include an heir, and this is certainly not in accordance with R. Johanan, as he holds that an heir cannot exchange, and also has no right to lay his hands upon an offer? The Tana of the Mishna cited holds with R. Johanan in one thing, but differs from him on the other point.

The rabbis taught: He who muzzles the cow while threshing is punished with stripes, and pays for the cow four kabs, and for an ass three kabs of fodder. But how is it possible that one

should be punished for one crime with two punishments? We are aware that if, *e.g.*, one deserves stripes for one crime, and for another, death, the stripes must be omitted, and the same is the case with a crime for which he has also to pay for the damage he has done when the crime was committed; the first punishment only must be imposed, and he is free from payment? This Boraitha is in accordance with R. Meir, who says that both are imposed. Rabha, however, said: There are many cases in which, although one is not obliged to pay the damages, he nevertheless has to pay, from a moral standpoint; and my support is from the Scripture, which forbids the hire of a harlot to be used in the temple, even if she was a relative, for which crime one is to be stoned (hence the hire is considered a payment), although it is not collected by the court. R. Papa said: The reason he has to pay in this case, despite his punishment with stripes, is because the obligation to pay was incurred before the crime for which he is to be punished with stripes was committed; he has to feed the animal as soon as he takes possession of it, and he cannot be punished with stripes until he has done work with it.

R. Papa said: The following two things were questioned of me by the disciples of R. Papa bar Abba, and I decided one of them in accordance with the law, and the other differently; namely, May one knead dough with milk or not? And my answer was: "Nay," according to the law [see Psachim, p. 45]; and the other question was, May one enter two kinds of animals in one stable? And I prohibited this, not in accordance with the law, as Samuel allows it. R. Jehuda said: One may gender one kind of animals with his hands without any fear even for immorality, as his mind is occupied with the expected product. R. A'hdbui b. Amui objected: There is a Boraitha: If the Scripture read [Lev. xix. 19]: "Thy cattle shalt thou not let gender," only, I would say that one must not gender any kind of animal at all; but as it is added, "with a diverse kind" (*kilaem*), it signifies that only *kilaem* is prohibited. But with one kind of cattle one may gender; and also, in that case, he may only hold it for this purpose. Hence we see that only to take hold is allowed, but not to gender? The expression, "to take hold," means to gender; and it was used only because of its being a nicer expression.

R. Ashi said: I was questioned by the disciples of R. Nehemia the Exilarch as follows: "Is it allowed for one to enter in

one stable two kinds of animals with their females? Shall we assume that because there are male and female of the one kind it does not matter about the presence of another kind, or is even this not allowed?" And I have answered them in the negative, not in accordance with the law, but because of the immorality of the Exilarch's slave.

MISHNA III.: The labor of a workingman entitles him to consume the fruit of that with which he is laboring, no matter with which member of his body he is doing the work; so that if he has worked with his shoulder, without occupying his hands or feet, it is sufficient. R. Jose ben R. Jehudah, however, maintains that he is entitled only when he employs his hands and feet in the work.

GEMARA: What is the reason of this statement? It is written [Deut. xxiii. 25]: "When thou comest into thy neighbor's," etc., signifies that it suffices when he enters to labor with any member of his body. And what is the reason of R. Jose's statement? He maintains that the muzzler shall be equal to the muzzled one; as the latter is entitled only when it is occupied in its labor with its hand and feet, the same is the case with the muzzler.

Rabbi bar Huna questioned: If one threshes with geese and cocks, how is the law according to R. Jose's theory? Does R. Jose mean that one is entitled to eat only when he works with all his strength? And if so, then the geese and cocks which are working with all their strength are entitled to eat. Or does he mean, literally, the hands and feet, and as in this case they have none they are not entitled to eat? This question remains undecided.

R. Na'hman, in the name of Rabbi bar Abuhu, said: Laborers who enter the wine-press are entitled to eat grapes, but not to drink wine; however, they are entitled to both if they cross the whole length of the wine-press while laboring.

MISHNA IV.: If one is occupied with pressing dates, he must not consume grapes, and *vice versa*; however, he may wait until he reaches the places where the good ones are to be found, and eat from them. In all cases it is said that he may consume only while he is laboring. In order not to waste the time of the owner, it was enacted that the laborers may consume when they are going from one place to another, and also when they are returning from the wine-press; and also an ass is entitled to consume while unloading.

GEMARA: The schoolmen propounded a question: If one was occupied with one vine, may he take a bunch of grapes from it to consume while laboring on another vine? If we assume that a laborer is entitled to consume of that kind which is to be put in the vessel of the owner, then he certainly may do so, or he is entitled to consume only from those which are to be put in the vessel of the owner; and as the grapes of the first vine were not to be put in the owner's vessel, he may not eat of them; and lest one say that he may not, then there would be difficulty in understanding why the ox, while laboring at things which are attached to the ground, may eat of them, because those attached to the ground are not to be put in the vessels of the owner. Said R. Shesheth b. R. Aidi: This case cannot prove anything, as it may mean that a branch with fruit reaches the laboring ox, but not otherwise. Come and hear. Our Mishna states that if one is occupied with dates he must not consume grapes; from which we infer that he may consume of one kind of fruit. Now, if it be not allowed to take fruit from one vine when he is going to labor on another, how could such a case be found? Said R. Shesheth b. R. Aidi: This proves nothing, as the Mishna may treat of a case where the dates were resting on the vine, or *vice versa*; and it came to teach that although he cannot occupy himself unless he takes of the dates resting upon the grapes, and one may say that in such a case he is considered to be occupied with both, the Mishna teaches that is not so (and so it is not safe to infer from this that if he is occupied with one kind of fruit in one place he may partake of it while laboring on another of the same kind). Come and hear! The latter part, "One may wait until he reaches the place where the good ones are," etc. Now, if one would be allowed to eat of the fruit on which he is not occupied, at another place where he is occupied, then why should he *wait* until he reaches the place of the good ones? Let him immediately bring and eat of it. Nay; it may be that he is not allowed to do so because of wasting time. However, if so, the question may arise: How is it if he has somebody—*e.g.*, his wife or his children who are not laboring there—and they can bring him the good ones, so that there is no waste of time; may it so be done or not? Come and hear the other statement of our Mishna: "In all cases, . . . however, in order not to waste time," etc. And the schoolmen, in explaining the reason for this statement, were about to say that because, biblically, walking is not considered labor,

one, biblically, is not allowed to eat in that case. Therefore the enactment in question was necessary, from which it is to be inferred that when one is laboring he may consume even biblically, and it may be decided that he may do so. However, it may be said that walking is considered labor, and yet according to the Bible walking is not considered labor, and yet according to the Bible one may not do so, and therefore the enactment was necessary; hence the question may be decided negatively.

An ass is entitled, etc. While unloaded! From what, then, shall it consume? Correct the Mishna so that it reads, "until it is unloaded"; and this is the same as the rabbis taught elsewhere, that an ass and a camel may consume from the load which is upon them. However, one may not take of the load with his hands and give them to eat.

MISHNA V. : The laborer may consume of cucumbers or dates with which he is working, even to a dinar's worth. R. Elazar b. Hasma, however, said: A laborer must not consume more than his wages; but the sages allow even this. Nevertheless, a man should be instructed that he must not be greedy, so that the doors of mankind should not be shut against him.

GEMARA: Are not the sages' statements the same as the first Tana? The point of difference can be found in the following saying of Rabh: I have found hidden scrolls in the house of R. Hyya, in which it was written as follows: "Aisi b. Jehudah says: The verse written [Deut. xxiii. 25]: 'When thou comest in the vineyard of thy neighbor,' means not only a laborer, but anybody." And Rabh himself added: "Aisi's theory does not allow any one to make a living" (*i.e.*, if it would be allowed for every one to enter the vineyard of a stranger, and to consume, as much as he likes, then nothing would remain for the owner). So that the first Tana does not agree with Aisi, and the sages do. Said R. Ashi: I have repeated this Halakha before R. Kahanah, and questioned him whether it meant laborers who are doing their work for their meal only; and he answered me: That even then one would prefer to hire men to cut off the trees of his vineyard than to have people enter and consume all it contains.

The schoolmen propounded a question: Are we to interpret the command of the Scripture, that a laborer may eat in addition to his wages (*i.e.*, the Scripture has added to his wage the consuming of the fruit he is engaged with, consequently it is a part of his wages; or is it only a kind of charity which the

Scripture commands to give him)? And the difference is, if the laborer says: "Give this that I am entitled to to my wife and children." If it is a part of his wages, this could be done; but if it is only a kind of charity, it may be said that the Merciful One has rewarded only the laborer himself, but not his wife and children. What is the law? Come and hear! R. Elazar b. Hasma said: A laborer must not consume more than his wages allow. Are we not to assume that the point of their differing is that one holds that this is a part of his wages, and the other holds that it is a kind of charity? Nay, all agree that this is a part of his wages; and the point of their differing is the explanation of the word *knaphshkha*,* which is mentioned in the Scripture [*ibid.*, *ibid.*]. One holds that this word may be interpreted, "a thing which you get with danger to your life" (*i.e.*, if one undertakes to ascend to the top of the tree in order to get the fruit), and the other interprets this word, "as thy soul" (*i.e.*, as for thy soul thou likest to muzzle thyself not to partake, thou mayest do so; the same is the case with the laborer, in some instances thou mayest prevent him from consuming). Come and hear! "A laborer who was a Nazarite, if he said, Give the grapes or wine that I am entitled to to my wife and children, he must not be listened to." Now, if this is a part of his wages, why should he not be listened to? Nay; there is another reason. People say, it must be said to a Nazarite, Go around, go around, so that you shall not meet a vineyard (*i.e.*, the things which are forbidden to him should not be found near him). Come and hear another Boraitha: If a laborer said the same, he also must not be listened to; hence if this is a part of his wage, why should he not be listened to? Nothing is to be inferred even from this, as the expression, "a laborer," may be interpreted to mean a Nazarite. But is there not a separate Boraitha which says plainly "a Nazarite"? This is no question, as the Boraithas were taught separately. One plainly states a Nazarite, and the other named a laborer, which means also the same. Then come and hear another Boraitha: From this we deduce that a laborer must not be listened to when he asks that that which he is entitled to shall be given to his wife and children, from the verse [*ibid.*, *ibid.*]: "But into thy vessel thou shalt

* *Nepesh*, in Hebrew, means "soul"; *knaphshkha*, literally, "as thy soul." Hence the expression "soul." R. Elazar maintains: "When thy soul is in danger," and the sages interpret this as: "You can do with your soul." Leeser, however, translates it according to the sense, "as thy pleasure."

not put any." And lest one say that this Boraitha also means a Nazarite, then this verse would be used as a reference, because for a Nazarite there is another reference given above? Yea; it may mean a Nazarite, but the verse belonging to a laborer is brought because one has named him a laborer.

Come and hear another Boraitha: If one hires a laborer to cut dates, he may eat of them and he is free from tithe. But if he was hired with the stipulation that "I and my son shall partake of it," *he* may and is free from tithe; his son, however, may eat only when the tithe is separated. Now, if this is a part of his wages, why, then, should his son not be free from tithe? Said Rabbina: Because the fruit used by his son is considered bought, as the son has nothing to do with it, and only consumes because of the stipulation of his father, who gave his word for it. Consequently, it is as if he had bought and sold it. Come and hear the next Mishna, which states that a stipulation can be made for all his family except the little children, etc. Now, if this is considered a charity, it is right that no stipulation should be made for his little children, if they have not reached the age of reason; but if it is a part of his wages, why should not the stipulation be of value for the children also? It may be said that it means when he does not feed them. But did not R. Hoshua teach that "one may make a stipulation for himself and for his wife, but not for his cattle; for his sons and daughters who are of age, but not for those who are not yet of age; however, for his male or female slaves whether they are of age or not"? From this we infer that all the Boraithas mentioned mean when he feeds them all; and the point of the difference is that the Tana'im of the above Boraithas and also of the cited Mishna hold that it is only a kind of charity, and R. Hoshua holds that it is a part of his wages.

MISHNA VII.: A laborer has the right to make a stipulation that he shall not eat what he is entitled to and take money for it instead. He has also a right to do the same for his grown son and daughter, for his wife, and for his grown-up male and female slaves, but not for his minor children or slaves, and not for his cattle, because these have no reason. If one hires laborers to work in his vineyard when it is in its fourth year (of which the fruit is prohibited), the laborers must not partake of it. If, however, he didn't notify them of the case, he must redeem the fruit and let them eat. If the round cakes of his dry figs became open, or his barrels of wine became ready for

use, so that they are fit for separating tithe from them, the laborers must not eat; but if, however, he didn't notify them at the time he hired them, he must separate the tithe and let them eat.

Watchmen of fruits are permitted to eat, according to the custom of the country, but not according to the law of the Scripture.

GEMARA: (Concerning the watchmen:) Said Rabb: The Mishna treats only of watchmen who guard vineyards, the fruit of which is still attached to the tree, and therefore, according to the Scripture, they are not to eat of it when it is not yet ripe. But they who guard wine-presses and heaps of grain are permitted to eat even in accordance with the law of the Scripture; for the reason that guarding is considered a labor. Samuel, however, maintains that the Mishna treats of those who guard wine-presses and heaps of grain; but they who guard vineyards are not entitled even in accordance with the law of the country, for the reason that guarding is not considered labor according to his opinion. R. Aha bar Huna objected to this from the following: "He who guards the red cow defiles his garments." Now, if guarding is not considered an act of labor, why should his garments be defiled? Said Rabba bar Ulah: It was enacted to be so for fear he would touch one of its members. R. Kahana objected from the following: If one guards cucumber fields, he must not fill up his belly from one garden bed, but he may eat some from each bed. Now, if guarding is not considered labor, why is he entitled to eat at all? Said R. Shimi bar Ashi: The Boraitha treats of those that were already cut off. But if so, then they are already fit for tithe? It treats in case the blossoms are not yet removed. Said R. Ashi: It seems to me that Samuel is right in his theory, and he can be supported from Mishna II. in this chapter: "The following laborers have a right to partake according to the law of Scripture," etc. From which it is to be inferred that there are such who eat not in accordance with law of the Scripture, but in accordance with the law of the country. How, then, should the latter part of the same be explained: "They have not to partake," etc.? What does the expression "not to partake" mean? If we say that they are not to partake in accordance with the law of the Scripture, but that they may partake in accordance with the law of the country, then it would be the same as in the first part; we must, then, say they are not to partake even in accordance with

the law of the country. And what is this? One who is engaged on that which is still attached to the ground and is not yet ripe, and, furthermore, the watchmen of the vineyards.

MISHNA VII.: There are four kinds of bailees: a gratuitous bailee, a borrower, a bailee for hire, and a hirer. (In case of loss,) the first is acquitted on taking an oath that he has not neglected his duty; the second has to pay under all circumstances; the third and fourth are acquitted in case the property entrusted to them has been broken, confiscated, or has died, but not when it has been lost or stolen.

GEMARA: Who is the Tana who states that there are four kinds of bailees? Said R. Na'hman, in the name of Rabba b. Abuhu: It is R. Mair. Said Rabba to him: Is there one who does not hold the theory of the four bailees? R. Na'hman rejoined: I mean to say that the only one who holds that a hirer and a bailee for hire are equal in law is R. Mair.

Is this so? Has not R. Mair said the contrary in the following Boraitha? For what loss must a hirer pay? R. Mair said: For the same that a gratuitous bailee must pay. R. Jehudah, however, said: For the same loss as a bailee for hire. (Hence R. Mair holds that a hirer is the same as a gratuitous bailee?) Rabba b. Abuhu has changed the names (in the quoted Boraitha). If so, then there are three, not four, kinds of bailees. Said R. Na'hman b. Itzhak: There are four kinds; the laws concerning them, however, are only three.

There was a shepherd who pastured his cattle on the shores of the River Papa. One of the cattle slipped and fell into the water. When the case was brought before Rabba he acquitted him, saying: What could he do? He has guarded them as is usual with shepherds. Said Abayi to him: In accordance with your theory, if the shepherd entered the city at the usual time, is he also acquitted? And he answered, "Yea." And what if he sleeps at the usual time, is he also freed? And the answer was, "Yea."

Then R. Abye objected to him from the following: The accidents for which a bailee for hire is not responsible are, *e.g.* [Job, i. 15], "When the Sabeans made an incursion and took them away." (Hence we see that he is responsible only for such things as he could prevent, but not otherwise. And Rabha answered: The Boraitha treats of the watchmen of the city who were hired to watch all night, so that their employers might rely upon them to prevent all accidents. Abye raised

another objection from the following: What is the extent of the duty of a bailee for hire, as, *e.g.* [Gen. xxxi. 40]: "(Where) I was in the day the heat consumed me," etc.? And he answered: This Boraitha also means the watchmen mentioned above. Abye rejoined: "Was Jacob the Patriarch a watchman of the night?" And he rejoined: "Yea; Jacob promised Laban that he would watch his (Laban's) cattle, as city watchmen watch the property entrusted to them." Abye then raised another objection from the following: "If a shepherd entered the city while his cattle were pasturing, and a wolf seizes a sheep, he must not be accursed. He must only be held responsible if it be adjudged by the court that his presence could have prevented the occurrence." Are we not to assume that the Boraitha means that the shepherd went to the city at the time that shepherds usually went there, and that even if this was the case he is held responsible for the accident? Said Rabha: "Nay; it means if he left the cattle at an unusual time."

Then, since he has neglected his duty, why should he be acquitted even if his presence could not have prevented the accident? The Boraitha treats of a case in which he (the shepherd) heard the voice of the wild beasts and fled. If so, why is it necessary to adjudge; what could he do under such circumstances? It would have been his duty to frighten the beast away by throwing stones and sticks. If so, why should only a bailee for hire do this; does not the same hold good for a gratuitous bailee? Was it not you, master, who said that if a gratuitous bailee could put the beast to flight with sticks and stones he is responsible?

Yea, I did say so; but this would only be the case if he could do this without incurring any expense; while the bailee for hire must do so even if he should incur expense. How much is it his duty to spend for this purpose? The amount that the article is worth. But where is it to be found that a bailee for hire is to be responsible for an accident, so that he is obliged to pay his own expenses? He is obliged to save them even when he must spend money, which, however, is returned by the owner.

Says R. Papa to Abye: If so, what good is it to the owner to have the property saved? And he rejoined: It saves him the trouble of buying others; besides, it is more pleasant for him to have the cattle which he is used to.

R. Hizda and Rabba b. R. Huna do not agree with the

above theory of Rabha, that if a bailee for hire has not neglected his duty he is not responsible for any accident; and the owner may say that he has paid for guarding the cattle in order that they may be guarded better than is usual.

Bar Adda of Sabula led cattle across the bridge of Narash, and one of them pushed the other into the water. When this case was brought before R. Papa, he held him responsible. When the defendant objected, saying: "What could I do?" he answered: "You could lead them across one by one." At this the defendant, however, exclaimed: "Does not the master know his people sufficiently well to know that they have not the time to lead them over one by one?" The judge then rejoined: Such claims have often been brought before the court, but they could not be taken into consideration.

Abu placed flocks at Rumnia, and Shabu, who was an errant robber, took them away. Although Abu proved that this was the case, R. Na'hman held him responsible. Shall we assume that R. Na'hman differs with R. Huna b. Abuhu, who sent a message, that if an article was thereafter stolen by accident, and the thief was identified, the depositary, if he be a gratuitous bailee, may choose either to take an oath or summon the thief. But if he was a bailee for hire he must pay and summon the thief. (Hence, as R. Na'hman made Runia, who was a gratuitous bailee, responsible, he certainly does not agree with the above theory of R. Huna ?)

Said Rabha: This proves nothing. As there was military in the city where Runia was, if he called for help they would have come to his assistance.

MISHNA VIII.: A single wolf coming among the flock, it is not considered an accident, while two constitute one. R. Jehudah maintains that at a time when there are visitations, a single wolf is also considered an accident.

Two dogs are not considered. Jeddna d. Babylon, in the name of R. Mair, said: If both come from one side it is not, but if they come from two different sides it is. A robbery is considered an accident. A lion, a bear, a leopard, a panther, and a snake are accident when they come suddenly; but if one has led his cattle where wild beasts or robbers abound, it is not considered an accident. A natural death is an accident, but not if it is caused by cruelty. If cattle fall from a steep rock where they have gone of their own accord, it is an accident, but if they are led there, it is not.

GEMARA: But have we not learned in a Boraitha that even a single wolf is considered an accident? Said R. Na'hman b. Itzhak: The Boraitha treats of a visitation, and it is in accordance with R. Jehuda.

A robbery is considered an accident. If there is only one robber, is there not only one man against one man? Said Rab: It means if the robber was armed. The schoolmen propounded a question: "If the robber and the shepherd were both armed, what is the law? Shall we say that as there was one against one, then it is not to be considered an accident? Or shall we say that as the robber risks his life, which is not the case with the shepherd, it is? Common sense says that it is so.

Said Abye to Rabba: If a shepherd meet a robber and say to him: "You ill-reputed thief, remember that we are located in such and such a place, where we have so and so many men, so and so many dogs, and so and so many archers with us, and if you venture to come to us you will be killed"; and if, in spite of this warning, the thief ventured to do so, how is the law? And he answered: Informing the thief of the location of the pasture is equal to the statement of our Mishna about leading the cattle to the place of robbery, etc.

MISHNA IX.: A gratuitous bailee has the right to make a stipulation that in case of loss he shall be freed from taking an oath. A borrower may do the same so as to be freed from payment. A bailee for hire and a hirer may likewise do the same, so that they may be freed from both an oath and from payment.

A stipulation made contrary to that which is written in the Scripture is of no avail. A stipulation which is made on condition that a certain act be done in advance is of no avail. If, however, the stipulation was that a certain act be done afterwards, and it is possible to fulfil the condition, the stipulation is of avail.

GEMARA: Why can a stipulation of this kind be made? Is it not contrary to what is written in the Scripture, and therefore ought it not to be unavailable? Our Mishna is in accordance with R. Jehudah, who said that in money matters a stipulation of this kind is of avail; as we have learned in the following Boraitha: "If one says to a woman: You shall be betrothed to me on condition that I will neither support nor dress you," the betrothal is valid, but the stipulation is to be abolished. So is the decree of R. Mair. R. Jehudah, however, maintains that in regard to money matters the stipulation is valid.

But how can we interpret the statement of our Mishna in

accordance with R. Jehudah, when in the latter part it plainly states that a stipulation made contrary to the Scripture is of no avail, which is certainly in accordance with R. Mair? This presents no difficulty, as the latter may treat of other than money matters. But still, if so, how would you interpret the last part of the Mishna, which states that "a stipulation which has an act in advance," etc., and such a theory was heard from R. Mair only, as stated in the following Boraitha: Aba'ha Laphtah, the man of the village of Hananya, said in the name of R. Mair that a stipulation which is to be fulfilled before an act is valid; but if the act is to be performed afterwards it is invalid? Therefore we must say that the whole Mishna is in accordance with R. Mair; and the reason the stipulation is valid is because he freed himself from all obligations before he became a bailee.

There is a Boraitha which says that a bailee for hire may stipulate that he shall be equal to a borrower. But how shall a stipulation of this kind be made verbally only? Said Samuel: It treats of when it was made with the ceremony of a sudarium. R. Johanan, however, maintains that even when a sudarium is not necessary—as the benefit which he derives is from the reputation he earns among the people of being a trustworthy man—he makes up his mind to take all responsibility.

And it is possible to fulfil, etc. Said R. Tabla, in the name of Rabba: This is in accordance with the decree of R. Jehudah b. Tama: The sages, however, maintain that even in such a case the stipulation is of avail. As we have learned from the following Boraitha: Here is your divorce, with the stipulation that you shall ascend to heaven, or shall descend to hell, or you shall swallow a stick a hundred ells long, or you shall cross the ocean on foot. If such a stipulation is fulfilled the divorce is valid; but if not it is invalid. R. Jehudah b. Tama, however, said that such a divorce is valid. Such is the rule: a stipulation which is impossible to be fulfilled should be considered a jest, and the divorce remains valid.

Said R. Na'hman, in the name of Rabba: The Halakha prevails in accordance with R. Jehudah b. Tama. Said R. Na'hman bar Itzhak: It seems to be so, as the last expression from our Mishna agrees with him.*

* *Thsptk.* What news did R. Na'hman come to tell? This was already stated by Rabba, to which they answered in various ways. We have therefore translated R. Na'hman b. Itzhak in support of Rabba, that the anonymous Mishna agrees with him, and consequently the Halakha must so prevail.

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING THE SALE AND HIRING OF ANIMALS, THE EXCHANGE OF THEM, THE SALE AND LEASING OF REAL ESTATE.

MISHNA I.: If one borrows a cow, and at the same time hires or borrows its owner, or if he does so before borrowing the cow, and the cow dies while they were laboring, the borrower is free from payment, as it is written [Ex. xxii. 13]: "And if one borrow aught of his neighbor, and it be hurt or die," etc. If, however, he has borrowed a cow, and has borrowed or hired its owner afterwards, and it dies, he is responsible; as it is written [*ibid.*, *ibid.* 13]: "The owner thereof not being with it, he shall surely make it good."

GEMARA: As in the latter part the Mishna states, "if he borrowed the cow afterwards," we may infer that in the first part it means that he has borrowed or hired its owner at the very time that he borrowed the cow. How, then, can there be a case in which the cow is borrowed by being led only, and its owner by words? And if the owner of the cow says to the borrower: "I and my cow are borrowed for your service," *he* is already considered borrowed, but the cow is not considered so until it is led off by the borrower. And so the owner was borrowed *before* the cow? If you wish, we may say that the stipulation was made that the owner shall not be considered borrowed until the leading of the cow takes place; and if you like, it may be said that the cow was already placed in the yard of the borrower, and in such a case leading it off is not necessary. We have learned in the Mishna that "there are four kinds of bailees," etc. Whence do we deduce all this? From what the rabbis taught. The first paragraph [*ibid.*, *ibid.* 6] treats of a gratuitous bailee; the second [*ibid.*, *ibid.* 9] treats of a bailee for hire; the third [13] treats of a borrower.

Says the Gemara: This is correct concerning a borrower, as it is so plainly written [verse 13]. But how do we know that the first and the second paragraph mentioned above are not the reverse? Common sense shows that the second paragraph

means a bailee for hire, as he is responsible for loss and theft. But perhaps the contrary may be said. The first paragraph may mean a bailee for hire, since he is responsible for the double amount if he claims theft. (This is no question.) It is more rigorous to pay the principal amount without an oath than the double amount with an oath. The evidence for this can be inferred from the case of a borrower who has all the benefit without any expense, and nevertheless he pays only the principal amount. But has not the borrower to feed it and also to guard it, consequently he has some expenses? It can be said that the borrower keeps it in a grazing place, which is also secured from thieves; or that he borrows vessels for which he has no expenses at all. It is stated in the same Mishna "that a bailee for hire and a hirer take an oath in case the borrowed thing breaks, is confiscated, or dies, but they pay for loss and theft." This is correct in case of theft, as it is written plainly [*ibid.*, *ibid.* 12]: "But if it be stolen he shall make restitution unto the owner thereof." But whence do we know that the same is the case with loss? Therefore the word "stolen" is repeated* to include loss.

But this would be correct according to him who holds that the Torah does not talk as men talk. (Therefore, as there is a repetition, loss may be deduced.) But according to him who holds that the Torah talks like men, what can be said? It was said in the west that an *a fortiori* conclusion is to be drawn thus: For theft which is almost an accident one must pay; for loss which is almost a neglect, so much the more he must pay. Whence do we deduce that a borrower is responsible for any kind of loss? It is plainly written that he is responsible for anything broken or for death. But how do we know that he is responsible in case of confiscation also? And lest one say that this can be inferred from the case of broken or death, it may be objected that cases could be borne in mind which are not so in case of confiscation. It is from what R. Na'hman said in the following Boraitha: Since it is written in verse 13 [*ibid.*, *ibid.*], "hurt *or* dies," confiscation may be included. But is not the word "or" needed for itself? Because if it were not, one might say that the restitution must be made only if the article be both hurt *and* dead, but not if it were broken only.

* The term in the Scripture is *Ganub yganubh*; literally, stolen, to be stolen. Hence the repetition of the word theft. Leaser, however, translates according to the sense.

Nay, there could be no error, in either case, because common sense dictates that there is no difference to the owner if it were entirely or only half killed. Whence do we deduce that a borrower is responsible for theft or loss? And lest one say that this is to be inferred from the cases of damage or death, then it may be objected that the above cases are different, as they cannot be returned. But in case of theft or loss it can sometimes be returned if he troubles himself. Therefore it must be said that this is deduced from the word "and" in verse 6, which means that what is written above also belongs to this, and also that this corresponds with the above.

It was taught: In case of neglect in the presence of the owner, R. A'ha and Rabuna differ. One makes the borrower responsible, because he holds that a verse can be used only with that matter which was written previously in conjunction with it; and as verse 14 frees the one who has neglected his duty in the presence of its owner, it is not written concerning a gratuitous bailee, which begins with *ibid.*, verse 6 (although the law about neglect is mentioned there, and it is not mentioned concerning a bailee for hire and a borrower); therefore the responsibility of a neglect, just mentioned by the two, is to be deduced by drawing an *a fortiori* conclusion from a gratuitous bailee. However, to free one from the consequences of neglect done in the presence of the owner cannot be deduced, because verse 14, which freed them, does it only on the responsibility mentioned there. And the one who frees him holds that the law of a verse can be used in conjunction with that preceding it and that written before. Consequently, verse 14 refers also to a gratuitous bailee in verse 6.

An objection was raised from our Mishna, which states: "He who has borrowed the cow and the owner at the same time," etc.; but a gratuitous bailee is not mentioned there? (Hence there is an objection to him who says that a gratuitous bailee is free in case of neglect committed in the presence of the owner?)

But even according to your theory is there mentioned in the Mishna a bailee for hire? Therefore we must say that the Mishna teaches only things which are plainly written, but not things which are deduced.

R. Hamnuna said: There is no responsibility when the owner works together with the borrowed article—*e.g.*, when the owner of the borrowed ass works with it, and also when he is present

from the time the article is borrowed until it is broken; but not otherwise. (Says the Gemara:) From this statement it is to be inferred that he interprets verse 14, "that the owner must be with it the whole time." Rabha then objected from the following: "If one has borrowed or hired a cow and its owner at the same time, or borrowed the cow and hired the owner, although the owner did his work at some other place, the borrower is free from payment in case the cow dies." May we not assume that the same is the case even if the owner was engaged with another kind of work? Nay; it means the same work. What, then, is the meaning of "at another place"? *E.g.*, he digs after it the earth which it ploughs to make it ready for seed. But as the latter part of this Boraitha states plainly: "If one hired or borrowed a cow, and thereafter he borrowed or hired its owner, although the latter were engaged with his cow in *the very same work and at the same time*, the borrower is not responsible in case the cow dies." Consequently, the first part must speak of a separate kind of work he was engaged in? It can be explained that both parts of the Boraitha speak of one and the same labor, and by the change of expressions it was intended to add something unexpectedly new in the first part as well as in the last; namely, in the first part, that although he was engaged at another work, the borrower is free in case of the cow's death; and in the latter part, that even if he were working together with his cow there is a responsibility. But can such an explanation hold good? To be unexpectedly new it must be only if the cow were laboring at a separate work, and its owner at another kind of work; but if both are at the same work, it is very easy to be seen that he is free. Aside from this there is another Boraitha which states as follows: Because it is written [Ex. xxii. 14]: "But the owner thereof be with it," etc. Why, then, was there need to state, "the owner not being with it," etc.? Is the first not sufficient? It is only written to teach that if the owner were with it at the time of borrowing, there is no necessity for him to be also with it at the time it dies; however, if he were with it at the time it was dying or breaking, but not at the time it was borrowed, the responsibility remains. And there is also another Boraitha, similar to this, which objects to R. Hamnuna's statement, and so it remains. However Tanaim differ in the interpretation of the Scripture, in the following Boraitha it is written [Lev. xx. 9]: "For every man . . . that curses his father and mother shall be put to death,

that his father and his mother hath he cursed," etc. Now, from this it is known that when he curses both father and mother he is guilty; whence do we know that the same is the case when he cursed only one of them? Therefore the repetition, "his father and his mother," to teach that one of them is sufficient to put him to death. So is the decree of R. Jashia. R. Jonathan, however, maintains that from the repetition one cannot understand more than from the first sentence, as for both it could be explained that the two are meant or only one is meant. However, the law is correct as R. Jashia said, for if the verse would mean both *only*, it would state so plainly.

Abye, who agrees with the theory of R. Jashia, interprets the verses in question in this manner. From the verse [13] it is to be understood that when the owner was not present at both times mentioned above, but if he was present at one of the times only, he (the borrower) is free; and from verse 14 it is understood that when he was present on *both* occasions he is free, but if on *one* occasion only he is responsible. Therefore it must be concluded that if the owner was present at the time the animal was borrowed, there is no necessity for him to be present at the time of its death. But if *vice versa*, there is a responsibility. Rabha, however, agrees with the theory of R. Jonathan, and interprets the verses in question thusly: From verse 13 it may be understood that if he were present at both times, and also if he were only present at one of them, and the same may be understood from verse 14, and therefore we conclude that the law remains as Abye said (although I do not agree with his reasons).

However, whence do we know that the owner's presence at the time of borrowing is the main thing—perhaps the occasion of the accident is the main thing? Common sense shows that the former is the main thing, as this act only brings the article under the control of the borrower. On the contrary, common sense shows that death is the main thing, as a borrower is responsible for an accident? Nay; after all, the first is the main thing, as this act obliges him to feed it. Said R. Ashi: From the expression, "And if a man borrow aught of his neighbor" [*ibid.*, *ibid.*], it is to be inferred that he is responsible only when he borrowed *from* his neighbor, but not if his neighbor is with him. Then the continuation of the above-cited verse and what follows would be all superfluous? Nay; if not the following,

one may say that such expressions are customary in the Scripture.

Rabina questioned R. Ashi: If one tells his messenger that he shall substitute him in service to his neighbor together with his cow, how is the law if the cow breaks or dies while laboring? Is the word "owner" in the Scripture to be taken so particularly that no one can stand in his stead; or in such a case is the messenger of one considered as if it were himself? Said R. Aha b. R. Iwia to R. Ashi: "Concerning a husband who used the cow of his wife." R. Jonathan and Resh Lakish differ in regard to his responsibility, and concerning a messenger R. Jonathan and R. Ashi differ.

Said R. Eylish to Rabha: If one borrows another's slave and cow, how is the law? This question is to be considered according to the theory of both the Tanaim who differ in the case of the law regarding a messenger, whether he is considered a substitute or not. To the one who holds that he is considered a substitute, the question is the same as is the case with a slave, for the reason that the slave is free from the obligations of the law, and therefore he cannot substitute; on the other hand, according to him who holds that a messenger is not considered a substitute, it may also be questioned if the same is the case with a slave or if the latter is different, as he may be considered as the hand of his master (consequently he may stand for him?). And Rabha answered: "Common sense dictates that the hands of a slave are considered as his master's."

Rami b. Hama questioned: "A husband who uses the estate of his wife, what should he be considered, a borrower or a hirer?" Said Rabha: "Only a man of such genius is fit to make such an ingenious error. What difference is there if he is considered a borrower or a hirer? In both cases it must be considered that the owner of the property is with him; consequently there is no responsibility." The question, however, by Rami bar Hama could be raised in case one has hired a cow of a woman and thereafter married her. If the husband is considered a borrower, then he is not responsible, as the owner of the article borrowed is with him; or if he is considered a hirer, the law of a hirer consequently remains. But what is the difference? Is it not a fact that now the owner of the hired article is with him, and this should supersede the previous act which was without the hirer; as we say the same in case he is considered a borrower?

Therefore, if Rami raised a question it must be thus: If a woman has hired a cow from any one, and afterwards she married, then, in accordance with the rabbis, who hold that the borrower has to pay to the hirer, there is no question, as the owner of the borrowed article is considered to be with him. However, according to R. Jose, who holds that in such a case the cow must be returned to its first owner—now, if after the woman has married, her husband uses the cow and it breaks, what is he considered, a hirer who must pay, or a borrower who is not responsible for an accident in the presence of its owner? Said Rabha: The husband is considered neither a borrower nor a hirer, but (a buyer of the estate of his wife), as said in the First Gate, p. 197.

The schoolmen propounded a question: If the body of the animal becomes lean because of the labor, how is the law? Said one of the rabbis, named R. Hylqia b. R. Ovia: As the schoolmen questioned in case of leanness and not in case of death, they must be sure that in the latter case one is surely responsible. Why, then, has he borrowed it, to put it under a canopy? Said R. Rabha: Not only if it become lean, but even if it dies while laboring, there is no responsibility, for the reasons said above by R. Hylqia.

There was a man who borrowed an axe from his neighbor and it broke, and he came before Rabh, who told him to bring witnesses that he used it as an axe is usually used, and then he would acquit him. (Questioned the Gemara:) But how is it when there are no witnesses? Come and hear! There was one who borrowed an axe and it broke, and Rabh had decided that he must buy him another one. Said R. Kahana and R. Assi to Rabh: "Does the law prescribe so?" Is it not stated (in First Gate, p. 100) that the defendant has only to pay the damage, but not to buy another? And Rabh kept silence. The Halakha, therefore, prevails in accordance with R. Kahana and R. Assi, that he must return the broken one and must give the difference in money.

There was one who borrowed a pitcher and it broke, and R. Papa told him to bring witnesses that he used it as a pitcher is usually used, and he would acquit him. There was a man who borrowed a cat, which had overeaten itself with mice and died, and R. Ashi, before whom the case was brought, was deliberating (whether this is considered a case in which it dies while laboring or not). Said R. Mordecai to him: "So said Abimi

of Hagrunia, that a man whom a woman has killed must not be taken into consideration." *

Rabha said: "If one wants to borrow something from his neighbor, and so that he shall not be held responsible if it be damaged, he may say to the borrower: You may give me water to drink (*i.e.*, that the giving of water will be considered a labor, so that he borrowed the article with its owner). However, if the lender is clever, he may say to him: First borrow what you need, and afterwards I will give you the water."

Said Rabha: A teacher who teaches infants, a planter, a butcher, a barber, and the scribe of the city—all these, when they do their work, are considered, in case one borrows an article from them, as if he has borrowed also the owner of it.

Said the rabbis of Rabha's college to Rabha: "According to your theory you, master, are borrowed to us" (*i.e.*, that if we were to borrow something from you and should spoil it we should be free from payment). And Rabha became angry, saying: "You want to benefit yourselves with my money? On the contrary, you, as my disciples, are borrowed to me, since I have the right to engage you in any tract of the Talmud I like, and you have no right to prevent me or refuse to study what I explain to you." (Says the Gemara: In reality it is not so.) In the days before the festivals he is borrowed to them, as then he must teach the laws of the coming festivals; they (the disciples), however, are borrowed to him on all other days

It happened that Maraimar b. Hanina hired mules from Huzai, and the former overworked them and they died; Rabha made him responsible. Said the rabbis to Rabha: "Was it not a neglect in the presence of the owner, and Huzai used to support them in their work? Rabha was embarrassed; finally it was learned that Huzai was not supporting them in their labor, but, on the contrary, was there to see that they were not overloaded. (Consequently Rabha was right in his decision.) This is correct in accordance with him who holds that a neglect in the presence of the owner is to be freed, but there is one who holds that in such a case the borrower is not free. Why, then, the embarrassment? (He may have agreed with the latter.) The case was that the mules were stolen, and died in the house of the thief; and when Rabha made him responsible the rabbis

* This is an ancient parable, and it means that such carelessness must not be considered.

questioned him: "Was it not stolen in the presence of the owner? Why, then, should Maraimar be responsible for the theft?" And therefore Rabha was embarrassed. Finally, it was learned that Huzai came only to see that they should not be overloaded.

MISHNA II.: If one borrowed a cow for a half a day, and for the other half a day he hires it, or he borrows it for to-day and hires it for to-morrow, or there were two of them, one of which he borrowed and the other he hired, and it dies, the lender claims that it dies in the time for which it was borrowed, and the borrower says, "I don't know," then the latter is responsible. If the reverse, the hirer says: "It dies while laboring when it was hired," and the owner says, "I don't know," then the former is free. If, however, they contradict each other, and one says that it died while borrowed, and the other says it died while hired, then the hirer has to take an oath that it is as he said, and he is acquitted. But if both say they don't know how the case was, then the damage is divided.

GEMARA: From this statement it is to be understood that if one claims a mana, and the defendant says, "I don't know," he must pay. Shall we assume this should be an objection, as it was taught that R. Na'hman and R. Johanan hold the defendant free in such a case? R. Huna and R. Jehudah hold him responsible (the reason of R. Na'hman's statement is, as R. Ashi explains, because the plaintiff cannot collect any money without evidence; and therefore the money remains with the defendant, in accordance with the law of hazakah). Nay; as R. Na'hman said elsewhere that this is only in case the defendant has to take an oath (the illustration will follow further on). The same can be explained in the case in our Mishna. How was the case? Rabha illustrates it thus: If one claims a mana, and the defendant says, "I am sure of fifty zuz, but not of a hundred," then as he cannot take an oath he must pay. However, in the cases brought in our Mishna, such a case can be found in the first part, when there were two cows. The plaintiff claims, "I have forwarded to you two cows for one day, a half of it as a loan and the other half as a hire, or for two days, one day as a loan and the other as a hire," and both die in the time for which they were borrowed. The defendant claims, "I am sure that one of them died in the time of borrowing, but I am not sure of the other one," and as he cannot swear, he must pay. The second part is to be explained that there were three cows, and the

plaintiff claims that two of them died in the time for which they were borrowed. The defendant claims that he is sure only of one of them, and as to the others, he does not know whether that which was borrowed died, and that which is still alive is the one which was hired, or *vice versa*. As he cannot swear, he must pay. And according to Rami bar Hama, who holds that all the four kinds of bailees are liable only when they admit a part and deny a part, the first part of the Mishna is to be explained that the claim was for three cows for half a day, or a day as a loan and the other as a hire; and the plaintiff claims that all the three died at the time when they were borrowed. The defendant, however, denies one of them altogether, and for the remainder he claims that only one of them died in the time for which it was borrowed, and concerning the other, he is doubtful; and in the second part the plaintiff claims that he has given him four cows: three of them as a loan and the one as a hire, and the three which were borrowed died. The defendant denies one altogether, and admits that one died in the time for which it was borrowed, and as to the remainder he is doubtful. As he cannot take an oath, he must pay.

One says it died while borrowed, etc. But why? In the claim of the defendant we do not see any admission, even in part, as to the claim of the plaintiff (since the plaintiff claims that that which was borrowed died, and the defendant says that it is still alive, but that the other which was hired is dead; consequently he is not obliged to take an oath at all. Said Ula: As the defendant must take an oath that the cow in question died a natural death, the plaintiff may desire that in that oath shall be included a statement that the hired cow, and not the borrowed one, died (such a desire must be listened to, as it is explained elsewhere that this is a biblical law).

But if both say they don't know, etc. This statement is in accordance with Symachos, who holds that doubtful money must always be divided.

MISHNA III. If one has borrowed a cow, and the owner sends it to him by his son, slave, or messenger, or even by the same persons of the borrower, and it dies while on the road, the borrower is free. If, however, the borrower orders him to send it through his son, slave, or messenger, or even through the same persons of the owner, or even if the owner says to him, "I will send it through the persons mentioned above, of my own or of yours," and the borrower says, "Do so," then the

borrower is responsible for the death while on the road, and the same is the case with the return.

GEMARA: Was it not said above that the hand of a slave is considered as the owner's? Why, then, should the borrower be responsible if it was sent with the slave of the owner? Said Samuel: It treats of a Jewish bondman, whose body does not belong to the owner. Rabh, however, said: The Mishna can be explained that it treats even of a heathen bondman; but the order of the borrower is to be considered, as if he would say: Strike it with a stick and it will come to me.* As the borrower told him to send it in that manner, his intention was that as soon as he shall forward it to the above-mentioned persons, the control of the owner ceases.

An objection was raised from the following: If one borrows a cow and it was sent to him with the son of the owner, or with his messenger (with the consent of the borrower), the borrower is responsible for an accident on the road. If, however, it was sent by his slave, he is free. Now this would be correct in accordance with Samuel's theory, as the Boraitha may treat of a heathen slave, and our Mishna of a Jewish one; but according to Rabh's theory it contradicts? Say, then, Rabh explained the case of the Mishna, that the borrower is not as explained above, "it is considered," but Rabh says that the Mishna treats of which it was said plainly, "Strike it with a stick and it will come to me." As it was taught: "Lend me your cow. Through whom shall I send it to you? Strike it with a stick and it will come." Said R. Na'hman in the name of Rabba bar Abuhu, quoting Rabh: As soon as it was out of the control of the owner the borrower is responsible for an accident.

There is a Boraitha which states plainly, as it is above, in the name of Rabh. Shall we assume that it shall be a support to him? Said R. Ashi: Nay; as the Boraitha may treat in case that the courtyard of the borrower was behind that of the owner, so that the borrower was sure that if the owner would strike the animal with a stick, while turning it to the yard of the borrower, it will come to it (but not otherwise). But is not such a case self-evident? The case was that there was another corner in

* His reason is that the slave who was appointed for this message is to be considered hired, as his master has a right to hire him out, and therefore it is as if he hired out two cows. And the statement above, that the hand of the slave is considered as that of his master's, holds good only when the master himself lends or hires. Then the slave may substitute for him, but not otherwise.

the yard of the owner, and the animal could turn there while running. Lest one say that in such a case the borrower was not sure, it is necessary to teach us that he was.

R. Huna said: "If one borrows a hatchet, if he has done some work with it he acquires title to it for the time borrowed, but not otherwise." (According to his theory drawing does not give title to a bailee.) To what purpose was this stated? Did he mean to say that he is not responsible for an accident? Why should this case be different from the case of the cow mentioned above? He meant to say that the owner has the right to retract as long as the borrower has not used it, but not after he has. And he differs with R. Elazar, who said that at the same time the enactment of drawing was made concerning buyers, it was also enacted concerning bailees, and so also we have learned in a Boraitha, with the addition that as real estate may be bought with money, with a note, and with hazakah, the same is the case with hiring. With hiring! What has a note and a hazakah to do with hiring? Said R. Hisda: When real estate is hired (*e.g.*, if one hires a house, if he has paid the rent, or has given a note, or taken possession, hazakah, of it) the owner has no right to retract.

Samuel said: If one steals a bunch of pressed dates, which contains fifty dates—and usually when they are sold together a bunch contains only forty-nine, but if single he sells out the whole fifty—then, when the robber repents and wants to make amends, if the dates belong to a common man he has to repay only for forty-nine, but if they belong to the sanctuary, he must repay fifty, with the addition of a fifth part. However, if one spoils the same, he is free from the additional fifth part; as the master said elsewhere: It is written [Lev. xxii. 14]: "If a man eat a holy thing unwittingly," etc.; it excludes if he spoiled it.

R. Bibi bar Abye opposed: Why shall he pay to a common man only forty-nine? Let the owner say: I would sell them singly. Said R. Huna bar Jehoshua: There is a Mishna (in the First Gate, p. 131): "It is appraised at how much the measure of the land required for planting a saah was worth before, and how much it is worth after."

Hence we do not appraise the value of that which was consumed, but of that which was diminished. Shall we assume that Samuel holds that the law concerning an ordinary man is not equal to that of the sanctuary? Are we not aware that elsewhere R. Abuhu, in the name of Samuel, declares that there

is no difference? Samuel had retracted that statement. But how do you know that Samuel retracted from *that* statement? Perhaps he had retracted from *this* statement. We are aware of this from Rabha's following statement: "That if some one took something from the sanctuary unintentionally or by an error, he transgresses, as if he did the same from an ordinary man intentionally." (Hence we see that there is a difference between a sanctuary and ordinary goods, and Rabha would not teach such a law if it were against Samuel.) Rabha said: Carriers who break a barrel of wine, the price of which on a market day is five zuz and on an ordinary one four, on the market day they have to return another barrel of wine, but on another they have to pay in cash four zuz. This, however, is said if the wine dealer has no other wine for sale. But if he has other wine, and he does not sell it, they may return him a barrel of wine, as we see that he intends to keep the wine for the season; and also in case they pay him, he has to deduct the money for their labor, and also what he has to pay for making a hole in the barrel (which was of clay).

MISHNA IV.: If one exchanged an ass for a cow, and it brought forth young ones, or one has sold one's female slave and she gives birth, and the seller claims that this happened before the sale, and the buyer thereafter, the value of it is to be divided. If one possesses two male slaves, a large one and a small one, or two fields, one large and one small, and the buyer claims, I bought the large one, and the seller, I doubt it, the buyer's is to be considered. If the seller claims: I sold the small one, and the buyer doubts it, the claim of the seller must be considered. If, however, they contradict each other, the seller must take an oath that he has sold the smaller one; if both doubt it, the difference is to be divided.

GEMARA: Why should it be divided? Let us see who possesses it. It should be the obligation of the plaintiff to bring evidence. Said R. Hyya bar Abba in the name of Samuel: The Mishna says: When the articles in question are still in the *semita* (a corner near a public thoroughfare where articles for sale are placed). But why should it not be considered still under the control of the owner, and the buyer the plaintiff who should have to bring evidence? The Mishna is in accordance with Symachos, who said that doubtful money ought to be divided without a note. But was Symachos's decision in a case where both claim that they are certain? Symachos's decision was

only in cases where both doubted. Said Rabba b. R. Huna: Yea, Symachos made his decision, even in a case where both claim certainty. Rabh, however, said: Symachos's decision was only when both claimed that they are doubtful, but not when both claimed certainty. But the Mishna is to be corrected, that both of them claimed that they were doubtful; and therefore the article in question must be divided. However, the Mishna is correct only with Rabh's correction, because part of it speaks plainly in case both are in doubt. Therefore the first part must also be interpreted in the same way. But according to Rabba bar R. Huna's theory, who says that Symachos's decision was even when both claim certainty, the last part would be entirely superfluous, since even when they claim certainty it is to be divided. Is it so much the more when both claim doubt? Nay; this cannot affect, as it may be said that the last part was taught only to make clear the meaning of the first part; lest one say that it speaks only when they both claim doubt. Therefore it teaches plainly the claims of doubt in the last part to signify that the first part speaks when both claims were of certainty, and nevertheless it must be divided. An objection was raised from the decision in our Mishna that the seller must take an oath that he has sold the smaller one, and this is correct only in accordance with Rabha, who says that Symachos's decision does not apply to a case of certainty. But, according to Rabba bar R. Huna's theory, it does. Why, then, should he take an oath; let them divide?

Symachos admits that in such a case where the oath is to be taken biblically, the law that it should be divided does not exist, as will be explained further on.

If one possesses two slaves, etc. What has an oath to do here? In the claim of the defendant we do not see any admission at all, as the plaintiff claims that he sold another person, which the defendant does not contradict; and, secondly, the seller says: "Here is your bought article; take it." Such a case is not considered a part admission, as said above; and aside from this there is no rule that no oath must be given concerning slaves. Said Rabh: It treats when he demands the value of the articles sold, but not themselves, as, e.g., the value of the slave or the field in question. Samuel, however, says: The Mishna treats concerning the garments of a slave and the sheaves of a field; the seller claims: I sold you the smaller ones; the buyer says: The larger ones. But then the claims are

not of one and the same article, and the axiom, There is no admission by the defendant, mentioned above, applies also to this. As Rabh Papa declares elsewhere that it speaks not of a ready-made garment, but of the stuff to a garment, which is still attached, and one claims: You have sold me measure for a large garment, and the other says: For a small one, the same is to be explained here.

It was difficult for R. Hoshea to accept this explanation, as the Mishna states a slave, and not a garment. Therefore he tried to explain thus—that the Mishna treats that the plaintiff claims that he sold him a slave with his garments or a field with its sheaves. And to the objection that there is no admission at all to the claim of the plaintiff that he has sold him a garment with the slave, the explanation of R. Papa mentioned above may be used here also, that the dress was attached to the slave (*i.e.*, that he was dressed in it); and as an oath has to be given to him for the dress, the oath about the slave may also be included.

It was difficult for R. Shesheth to accept this explanation, as according to it the main thing the Mishna teaches is that the oath for encumbered estate, for which an oath is not given when the claim is only about it, is nevertheless to be included in the oath given for unencumbered estate; and this is plainly stated in several places elsewhere. This, however, presents no difficulty, since, lest one say that the garment which the slave wears is equal to himself, or the sheaves of the field which are still attached to it are equal to the field, it comes to teach us that it is not so.

If both doubt it, etc. This is certainly in accordance with Symachos's theory, who says that doubtful money is to be divided. How, then, is the second part to be explained, which states that if the seller claims that it was born under his control, the seller must swear that so it was? Did not Rabba bar R. Huna declare above that Symachos's theory applies also to the claims of a certainty? Why, then, an oath? Let them divide in this case also. Symachos admits that in such a case, where the oath is to be taken biblically, the law that it should be divided does not exist. As Rabha explained that it treats of a case in which he has cut off a woman's hand, and of a field in which he has digged pits, excavations, and caves, to which the theory, "Here they are," does not apply, as it is not acceptable. Concerning the admission in

part; it may be considered that her hand is considered a part of her.*

MISHNA V.: If one sold out his olive trees for fuel, and there were still bad olives on them, the oil of which was less than a quarter of a lug from the measure of a saah, they belong to the buyer. If, however, there was such a quantity or more, the buyer claims it is produced from his trees, and the seller claims it was produced from his estate, the products are to be divided.

Olive trees which were overflowed (by a stream), taken out by the owner, and planted in another's field, and the two quarrel about the fruit borne: one claims, My trees, and the other, My ground brought it. It is to be divided.

GEMARA: Let us see how the case was. If the seller told the buyer to cut it off immediately, and he didn't, then even if there was less than that quantity, it belongs to the seller. If he told him: You can cut it off whenever you like, then, even if it was more, it belongs to the buyer. The case was that he sold it without any stipulation; then less than a quarter of a lug people do not care about. But when more than this, they do. Said R. Simeon b. Paze: The quarter in question must be measured after what is lost in pressing it.

Olive trees which were overflowed, etc. Said Ula, in the name of Resh Lakish: The law holds good only when they were torn out with lumps of earth in which they were planted. (In such a case the trees in question are free from the law Arlah; that is, the first three years) and even then only when three years have elapsed from the time he had planted them in the other field. Otherwise the fruit belongs to the owner of the trees; as he may say to the owner of the estate: If you, *e.g.*, would plant new trees you could not use them in the first three years, as they would be Arlah. But why should not the owner of the estate claim: "If I should do as you say, I would use all of them after the lapse of three years, and now you take half of it." Therefore we must accept, as Rabin has reported that Resh Lakish said, thus: The law holds good when they were torn out with the lumps of earth and during the first three years, but after the lapse of three years all of them belong to the owner of the

* The text is so complicated that it is very difficult to understand the real meaning of it. The Achri has omitted this from his compendium; the commentaries also have tried to explain this, but did not succeed. However, according to our method we could not omit this, so we did the best we could to translate it.

estate, because of the reason stated above. But why should not the owner of the trees claim: If you should plant it you would not use it for three years, and now you consume half of it every year? Because the owner of the estate may answer: If I were to plant it, they would be small and would not afford much, so that I could use the ground near them for vegetables (which need sunshine), which is not the case now, as you planted your trees in that place.

There is a Boraitha: If the owner of the trees says, "I will take back my plant from your field," he must not be listened to (although after three years it will all belong to the other one), but the owner of the estate has to pay the value of trees for planting, and not the value for fuel. Why so? Said R. Johanan: Because of the occupancy of the land of Israel. Said R. Jeremiah: To such an explanation we need such an authority as R. Johanan.

It was taught: If one has planted trees in a field belonging to another, without the consent of the owner. Said Rabh: His word must be appraised, but not to his benefit (*i.e.*, if the expenses were more than the improvement, he gets nothing, and if the improvement was worth more, then he gets paid for the improvement). Samuel, however, maintains that the appraisal should be as much as one has to pay for planting such a field. And R. Papa said: They (*i.e.*, Rabh and Samuel) do not differ, as one speaks of a field which is better for trees and the other of that which is better for vegetables. And the statement of Rabh was not heard from him plainly, but was so inferred from the following: There was a man who came to Rabh with such a complaint, and he told him to appraise his work. He objected, saying, I do not want my field to be planted at all, and Rabh said: Go and appraise his work, not to his benefit. And the man said: I don't want to do even that, as he spoils my field. Thereafter it was learned that the owner of the field had fenced it, and Rabh said: From this we see that his work satisfies you; go and appraise his work so that he may be benefited.

It was taught: "If one has rebuilt a ruin of one's neighbor without his consent, and to the owner's claim has said: I will take back my wood and stones," R. Na'hman is of the opinion that he must be listened to, and R. Shesheth maintains that he must not. An objection was raised. R. Simeon b. Gamaliel said that in such a case the Beth Shamai hold that he should

be listened to, and the Beth Hillel say not. Shall we assume that R. Na'hman holds in accordance with the Beth Shammai? R. Na'hman holds with the Tana of the following Boraitha: In such a case his claim should be taken into consideration; so is the decree of R. Simeon b. Eliezar. But R. Simeon b. Gamaliel said that so was the decree of the Beth Shammai. The Beth Hillel's verdict, however, is contrary. How, then, should the law be decided? Said R. Jacob in the name of R. Johanan: If this happened with a house, his claim may be considered, but not with a field—for the reason the earth became deficient.

MISHNA VI.: If one rents a house (without appointing the time) in the rain season, he has no right to make the tenant move from the Feast of Tabernacles until Passover; and in the summer season for a period of thirty days. In the large cities, however, there is no difference at what time; he must keep him twelve months; and the same is the case with stores or shops at any place. R. Simeon b. Gamaliel maintains that the term of the shops of bakers and dyers is three years.

GEMARA (Let us see): In the rain season why must he keep him for the whole season? Because usually when a man rents a house it is for the whole season. Why should not the same be said of the summer season? And if you should say that the reason is that because during the rain season it is not easy to find a house to rent, then how is it that in the large cities the term is fixed for twelve months? Now if the twelve months terminate in the rain season, and the owner makes the tenant move, why it is not easy to find a house for rent? Said R. Jehudah: All the terms are fixed only for giving notice; *i.e.*, thus: If one lends a house to some one anonymously, one cannot make the tenant move from the Feast of Tabernacles until Passover, unless one had given him notice thirty days before. And so, also, we have learned in the following Boraitha: The terms thirty days and twelve months are for giving notice; and this notice is to be given by the owner of the house as well as by the tenant, as the owner may say, If you had given me notice, I should have troubled myself to find a man who would have taken it for the whole season. Said R. Assi: If he has dwelt even only one day in the rain season, the owner loses the right to make him move until Passover. But was not thirty days the term? He means to say if one day of the thirty days in question had passed without any protest of the owner. Said R. Huna: The owner, however, has the right to increase the

rent. Said R. Na'hman to him: This would be if he would hold him (*χρησίου**) (in his pocket) until the tenant would lose his last garment. (Rejoined R. Huna:) I mean if the rent in general becomes dearer. It is certain, if the house of the owner where he dwells falls, he may make the tenant remove from that house (if the term is at an end) even without a notice before, as he may say, You are not better than myself, as I also cannot so easily find a house, and I was not aware that my house will fall. If the tenant sold out his lease, loaned, or made it a present, the same may be done, as the owner may say, You are not better than the man from whom you took it. If, however, the tenant has given it for the wedding of his son, then it must be investigated; if it was possible for the owner to notify him, he should do so; and if not, he may say, You are not better than myself.

There was a man who bought a lot of wine and couldn't find a place to keep it in, and he asked a certain woman if she had a place for hire; and she said no. Then he betrothed her and she gave him a place. He went home, wrote a divorce, and sent it to her. She then took carriers, paid them with the same wine for taking it out, and put it in the street. When the case was brought before R. Huna b. R. Jehoshua, he said: As he has done, so it was done to him; he was rightly rewarded, and not only from a yard which was not for rent she had the right to do so, but even if it was for rent, as she may say I would like to let it to some one, but not to you, as you are in my estimation equal to a spy.

R. Simeon b. Gamaliel maintains, etc. A Boraitha states that the reason is because they usually give very much of their goods in debt to the people in the neighborhood.

MISHNA VII.: The owner of the house is obliged to give to the tenant a door bolt, a lock, and all other things belonging to the house which is to be done by a specialist. However, the things which can be done by any one the tenant has to furnish himself. The manure of the house belongs to the owner; the tenant has a right only to the ashes which he takes out from the ovens.

GEMARA: The rabbis taught: The owner of the house is obliged to put in doors, to open windows, to repair the ceiling,

* We have translated according to Schoenhack's Dictionary. Rashi, however, explains it differently, which is not translatable; the meaning, however, is the same.

and to support it with a beam; and the tenant is obliged to make for himself a ladder, a battlement, a gutter, and to plaster the roof with clay.

R. Shesheth was questioned: Whose duty is it to furnish a Mezuzah? * But did not R. Mesharshia say that the obligation is the tenant's? The question was that if the door-post was of stone, whose is it to furnish a place for the Mezuzah? And R. Shesheth answered thus: We have learned in our Mishna, which states that things which need not a specialist the tenant must prepare; and this is also to be considered among these things as he can fix it himself.

The rabbis taught: The tenant has to buy a Mezuzah, but when he removes he must not take it with him, unless he is aware that a Gentile will occupy the house after him. And it happened that one took it out while removing, and buried his wife and two children.

The manure belongs to the owner, etc. How is the case if the cattle were the tenant's? Why, then, should the manure belong to the owner of the house? And if the yard was not rented to him, and the cattle belong to the owner, then it is self-evident that it belongs to him? The court was not rented, and the manure was not of the owner's cattle, but of cattle which were in the court to load or unload things belonging to the tenant. And this statement may be a support to R. Jose bar Hanina, who said that a courtyard acquires title for its owner even without his knowledge. An objection was raised from the following: If one said all articles found in my courtyard to-day, it shall give title to me. He said nothing. Now if the theory of R. Jose is correct, why should his words be disregarded? It speaks of an open court where the articles are not secure. If so, how is to be understood the latter part of the same Boraitha, which states: If, however, there was heard a voice in the city that in the yard of so and so is found an article (Rashi explains this as, *e.g.*, that it was heard in the city that a lame ram happened to come to his field, or that the river overflowed and left some fish in his yard) his word is to be considered. Now, if it speaks of a court where the things are not secure, why should his word be considered, even in this case? If such a thing was heard in the city, one would not dare to take it, and therefore it is considered as if the yard were secured.

* The "amulet" for the door-post (Deuteronomy, vi. 9).

Another objection was raised from the following: Ashes of the ovens and dust from the air belong to the tenant, but that from the stable and in the yard belongs to the owner. Now if the theory said above by R. Jose is correct, why should dust of the air belong to the tenant? Is it not the air of the owner's court? Said Rabha: Air which cannot reach the ground because of some obstacle must not be considered as if it were on the ground. But was the decision certain to him? Did not he himself question as follows: If one has renounced his ownership of a purse of money, and has thrown it into one open door, and it passes out through another open door, and falls outside of the house, did the contact of the purse with the air of the house in its passage through give title to the purse to the owner of the house, or, because it has not rested in the house, has the house-owner no title? (Now if he were certain in his above decision, he would not ask such a question?) In the case questioned by him there was no obstacle, as in the case mentioned above.

That which is in the stable and in the yard, etc. Why both? Is not one sufficient, as it speaks of a yard which was not rented to the tenant? Said Abye: It means to say that even if the courtyard was rented, still that which is in the stable belongs to the owner. And R. Ashi said: From this it may be inferred that if the yard was rented without any stipulation, the stable in it is not to be considered included.

MISHNA VIII. : If the year was made a leap-year, the tenant reaps the benefit of the intercalation. However, if he rented him the house monthly, the intercalation belongs to the owner. It happened in Ciphorius, that one rented a bath-house for twelve golden dinars a year. The payment should be one dinar monthly, and thereafter the year was made leap intercalary. When the case came before R. Simeon b. Gamaliel and R. Jose they decided that the payment of intercalation shall be divided.

GEMARA: Does the Mishna bring a fact to contradict its previous statement? (As there is no mention of a division, but belongs either to one or to the other.) The Mishna is not completed, and should read thus: If he has rented it to him for twelve months to be paid monthly, then the payment for the added month is to be divided, and it happened also in Ciphorius, etc.

Said Rabh: If I were there I would decide that this month belongs altogether to the owner. What was the intention of Rabh to teach us? That the last expression must be consid-

ered. Has he not taught the same elsewhere; namely, R. Huna said that in the school of Rabh it was taught that if one says I sell you this article for an istera (hundred mahas), then he has to pay him a hundred mahas in good money, and if *vice versa* he may give him an istera? (The difference between an istera and a hundred mahas is that an istera contains also a hundred mahas, but not in current money.) From that statement we can infer nothing, as one may say that the last expression was only an explanation to the preceding one. (In our case, however, there is no explanation. The owner rented the tenant the house for a year for twelve golden dinars. The payment should be a dinar monthly; consequently it was two conditions, and not an explanation.) Samuel, however, said: The decision was so made because they came to the court in the middle of the month, but if they had appeared in the beginning it would be entirely the owner's; and if they would come in the end of the month, it would be the renter's (because they doubted as to which expression should be considered, the first or the last; and if they came in the beginning of the month, and he required payment or removal, then his claim is to be considered, since the house is his. And if they came at the end of the month, there is no claim for removal, but for the past month. Such a debt cannot be collected by the court, and therefore the money remains with the renter. But if they came in the middle of the month, and the owner demands payment or removal, he is to be paid for the future, but not for the time past.

But did not Samuel also hold that the last expression must be considered? Is it not stated elsewhere: If one said, I sell you a kur of wheat for thirty saahs, the seller may retract even at the last saah, because the buyer does not acquire title until he has taken the last one (and he had sold him the whole kur and not every saah separately). If, however, the seller said, I sell you a kur for thirty saahs, each saah for a saah, then he cannot retract from that which was already measured (as the last expression, one saah for a saah, is the one taken into consideration). So said both Rabh and Samuel. (Hence we see that Samuel also agrees to the theory of the last expression.) Nay, the reason in that case was, because he took possession of it already, and in our case also for the same reason that it is doubtful, whether the first or the last expression is to be considered. He does not pay for the time occupied, but for the future. R. Na'hman, however, maintains that the estate is

always considered in the occupancy of the owner, and therefore there is no difference at what time in the month they came to the court. His rent must be paid; and not only when the last expression was a *salah* a month, but even if it was the reverse, a "*salah* a month, twelve for a year."

R. Janai was questioned: If the renter says I have paid, and the owner claims I have not received it, who of them must bring evidence? (Let us see.) The following Mishna in (Tract B'khorad) answers this question: Either it was for time past or for the present, namely: If the father dies within thirty days of his first-born son's birth, he must be considered unredeemed as yet (*i.e.*, when he is grown up, then the obligation of redeeming would remain to him all his life). If, however, his father dies after thirty days, he is to be considered redeemed, unless neighbors assure him that he was not. (From which it is inferred that within the time the renter must bring evidence, and after the time the owner must bring evidence, as according to the Jewish law rent is paid at the end of the month.) The question was, at the very same day when the term is ended, the renter says I paid you in the morning, and the owner says you did not. Said R. Johanan to them: This we have learned in the following Mishna: A laborer who claims in the last day of his employment, that he did not receive as yet his salary has to take an oath and collect the money. And that the laborer must take an oath and not the employer is enacted by the rabbis only there; as the employer has to deal with many laborers, it may happen that he has given to another one instead, and then he will swear falsely; but in your case the renter is trusted, if he takes an oath that he has paid.

Rabha in the name of R. Na'hman said: If one has rented out a house for ten years, and has signed a lease without a date, and thereafter he claimed that the tenant has already had the house for five years, he is to be trusted. Said R. A'ha of Difti to Rabina: According to this theory, if one has loaned a hundred *zuz* and has taken a note, should the debtor also be trusted if he says, I have paid you the half? And he answered: What a comparison is this? A note is written for collection; and if he would pay, he would insist that it should be written on the note or he would take receipt. In this case, however, the owner may claim that he has made the lease, so that the tenant shall not be able afterwards to claim *hazaka* (occupancy).

R. Na'hman said: If one borrows at his neighbor's an article

for the time it may be fit for work, he may take it as often as he requires it as long as it exists. Said R. Mari, the son of Samuel's daughter: This holds good only if it was done with the ceremony of a sudarium. And R. Mari b. R. Ashi said: That in case it breaks, he is obliged to return him the pieces, as it was only borrowed, but not sold.

Rabha said: If one borrows a hoe to dig this vineyard, he may dig with it the whole vineyard. If he says *a* vineyard, it may be any vineyard he likes, and if he says *vineyards*, then he may dig as many as he possesses, and if it breaks he must return the pieces.

R. Papa said: If one says lend me this well, and it becomes ruined, the borrower has no right to rebuild it. If, however, he said *a* well, if it becomes spoilt, the borrower may rebuild it. If, however, he said to him, Allow me your estate to dig a well, he may dig at any place in it until he finds water. However, all this holds good only with the ceremony of a sudarium.

MISHNA IX.: If a man rents out a house and it falls he must build another house in the same condition as the first was; if it was a small one, he must not build it larger, and *vice versa*. If it was two houses he must not make one, and *vice versa*; he must not increase or decrease the number of windows, unless the renter agrees.

GEMARA (How was the case): If the owner rented him *this house*, then why should he build another one when it falls; and if he rented him anonymously a house, then why can he not make any change in the building, *e.g.*, two or one, or a large instead of a small? When Rabin came from Palestine he said, in the name of Resh Lakish, that the Mishna treats: When the owner said to the tenant, I rent out to you a house like this. If so, what does the Mishna teach us? Is this not self-evident? The case was if the house was standing on a shore of a river, and lest one say, that it means a house which is placed in the same position, therefore the statement of the Mishna.

CHAPTER IX.

RULES AND REGULATIONS CONCERNING THE HIRING OF FIELDS ; PAYMENT OUT OF THEIR PRODUCTS OR IN MONEY ; THE NEGLECT OF THE HIRER ; WHAT HE MAY OR MAY NOT SOW IN THEM.

MISHNA 1. : If one hires a field (no matter under what condition, for a half, third, or a quarter, or for so and so many kurs a year) he must do as it is customary in that country: to scythe, to turn it out, or to plough, to weed after them. (When they come to divide) the grain, they have also to divide the hay and straw. If the stipulation was made on wine, then they divide the vine and sticks. They must also prepare together the sticks needed for the vineyard for the next year.

GEMARA: There is a Boraitha: If the custom was to scythe, he must not tear out, as the owner of the estate may say it is better for me that some of the straw remains, which will serve me to prepare manure next year. Or if the custom was to tear it out, he must not scythe, although one might say I would like the garden to be clean, and the other says, I would like to have the straw of it, and the reason is because each of them has a right to prevent the other.

To weed after them he may. Is not this self-evident? The case was in such a place where the custom was not to weed, and he, however, did so while still growing, saying, I do so now in order that I shall not have to do it after the grain is taken off. It teaches us that such a stipulation is not to be considered.

All must be done according, etc. What does it mean to include in the word "all"? That what the rabbis taught: Where it was customary to let the trees with the earth he may do so, and in the places where it is not customary he must not do so. Is this not self-evident? The case was in places where it was customary to let it for a third of the products, and he let it for a quarter, lest one say that the owner may say, I have reduced the price for the purpose of saving the trees for myself. It comes to teach us that this cannot be done unless so stipulated.

Where it is customary not to let it, etc. Is this not self-evi-

dent? The case was in places where it was customary to let for a quarter, and he took it for a third, lest one say that the hirer may claim, I have increased the price for the purpose that you should give it to me with the trees. It comes to teach us that this cannot be done unless so stipulated.

R. Joseph said: In Babylonia there is a custom that the gardener is not given any straw. To what purpose does he say this? Because if it happened that some are doing so, it shall not be considered as a custom, but attributed to their goodness. The same said again: The first earth upon the trench, the second, and the third, and also the sticks for the thorns must be furnished by the owner; the thorns themselves, however, by the gardener. This is the rule. All things which are considered the most necessary for preserving the garden must be furnished by the owner, but extraordinary things by the gardener. (As this benefits him only as this saves him time and trouble.) He said again: The hoe, the dung-fork, the pail, and the bag for water is to be furnished by the owner; the gardener, however, has to dig the channels for water.

As they divide the wine, etc. What have sticks to do here? In the school of R. Janai it was said, *i.e.*: The peeled sticks on which the vine is usually supported.

They must also, etc. Wherefore this addition? This corresponds to the former, and it means thus: Why should the sticks be divided? Because the preparation of them is to be done by both.

MISHNA II.: If one hires a field and it was a dry place (so that it has to be artificially watered), or a group of trees and thereafter the spring ceased to flow, or the trees were cut off, the hirer has no right to deduct from the price stipulated. If, however, at the time hired the hirer said to him: Rent me *this* dry field, or this field in which there are a group of trees, and it happened that the spring dried up or the trees were cut off, the right of deduction is granted.

GEMARA: How was the case? If the general river from which all water their fields become dry, why then shall nothing be deducted from the agreement; let him claim that this is a plague to the whole country (further on it is taught that in such a case the hirer may deduct)? Said R. Papa: *I.e.*, that the channel from the river to the field only became dry, and then the owner of the field may say, you could water it by means of pails. R. Papa said again: The statement of the two Mish-

nayoths applies to both cases, either he took it in partnership for half or third of the product, or he hires for a certain amount of kurs. The statement of the following Mishnayoths of this chapter, however, are different, as the law which applies to an undertaking for half of the products does not apply to a hiring and *vice versa*, as it will be explained further on.

If the hirer said to him: Rent me this dry field, etc. But why? Let him say, I only gave you the name without any particular intention; have we not learned in the following Boraitha that if one says, I sell you the estate which contains a kur of earth, and there is no more than a half, or, I sell you a vineyard and there are no vines, or, I sell you a fruit-yard, and there are nothing but pomegranates, all these sales are valid as they are so called. And the same should be the case here. Said Samuel: This presents no difficulty, as in all cases of the Boraitha the owner says it to the buyer, therefore the name is considered. From the case stated in our Mishna, however, we see that he wanted that particular field upon which he was then standing, as he said *this*. Rabina, however, said: It does not matter who says so, the case in the Mishna is different, because in spite of the fact that he mentions *this*, of which it is to be inferred that he was standing upon, he nevertheless mentioned dry field also, which shows that only that particular dry field suits him, because of the circumstances.

MISHNA III.: If one has undertaken to work up a field, and he has neglected to do so, it must be appraised at how much it would produce if worked, and the defaulter has to pay, as it is customary for an agreement to be so written, that should it be neglected, I will pay from my best estate.

GEMARA: R. Mair, R. Jehuda, Hillel the first, R. Jehoshua b. Kar'ha, and R. Jose, all these considered the language of the common people legal (although it was not in accordance with the enactment of the sages); R. Mair, in the last sentence in our Mishna, which is stated in his name elsewhere, R. Jehudah in the following Boraitha: One has to bring the offer that is prescribed for the present of a rich man to his wife. (The difference between the offering of rich and poor is explained in Lev. xiv. 21.) Because in the marriage contract he writes: I will take upon myself all the responsibility you have had before our marriage—*i.e.*, from the time he marries her he takes upon himself to make good all her obligations to

the sanctuary, even those contracted before marriage.* Hillel the first in the following Boraitha: The inhabitants of Alexandria used to betroth their wives, but at the time they were prepared to go under the canopy (Chupha) other people used to come and take them away; and the sages were about to proclaim their children bastards. Said Hillel the first to them: Bring me the marriage contract; and finding that it is written there: You shall be my wife when you enter the canopy, therefore the children were not proclaimed such. R. Jehoshua b. Kar'ha in the following Boraitha: If one lends money to some one, he has no right to pledge him through the court for more than he owes him, as is written in the agreement: You may pledge me for all I owe you. [Was this, indeed, because of the written agreement? Did not R. Johanan say: If one has pledged his debtor, and thereafter he has returned him his pledge for a short time, and meanwhile the debtor dies, the lender has a right to take it away from his heirs? (Hence we see that even without an agreement the lender acquires title to the pledge.) The agreement benefited the lender, in case the debtor has used the pledge and diminished its value, to collect it from their other estate.] R. Jose in the following Boraitha: In the places where it was customary to consider the dowry prescribed by the father of the bride, as a loan, the husband has a right, in case the marriage contract was not fulfilled to collect it from his father-in-law as a creditor. In the places, however, where it was customary to write in the marriage contract to double the amount, the husband collects the half. The inhabitants of Nahardai used to collect only the third of the amount written. Maremar, however, used to collect the whole amount. Said Rabina to him: Have you not learned where it is customary to write double he collects the half only? This presents no difficulty, as the cited Boraitha treats when it was not made with the ceremony of a sudarium, and Maremar treats when it was.

Rabina used to double the amount in the marriage contract, and when asked to strengthen this with the ceremony of a sudarium, he would say: One of the two, either a sudarium or

* We have translated this from the text, and according to the commentary of Thosphath. Rashi, however, says that he could not explain this paragraph, and, therefore, he brings another text of *Thorath Kohanim*, which is exactly the contrary to this text. It is remarkable, however, that in the Tract Yebamoth, 35 B., where the same is brought, Rashi explains it exactly as Thosphath did, without any remark, and Thosphath brings the text which Rashi used here.

the double amount. There was one who said when on his dying bed: Give four hundred zuz to my daughter in her marriage contract, and R. A'ha b. R. Ivia questioned R. Ashi: Does he mean to give four hundred in cash, so that the marriage contract should be written eight hundred; or does he mean that it should be so written in the contract, which in reality means only two hundred? It must be investigated how he expressed himself. If he said, Give her four hundred to her marriage, then it is evident that he meant cash, and it must be written eight hundred; but if he said, Give her in the *marriage* contract four hundred, it means only two hundred. (Said the Gemara:) In reality it is not so. There is no difference if he said to her marriage, or in her marriage contract, it must be considered that he intended two hundred, unless he said give her four hundred without any addition.

There was one who undertook to work up a field, and he said: Should I neglect I will give you one thousand zuz. Finally he neglected to work up a third of it, and the sage of Nahardai decided he shall pay him $333\frac{1}{3}$ zuz. Rabha, however, said the whole thing was only an *asmakhta*, which gives no title. But why should this be different from that which is stated in our Mishna: If it will be neglected I shall pay with my best estate? In the Mishna there was no exaggeration; here, however, when he said he will give a thousand it was merely an exaggeration.

There was another man who undertook to work up a field for poppy and had sowed it with wheat. The wheat, however, became dear, so that the price was equal to poppy (so that the owner of the estate suffered no loss). R. Kahna, nevertheless, was about to deduct from the agreement the value of the fertility which was used less for wheat than it should have needed for poppy. Said R. Ashi to R. Kahna: People say it is better for one that his earth should become meagre than he himself.

There was a man who undertook a field for poppy, sowing with wheat, and finally the wheat was worth more than poppy, and Rabina was about to say that the hirer shall take the value of the increase. Said R. A'ha of Difti to him: Was the increase from the grain only; was it not also from the fertility of the earth? The sages of the Nahardai said: If one takes an article to sell in places where it is dearer, for the half profit, the enactment of the sages was that half shall be considered a loan and the other half a deposit; and they did so to benefit both. The borrower is benefited, as he has the right to use the half for his

own expenses, and the lender, because the half, which is considered a deposit, collects it from his heirs in case he dies, as it becomes no personal property of theirs. This is in accordance with R. Ida bar Rabin.

Rabha, however, said: It is therefore called business that first one must not use it for himself; and, secondly, that if he dies it should not be considered personal property of his heirs.

Rabha said: If one has given articles for business without any stipulation (the law of which is that the owner takes three-quarters of the profit, and suffers half if damage occurs), and took from him two notes, *e.g.*, if he sold him two bundles of goods for two hundred zuz, and took a note for each of them for a hundred zuz, and the borrower had sold out one bundle for one hundred and thirty zuz and the other for seventy, then if there were only one note, it would be considered no profit nor loss. But now, as there are two, to one there is a profit of thirty zuz, of which the lender takes two-thirds or twenty, and the other one is considered thirty zuz loss, of which the lender suffers half. If, however, it is the reverse (*i.e.*, he took two loans in two days on one note), then in such a case as stated above, the borrower suffers (five zuz), not the lender. He said again: If one took money for business, and has had a loss, and thereafter he exerts himself and regains the loss, but failed to notify the lender both of the gain and the loss, he cannot claim that the lender shall suffer any loss, because the lender may say to him: You have exerted yourself for your own benefit to regain it, that people shall not say that you are a poor business man. The same said again: If two persons took money from one lender for business, they shall do it together, and one of them profits and wants to separate himself from his partner, he has no right to do so if his partner protests and says: Let us be partners until the time appointed for returning the money. And if one claims: I would take half the profit for my share, the other may prevent him, saying he cannot take out the profit because of the possibility of future loss. And even if one of the partners claims the half profit and half of the principal amount, the other can prevent him by saying: We cannot divide, as the whole money belongs to the business. And if he promised his partner that in case of loss he shall suffer his share, his partner can prevent him by saying that the fate of two is better than of one.

MISHNA IV.: If the gardener did not want to weed the field, saying: I will give you your due, he must not be listened

to, as the owner may claim, To-morrow you will leave this field, and I will have to weed it myself.

GEMARA: And even if the gardener says: I will weed it afterwards, the owner may say: I want good wheat, and if it is not weeded the wheat cannot be as good as when weeded. And if he says: I will buy you good wheat from the market, he may say: No, I want the wheat from my estate, and even if he claim: I will weed out that share of it which belongs to you only, he may say that by doing so you will spoil the reputation of my field. But did not the Mishna give only one reason, *that I will have to weed it, etc.*? All these claims are included in the one reason given by the Mishna, that finally he will have to weed it. (The statements of this Mishna apply only to a hirer, but not to one who took it in partnership.)

MISHNA V.: If one took a field in partnership, and it was not productive, he must not leave it as long as there is hope of bearing even only one heap. R. Jehudah says that there is no appraisement as to the contents of a heap, he therefore maintains that he must not leave it if there is hope of the products being at least as much as was sowed.

GEMARA: The rabbis taught: If one took a field in partnership and it was not productive, if there is grain sufficient to make one heap, he is obliged to work it up; as the usual written agreement of such a partnership is as follows: I will plough, sow, weed, make sheaves, thresh, blow, and will make a heap of it for you, and then you will take half and I for my labor the other half. What should be the quantity of the heap? To cover the winnow—*i.e.*, that if put in it should be completely covered.

The schoolmen propounded a question: How is it if both edges of the winnow are still visible? Come and hear. R. Abuhu said: R. Jose bar Hanini explained to me, when the right side of the winnow cannot see the sun. It was taught: That quantity of the heap is three saahs according to Levi, and according to the disciples of R. Janai two. Said Resh Lakish the saahs in question must remain after it was cleaned out.

But how much is it? Said R. Ami in the name of R. Johanan, four saahs for one kur, and R. Ami himself maintains eight for a kur. There was a certain old man who said to R. Huna b. Rabba bar Abuhu: I will explain to you the reason of their statements. In the year of R. Johanan the earth was fertile, and four for a kur was sufficient, but in years of R. Ami

the earth was already meagre. There is a Mishna (Peah XV.): If the wind has spread the sheaves it must be appraised how much gathering for the poor there would be if this had not occurred. R. Simeon b. Gamaliel said: He may give to the poor as much as was sowed, and what a quantity does he mean? When R. Dimi came from Palestine he said: In the name of R. Eliezar or R. Johanan four kabs to a kur.

R. Jeremiah questioned, Is it meant for a kur seed (*i.e.*, for a kur sown in the field), or for the field where a kur grain can be gathered; and if you should mean for a kur seed, there is still a question whether it means for sowing by hand or with oxen? (As to the last one the quantity is larger.) Come and hear. When Rabin came he said in the name of R. Abuhu, quoting R. Eliezar or R. Johanan, four kabs for a kur seed; the question, however, whether with hands or oxen remains undecided.

MISHNA VII.: If one hires a field, and the locusts destroyed it or it was burned, if this was a general plague in the country he may deduct from the agreement, but not otherwise. R. Jehuda, however, maintains that if he has hired it for money, he must deduct under any circumstances.

GEMARA: What is to be understood by a plague of the country? Said R. Jehudah as, *e.g.*, the majority of the valley, where there were many fields, was destroyed. Ulah, however, said: If four fields, on all its sides.

If the owner had told him to sow it with wheat, and he had sowed it with barley, and the fields of the majority of the valley were destroyed and also his barley, may the owner of the field claim that if he had sowed it with wheat, according to the agreement, it would not have been destroyed, as I have prayed that I should succeed in wheat, not in barley? Common sense dictates that his claim is right. If it happened that all the fields of the landlord were destroyed, and which was hired included, but the majority of the valley was not destroyed, may the hirer claim that since all your estate was destroyed, it is your fate that this field was also destroyed? The landlord, however, claims that if you hadn't hired it some of my field should have been left to me, consequently it is your fate. Common sense dictates that the claim of the landlord is right. If all the estates of the hirer were destroyed, and also the majority of the valley, may the hirer claim that because the majority of the valley was destroyed he has not to pay, or the landlord may

say: As all your estate was destroyed, it was your fate that this was also destroyed? Common sense dictates the claim of the landlord is right. But why should not the hirer claim that if it were my fate something would be left to me, as it is said above concerning above? As the landlord may say that if Providence would favor you, some of your own fields would have been left to you. An objection was raised from the following: If that year was a year of destruction, or a year which was like the years of Elijah (without rain), it must not be counted among the years of redeeming. We see then that he compares a year of destruction to the years of Elijah, when there was no grain at all, but where grain is to be found it is not to be considered a plague of the country.

Said R. Na'hman bar Itz'hak: There it is different, as it is written [Lev. xxv. 15]: "According unto the number of harvest years," etc., which signifies that as long as there is some grain in the country it is called a harvest year.

Said R. Ashi to R. Kahana: According to your theory, let the Sabbatic year be counted, as there is grain out of Palestine where the Sabbatic year is not observed, and he answered: The Sabbatic year is a decree of the king, and must not be considered at all.

Samuel said: The statement of our Mishna applies only when he has sowed it and it was grown, and then the locusts have destroyed it. But if he has not sowed it at all because of the locusts, the hirer is responsible, as the landlord may claim that if you would sow it the verse of Psalm, xxxvii. 19 would apply to me.

There is one Boraitha which states that if this happened once, he has to sow it the second time and also the third, but not if it happened the third time also. And another Boraitha states that he has to sow it even after the third time, but not after the fourth. This presents no difficulty. As one Boraitha is in accordance with Rabbi, who holds that two times is to be considered a hazaka, and the other Boraitha is in accordance with R. Simeon b. Gamaliel, who holds that it must not be considered so unless it happened three times. Resh Lakish said: The Mishna treats: In case it was sown, grown, and then was destroyed by the locusts; but if he has sown and it didn't grow, the owner of the estate may claim he shall sow it again and again, until the sowing time is past. But when is it considered past? Said R. Papa: When the gardeners come from the field in the month Adar.

An objection was raised from the following: R. Simeon b. Gamaliel in the name of R. Mair and also R. Simon b. Mnasia said: That the latter half of Tishri Mar Cheshvan and the first half of Kislev is the time for sowing, the latter half of Kislev Tabet and the half of Shbat is winter; the latter half of Shbat, Adar, and the half of Nisan is cold; the half of Nisan, Iyar, and the half of Sivan is harvest; the latter half of Sivan, Thamuz, and the half of Ab is summer, and the half of Ab, Ellul, and the half of Tishri is heat. (Hence we see that the time of sowing is only until the half of Kislev.) R. Jehudah counts from Tishri. R. Simeon, however, counts from Cheshvan. But even then, who is more lenient? R. Simeon, who counts from Cheshvan, does not even count the sowing-time until Adar. This presents no difficulty. The one speaks of a case when he took the fields for sowing wheat and corn, which are usually sown in the beginning of the winter, and the other speaks of barley and peas, which are usually sown in Adar.

If he hired for money, etc. There was one who undertook an estate to sow garlic on the shore of the river of the old king; and it happened that the river was stopped. When the case came before Rabha, he said that it is not usual for this river to be stopped up, and consequently it is therefore considered a plague of the country, and you may deduct. Said the rabbis to him: Have we not learned in our Mishna that R. Jehuda said if he took it for money, he must pay under all circumstances, and he answered: There is no one who cares for his decision.

MISHNA VII.: If one hires a field for ten kur wheat per annum, and the products are poor, he may pay him with the same. The same is the case if the wheat was good, he cannot say: I will pay you with the best of the market, but must furnish him with the same.

GEMARA: There was a man who took an estate for pastio (pasture; such a field is usually sown many times a year) for one kur of barley. First he used it for pasture, and afterward he sowed barley in it, and the barley was bad. R. Habiba of the city of Sura, on the shores of the Euphrates, then sent a message to Rabina, asking: How should such a case be decided? Is it equal to the statement of our Mishna, which says that he must pay with the products of the estate, or as he hires it for pasture, and uses it for barley, it is different? And Rabina answered: What comparison is this? In the case of the Mishna the earth was sown according to the agreement, and the pay-

ment has to be with its products; but here he has not conformed to the agreement, hence he has to pay him with the good barley of the market.

There was a man who hired a vineyard for ten barrels of wine, and thereafter the wine became sour. R. Kahana was about to say that this case is equal to the case stated in the Mishna, that if the field becomes stricken and produces bad barley, he may pay him with its products. Said R. Ashi to him: What comparison is this? In the case of our Mishna the earth failed to give what was expected of it; here, however, the earth did fulfil the expectation, and the *wine* became sour thereafter. However, R. Ashi admits that when the grapes become wormy, and also in case the sheaves of the field became spoilt, that he has to repay him with the same.

MISHNA VIII.: If one takes a field for sowing barley, he must not sow wheat in it; but if for wheat, he may sow barley. R. Simeon b. Gamaliel forbids this: he must not sow peas in that which was taken for grain, but he may sow grain in that taken for peas. R. Simeon b. Gamaliel forbids this also.

GEMARA: Said R. Hisda: The reason of R. Simeon's statement is, because it is written [Zephaniah, iii. 13]: "The remnant of Israel shall not do injustice or speak lies, and there shall not be found in their mouth a deceitful tongue."

An objection was raised from the following: That which was collected for the poor on Purim must be distributed at the same time without any particulars. However, the poor must not buy with the donation a strap for the shoes, unless it was so stipulated by the elders of the city. So is the decree of R. Jacob in the name of R. Mair. R. Simeon b. Gamaliel, however, was lenient (permitting this). Hence we see then that he was lenient in his decision, and in our Mishna, however, he is rigorous. Said Abye: R. Simeon's reason is as my master (Rabba) said: He who likes his earth to bring forth good fruit, should sow in it one year wheat and the other barley; one year in the length and the second in the width. This, however, is the case if he does not sow in time, but if in time it does not matter.

He must not sow peas, etc. R. Jehudah taught to Rabin: If for grain, he may sow peas. Said Rabin to him: But did not the Mishna state he must not? And he answered: My statement is not contradictory, as the Mishna speaks of Palestine, which is mountainous, and the leanness of the earth is taken into consideration; and I talk of Babylon, which is

situated in a valley, and there is no fear of this. Said R. Jehudah to Rabin b. Na'hman, Rabin, my brother: Cresses growing among flax may be used without fear that there is robbery (because the owner is benefited by their removal, as they do more harm than good). If, however, they are placed outside of the flax-beds, then it is robbery, and the same is the case even if they grow among the flax, but are already grown up as much as the flax, and so do no more harm. The same said again: Rabin, my brother, in our fields, which are closely attached, there are some among my trees, the branches of which are bent toward yours, and *vice versa*. In such cases, however, the custom is that the fruit belongs to the side to which the branches incline. As it was taught: A tree which stands on the boundary of two estates belonging to two different persons, where the branches are inclined there should the fruit be used. So said Rabh. But Samuel maintains that it is to be divided. An objection was raised from the following: A tree which is placed on the boundary is to be divided, and this contradicts Rabh. In order that the cited Boraitha should not contradict Rabh, Samuel explains that it speaks of a case in which the tree in question occupies the whole boundary; but, then, it is self-evident? It means even when all the branches are inclined to one side. However, even then it is self-evident? Lest one say that then one's neighbor has a right to say: You may take of the fruit of those branches which are inclined to your field, and I will take the remainder, it comes to teach us that our neighbor may say, We must share equally.

The same said again: Rabin, my brother, see that you do not buy an estate close to the city, as R. Abuhu in the name of R. Huna quoting Rabh said: One is not allowed to stand and consider his neighbor's field when the fruit is nearly ripe because of an evil eye. Is that so? Did not R. Abba meet the disciples of Rabh, asking them what has Rabh to say to the following verses [Deut. xxviii. 3-6]? And they answered: Rabh said thus: "Blessed shalt thou be in the city," means your house shall be near the synagogue; and "Blessed shalt thou be in the field," means that your estate should be nearer to thy city; "Blessed shalt thou be at thy coming in," means you shall find your wife and family ready to please you; and "Blessed shalt thou be at thy going out," means that your offsprings shall be equal to you. And R. Abuhu answered: R. Johanan interpreted them differently—namely: "Blessed thou

shalt be in the city," means that the closet of man's necessity shall be near his house [but not a synagogue, as the one who goes further is rewarded for his walk]; "Blessed shalt thou be in the field," means that thy estate shall be thirded, one third in grain, one in olives, and the other in wine; and "Blessed shalt thou be in thy coming in and in thy going out," means that your departing from this world shall be equal to your entering, as your entering was without any sin, so shall be your departing. (Hence we see that it is a blessing if the estate is near the city?) This presents no difficulties. When it is fenced it is a blessing, but not when it is not.

It is written [Deut. vii. 15]: "And the Lord will take away from thee all sickness." Said Rabh: It means an evil eye. And Rabh is in accordance with his theory, as it happened once that Rabh was at the cemetery, and he did what he did, and said thereafter: I see that ninety-nine of the dead were killed by an evil eye, and only one died a natural death. But Samuel said: All sickness is from the air, and as he said elsewhere, that every sickness and death came from the air. But are there not some who were killed by the government? Also these, if not the air, a medicine could be prepared that would restore them. R. Hanina, however, says that the verse means cold, as it is written [Proverbs, xxii. 5]: "Thorns and snares," etc.,* from which we infer that everything is in the hands of Heaven but cold. R. Eliezar said, *i. e.*, the gall; and so also have we learned in the following Boraitha: The word *ma'hlah*† means the gall. And why is it called *ma'hlah*? Because it makes sick the whole body of the man. According to others it is called *ma'hlah*, because there are eighty-three kinds of sicknesses to which the cause is only the gall (and the letters of the word *ma'hlah* number eighty-three), and all these sicknesses are abolished by consuming bread with salt and a pitcher of water early in the morning.

The rabbis taught: Thirteen advantages can be gained by taking the early morning meal—namely: prevention from heat, cold, winds, evil spirits, and also the brightening of the fool, the winning of a law-suit (Rashi explains this, that the early meal brightens his mind so that he can explain his case clearly to the court), to learn, to teach, his words are listened to, his

* The Hebrew term for this is *ziria*, *i. e.*, cold, for which the Talmud takes it; Lesser, however, translates it differently, according to the sense further on.

† The Hebrew term for sickness is "*ma'hlah*."

learning is retained, his flesh does not give too much heat, and he does not lust for a strange woman, and the meal also kills the parasites in the intestines, and according to others it removes jealousy and brings love.

Said Rabba to Rabha bar Mari: Where is it from that people say, Sixty racers cannot reach the man who takes his meal early in the morning; and also the rabbis say, Get up early in the morning and eat, in the summer because of the heat and in the winter because of the cold? And he answered: Because it is written [Isaiah, xlix. 10]: "They shall not be hungry nor thirsty, and neither heat nor sun shall smite them," etc., which is to be explained that they shall not be smitten by heat and cold, because they were not hungry in the morning. And he rejoined: You infer this from this; I, however, from the following [Ex. xxiii. 25]: "And ye shall serve the Lord your God," means the reading of shemah and praying; "and he will bless thy bread and thy water," means the bread and salt and the pitcher of water taken in the morning; (and this will do that:) "I will remove sickness from the midst of thee."

R. Jehudah said to R. Ada, the land-surveyor: You should be very particular in your business. Bear in mind that every inch of the earth is fit for sowing saffron. And he said again to the same: When you are measuring the trench from the river to the fields, you should not be particular with the four ells near the trench which the owners are forbidden to sow. However, that which remains on the shore for anchoring, do not measure at all, but leave it so that it should be conspicuous enough; and this advice is in accordance with his theory, that the four ells of the trench belong only to those who are benefited by them, but that of the shore belongs to every one.

R. Ami proclaimed: A forest or any other group of trees placed on the shore must be cut off at the width of a shoulder (*i.e.*, to leave space for the towmen of the boats on both sides of the river). R. Nathan b. Hoshea had cut off sixteen ells, and the inhabitants of Mashrunia beat him bloody. He thought sixteen ells were needed for a public thoroughfare. For the towmen, however, is only required sufficient space for the managing of ropes bound to the boat.

Rabba b. R. Huna possessed a forest on the shore of the river, and when he was asked to cut it off, he answered: Let the forests which are before and behind mine be cut off, and then I will cut off mine. But how could he answer so? Is it

not written [Zephaniah, ii. 1]: "Gather yourselves together." And Resh Lakish said: That is, Correct thyself first, and then others? The forests before and behind him belonged to a governor of the Persians, Parzak, and Rabba was aware that he would not care to cut off his, and no one can compel him, consequently the carriers of the boats could not pass anyhow; what, then, would be the use of his cutting? Rabba bar R. Na'hman was sailing in a boat, and had seen a forest on a shore, and to the question, Whose is it? he was told that it was Rabba b. R. Huna's, and he applied to him the verse [Ezra, ix. 2]: "And the hand of the princes and the rulers hath been the first in this trespass," and he then commanded his people to cut it off. (He was not aware of that which was said above.) Rabba b. R. Huna came and found them cutting, and said: Who has cut this, his branches shall be cut off; and it was said that all the years of the existence of Rabba b. R. Huna the children of Rabba b. Na'hman were not preserved.

R. Jehudah said: All the inhabitants, even orphans, of the city must contribute to the repairing of the wall of the city if it is destroyed, but not scholars, as they need no guard (Rashi explains that their wisdom guards them); but if the spring was spoiled the scholars must also contribute (as they also require water). This applies only in the case of contribution of money, but when the contribution means to dig themselves, then the rabbis are to be freed, as it would be a humiliation for them to do this work. He said again: When there is a stop in the river, the people behind it have to contribute to the repairing of it, but not those who live before it; with rain-water, however, it is the reverse. The illustration is in the following Boraitha: If five gardens, one behind the other, which are watered from one spring, and the spring becomes spoiled, all of them are obliged to support the people of the highest one. Hence the very lowest one has to support all those above it; and if it happens that only the entrance of the lowest is spoiled, then the above are not obliged to support it. Reverse is the case with five court-yards which pour their unclean waters to one sewer, and if the channel was spoiled at the last one, all of them must support it (and also all that are above the yard have to support the lower ones, but the highest has to shift for itself).

Samuel said: If one takes possession of a dock he is a rascal, but he cannot be removed by law (Rashi explains this to mean that at the time of the Persians the estate was ownerless, and

he who paid the duty to the government acquired title, as he who took possession of the dock is given title, but this act is considered rascality, as the dock is for loading). Now, however, as the Persians write in their deed: "You may acquire title on this estate as far as the measure of a neck of a horse from the water," if any one takes possession of a dock, he is to be removed.

R. Jehudah in the name of Rabh said: If one takes possession of a field which was placed between two brothers or partners, it is considered a piece of assurance, but he cannot be removed by law. R. Na'hman, however, says that he may be removed also. But if there is no other right than preëmption, he is not to be removed. The N'hardais, however, maintain that even for this he is to be removed, as it is written [Deut. vi. 18]: "And thou shalt do that which is right and good in the eyes of the Lord."

In case the buyer asked advice from the preëmptor, and the latter advised him to buy, is his word sufficient, or must it be done with the ceremony of a sudarium? Rabbina says the sudarium is not necessary, and the N'hardais say it is; and so the Halakha prevails.

Now, as it was concluded that the sudarium is necessary, if it was not done, and the land became greater or less in value, it is considered under the control of the preëmptor, so that the buyer has to pay the prevailing price. If, *e.g.*, he bought it for one hundred and it was worth two hundred, it must be investigated. If the owner has lowered the price for every one, then the preëmptor has to pay him only one hundred, as he could buy it from the owner at the same price; if, however, the price was lowered only for him, then he has to pay the two hundred. If, however, he had bought for two hundred, and it was worth only one hundred, the schoolmen were about to say that the preëmptor may say to the buyer: My message to you was for my benefit not for my loss.* Said Mar the elder b. R. Hisda to R. Ashi: The N'hardais have declared in the name of R. Na'hman that there is no cheating concerning estates.

If one bought a field which was placed in the centre of others

* The Ashri maintains that this claim is not meant that he may give him only one hundred zuz, and the buyer shall lose one hundred, as this would not correspond with the verse cited, "right and good." As if the estate would remain with the buyer it may be he would lose nothing, or to him it was worth double; but this is meant that the sale shall be considered invalid.

it is to be investigated; if this field is distinguished to be the best or the worst of all his other estates then the sale is valid; and if not, it is to be feared that that was craftiness on his part, as he may have bought it for the purpose of claiming the preemption to all fields around him.

To a presented estate the right of preemption does not apply. Amemar, however, maintains that if the donor obliged himself in writing to be responsible for it, this law applies.

If one had sold out all his estate to one buyer preemption cannot be claimed, and the same is the case if he returns his estate to its first owner from whom he bought it. The same is the case with an idolater. If bought, the buyer can say: Am I worse than your first neighbor? You ought to be grateful to me that I have driven a lion out from your neighborhood. If sold, the law of preemption does not exist, as it applies only to the buyer, and he, the idolater, is not under the obligation of the above-cited verse ("do right and good"). To the seller, however, this does not apply, as he may say: No one can compel me to sell my estate. However, the seller is to be put under ban until he obliges himself to be responsible for any harm done by this buyer to the preëmtor.

To a pledged estate the law of preemption does not apply, as R. Ashi declared that he had heard from the elders of the city of Suria that therefore is a pledge called Mashkhantha, because the one to whom it is pledged is a neighbor. (See above.)

If one wishes to sell out his estate because it is placed at too great a distance, and to buy one near him, preemption cannot be claimed; and the same is the case if he wishes to sell out the estate near him because it is bad and to buy good ones. (The above-cited verse means to "do right and good" to one as long as he does no harm to another.) If it is sold for taxes or for the support of a widow or for burial, this law does not apply. The N'hardais said that in such cases the estate may be sold out without any proclamation; the same is the case if he sold it to a woman, to orphans, or to his partners. If he has neighbors in the city and neighbors in the field which are not considered preëmtors, the former have the preference. A scholar has the preference to a neighbor and even to a relative. The schoolmen questioned: How is it if he was both a neighbor and a relative? Come and hear what is written [Proverbs, xxvii. 10]: "Better is a near neighbor than a distant brother."

If the buyer is about to pay with current money, and the preëmtor wishes to pay with money which is of greater value but is not current, he loses his right. If the preëmtor sends money sealed (and the owner of the estate fears to open it, as it may not be the full value), and the buyer sends it open, he also loses his right. If the preëmtor says: I am going to try to get money, it is not to be taken into consideration; if, however, he says: I have money, and I am going to bring it, if he is a wealthy man the same may be postponed, but not otherwise. If the lots belong to one and the houses to another, the former has a right to prevent the sale of the latter, but not *vice versa*. The same is the case if the field belongs to one and the trees thereon to another.

If the preëmtor wants the lots for sowing, and the buyer wants it for houses, the latter has the preference. If there was a stone or a group of trees separating the two fields, if the preëmtor can in spite of this make one bed for sowing, attaching the two estates, preëmption may be claimed, but not otherwise.

If there were four preëmtors, one on each side, and one of them hastened and bought it, the sale is valid, but if all four appear at the same time, the estate must be divided diagonally.

MISHNA IX. : If one hires a field for a few years (less than seven) he must not sow flax in it; and he has also no right to cut branches off the sycamore tree for building purposes. If, however, he took it for seven years, he has a right in the first year to sow flax, and also to cut from the above-mentioned branches.

GEMARA: Said Abye: He has no right to the branches of the sycamore, but he has a right to the improvement of it. Rabha, however, maintains that he has no right even to this. An objection was raised from the following: When the term of his agreement to this field is at an end, the contents of the field must be appraised. Is it not as, *e.g.*, the improvement of the sycamore? Nay; it is meant the vegetables and herbs. If so, why then the appraisement? Let him take it out and go. If it happens before the market-day arrived? Come and hear. If the sabbatical year arrived, when the term of this field was not yet up, it must be appraised. [Does, then, the sabbatical year abolish the agreement? Read then the jubilee year; but even then the jubilee year abolishes only sales, but not hirings.] Read then: If the jubilee year arrived while the agreement is not yet up, it must be appraised. Now that the vegetables

should be appraised, does not apply here as in the jubilee year they are ownerless? You must therefore say that, *i.e.*, the improvement of the sycamore. Hence it is contrary to the statement of Rabha. Abye, in order that this shall not contradict Rabha, explains it thus: A jubilee year is different, as it is written [Lev. xxv. 33]: "Then shall the house that was sold," etc. The "house" which is sold . . . to be free, which signifies that a sale is to be returned, but not an improvement. Then let this law be inferred as a standard. Nay, there was a right sale, and the jubilee year is a command of the Lord, of which a hired article cannot be inferred.

R. Papa hired fields for pasture, and some trees sprouted in them, and when his term ended he demanded the improvement of them. Said R. Shesheth b. R. Idi to him: Would you also demand for the increase in thickness of a tree if there should be one? And he answered: Then it would be altogether different, as it is not usual to hire a field for this purpose, but I have hired this estate with this intention.

(Says the Gemara:) Is this in accordance with Abye, who said above that he has a right to the improvement of the sycamore? Nay, this may be explained also in accordance with Rabha, as there the hirer suffered no damage from the improvement of the sycamore. Here, however, there is damage, as the place where the tree grows he could not use for pasture. Said R. Shesheth to him: Then I have damaged you this little space, here is the value of it and go. And he answered: Nay, I would sow saffron in this place. Rejoined R. Shesheth: With your claim that you would sow saffron, you have made clear your intention that you did not wish to improve this estate with plants which should remain forever, but with such as you could take off at will; consequently your claim is for the value of the trees for fuel; then take this value and go.

R. Bibi bar Abye hired a field, and they surrounded this field with an embankment, and some trees grew up from it, and when his term was at an end he asked for this improvement. Said R. Papa to him: Because you are descendants of frail people you speak frail words; even R. Papa demands it (in the above) only because he has had damage, but here, what damage have you had?

R. Joseph had a planter who planted all his trees for half product, and he died and left five sons-in-law, all planters. Said R. Joseph: Hitherto I have had only one to rely upon,

and now I have five; each of them may rely upon the other, and my gardens may be neglected. Therefore he said to them: If you want to take the improvement of this year and resign, it is all right; if not, I will discharge you without any reward, as R. Jehudah—according to others R. Huna or R. Na'hman—said: If a planter dies his heirs may be discharged without reward. (Says the Gemara:) In reality it is not so.

There was a planter who said: If I do any damage I will be discharged. Finally he did. Said R. Jehudah: He may be discharged without any reward. R. Kahana, however, maintains he may be discharged, but he must be rewarded for what he has done. R. Kahana, however, admits that if it was so stipulated, then he is not to be rewarded. Rabha, however, says: Even then his saying was only an *asmakhta*, which gives no title. But why is this different from what we have learned above: If I neglect, etc. . . . I will pay with my best estate? There is no difference, as in both cases only the amount of the damage is paid; there he pays cash for the damage done, and here is deducted the amount of the damage, and the remainder must be paid to him for his reward.

Runia, the planter of Rabbina, did damage and was discharged; and he came to complain to Rabha, who answered him: He has done right; you have so deserved. And he rejoined: But he has not given me any notice. And Rabha said: That was not necessary at all. This decision is in accordance with his theory elsewhere, that an infant, teachers, planters, butchers, barbers, and the scribes of a city may be discharged without any notice; as there is the rule that damage which cannot be repaired annuls the agreement; and damage done by such people is counted under that category.

There was a planter who said: Give me what I am entitled to of the improvements, as I want to go to Palestine. When the case came before R. Papa b. Samuel, he decided that so should be done. Said Rabha to him: Was this improvement wholly due to his effort; did not the earth do its share? And the planter said, I don't ask for the whole improvement, but only for half; and Rabha rejoined: Until now the gardener took the half for his labor, but now when he leaves, the owner is compelled to hire another man and to pay him from his pocket. And R. Papa answered: I mean he shall take a quarter of the improvement and a quarter shall remain for future labor.

R. Ashi taught that the above decision that he shall take a

quarter means a quarter from the two-thirds profit that the owner of the vineyard takes for himself, which makes a sixth of the entire improvement (*e.g.*, if the improvement was worth six dinars, two of them are for the gardener, three for the owner, and one for the planter—as Minyumi bar R. Nehumi said: In the places where the planter takes half and the gardener a third, the planter who wishes to leave the work, his reward must be appraised, so that the owner shall not suffer damage; and therefore if the quarter in question means a sixth, as explained above, it is correct, but if it should be explained literally, a quarter of the whole improvement, then the owner would suffer a half-dankha damage. Said R. Aha b. R. Joseph to R. Ashi: Let the planter say to the owner: You give your share to the gardener, and with my share I will do as I please (*i.e.*, I will sell out to some one my share, and he will do his work without paying the gardener). And R. Ashi answered him: Leave thy objections for the section Holiness, which is so complicated that your objections will best fit there. Said R. Minyumi b. R. Nehumi: If an old group of vines, which do not bear fruit, remains in the vineyard, the planter has to receive half of it, as it is considered equal to those branches of the vineyard of which the planter takes half. If, however, a vineyard was flooded, and the vines were taken out or planted in another place, the planter gets only a quarter of it.

There was one who pledged his vineyard for ten years, and it became old in eight years. Abye said: The old vines are considered improvement, so that it belongs to the lender, and Rabha said: This is to be considered the principal amount which is to be sold, and for the amount to buy another vineyard with improvement, so that the lender shall use the fruit. (Come and hear an objection:) If a married woman inherits old vines and olives, they are to be sold for fuel and for the value estate is bought, and the husband loses the fruit. (Hence we see that it is considered principal amount, and this is an objection to Abye.) This Boraitha treats of a case, that where the woman inherited trees without estate, and if it would be allowed for the husband to consume them all, then nothing would remain from the principal amount, and this is against the law, as the principal amount of the woman must always remain to her benefit; so was it explained in Tract Khthubet.

There was a note in which was written years without a number. The landlord claims it means three, and the lender

claims it means only two; meanwhile the lender hastened and took the fruit from the third year also. Now the court has to decide who should be trusted. According to R. Jehudah the estate must be considered under the hazakah of its present possessor, and he should be trusted. According to R. Kahana, as the fruit there was already consumed by the lender, they must be considered under his hazakah, so that he must not pay for it, and so the Halakha prevails. But is it not decided elsewhere that the Halakha prevails in accordance with R. Na'hman, who holds that the estate must always be considered under the hazakah of its possessor? There was a case which could not be proved which of them was right; but here it can be proved by the witnesses who signed the note, and we do not care to trouble the court twice, *i.e.*, that if the court would now compel the lender to pay, and after he will bring witnesses that he was right, they would have to replevin from the borrower. If in case the broker claims for five years and the borrower claims three, and the note was lost, according to R. Jehudah the lender is trusted, *because* should he intend to make a wrong claim, he would say, I bought it, and as there is no note he could do so. Said R. Papa to R. Ashi: R. Zebid and R. Avira do not agree with the theory of R. Jehudah. Why so? Because this note, which was for collection, was undoubtedly taken good care of, and he has only concealed it, thinking, I will meanwhile use the fruit two years more.

Said Rabbina to R. Ashi: According to this theory the pledges of Sura, to which they usually write as follows: At the elapse of the time for which it is pledged this estate should become free without any payment. Now, if the lender should conceal the document and say, I bought it, should he also be trusted according to R. Jehudah's above theory? Is it possible that the rabbis should make such enactments by which the borrower should easily suffer? And he answered: There was the enactment of the sages, where the owner of the land should pay taxes and dig a trench around it. Now if this land was bought without a trench, and the taxes were unpaid, what could the buyer do? And he answered: He has to protest, in order that people shall know that it is a pledge only, and by not doing so he has done harm to himself.

If the gardener claims: For the half I worked, and the owner says for a third, who should be trusted? According to R. Jehudah, the owner; according to R. Na'hman, however, the cus-

tom of the country must be considered. The schoolmen were about to say that the above do not differ, as R. Jehudah speaks of a place where the gardener takes only a third. Said R. Mari, the son of Samuel's daughter, to them: So said Abye, Even at the place where the gardener takes half they differ, as according to R. Jehudah, even then the owner is trusted, as, should he like to make a wrong claim, he could say the gardener was hired for money for a certain time.

If orphans claim: *We* have made the improvements of this estate (and so no creditor has anything to do with it), and the creditor claims: It was improved by your deceased father, for whom is it to bring evidence? R. Hanina was about to say that the estate is to be considered under the hazakah of the orphans, consequently the creditor has to bring evidence. Said a certain old man to him: So said R. Johanan, that the orphans must bring evidence, because an estate which is to be taken away for debt is to be considered as if already done, and therefore *they* are considered the plaintiffs.

Said Abye: We have also learned the same in the Third Gate concerning a tree which was placed within fifty ells of the city, and it was doubted whether the city was built first or the tree was planted first. It was decided that the tree must be cut off at any rate. Hence, we see that because the tree is to be cut off it is considered as if already cut, and the evidence is only for the money (this will be explained in Third Gate in this case). The same is the case here; the note upon the estate is for collection, and it must be considered as if already collected, and the plaintiffs are the orphans. But how is it if the orphans have brought evidence? Again R. Hanina was about to say, that we give them estate for their claim. In reality, however, it is not so, as they get money, not estate for their claim; and this is to be inferred from the statement of R. Na'hman in the name of Samuel, who declares in the First Gate, page 216, that there are three to whom the improvement must be appraised, and they take money not estate for their claim. (See there.)

MISHNA X.: If one hires a field for the whole sabbatic season (*i.e.*, seven years, from the first year until the sabbatic year is past) for seven hundred zuz, the sabbatic year is included; but if for seven *years* the sabbatic year is to be excluded. A day-laborer has to collect his money the whole night after that day; for a night-laborer the whole day after it; if he was hired for a few hours, the night and day after. For a week,

month, year, or for the whole sabbatic season, if his term expired during the day, collects in the same day, and if at night, that night, and the whole day after.

GEMARA: The rabbis taught: Whence do we deduce that a day-laborer has to collect the whole night after? From Lev. xix. 13: "There shall not abide with thee the wages of him that is hired, through the night until morning." And whence that a night-laborer collects the whole day after? From Deut. xxiv. 15: "On the same day shalt thou give him his wages," etc.; but perhaps it means the reverse? Wages are paid only at the end.

The rabbis taught: As it is written: "There shall not abide with thee . . . through the night"; it is self-evident that, *i.e.*, until morning. Why, then, is it repeated? To teach that the transgression of this commandment comes and ceases with the first morning. But what does he transgress after that time? Said Rabh: He transgresses, You shall not keep wages. Said R. Joseph: Where is such a verse to be found? [Proverbs, iii. 28]: "Say not unto thy neighbor . . . when thou hast it by thee," etc.

The rabbis taught: If one told his neighbor to hire laborers for him, neither of them transgresses the above-cited verses. The owner, because he *himself* has not hired them; and the hirer, because they have not worked with him. However, this is only in case the hirer told the laborer: You shall get your payment from the owner. But if he told him: I will pay you, the transgression rests upon him. Jehudah b. Maramar told his servant: Go and hire laborers for me, and tell them that they will get their payment from the owner. Maramar and Mar Zutra, when they required laborers, hired one for the other, with the stipulation that they should get the payment from the owner. Said Rabba bar R. Huna: The inhabitants of Sura, who usually get their money on the market-day, do not transgress if they postpone the wages of their laborer until the market-day, as the laborers are aware of this. However, if they have money and do not pay, they transgress that of the Proverbs cited above.

For a few hours, etc. Said Rabh: If he was hired for hours of the day, he collects the whole day, and if for the night, he collects the whole night. Samuel, however, maintains that of the day collects at daytime, and that of the night collects at night and the whole day after. But does not our Mishna state "for a few hours, the night and day after," and also further

on, "for a week, month," etc., "if his term expires during the day, collects in the same day," etc., which is an objection to Rabh's statement? Rabh may say that in this case the Tanaim differ, as we have learned in the following Boraitha: A laborer of a few hours of the day collects the whole day; of the night, the whole night. So is the decree of R. Jehudah. R. Simeon, however, maintains that of the night collects the whole night and the day after. From this it was said that one who withholds wages transgresses the commandments of the following five verses: [Lev. xix. 13,] "Thou shalt not withhold anything from thy neighbor," [and *ibid.*,] "nor rob him"; [Deut. xxiv. 14,] "Thou shalt not withhold," etc., and in the above cited verse, "There shall not abide," etc.; and from [Deut. 15,] "On the same day," etc., and finally, that "the sun may not go down upon it." The laborers who finish at daytime, the night does not apply to them, and they who finish at night, to them the day does not apply.

Said R. Hisda: The Boraitha does not mean that one transgresses all the five negative commandments cited above, but the case of hiring is subject to them, that some of them transgress when the day is past, and some when the night is past. What is considered withholding and what robbery? Said R. Hisda: Come again, come again, is withholding; but if one says: "I have the wages, but do not want to give them to you," that is robbery.

R. Shesheth opposed from the following: What is considered withholding? That to which the Law prescribed an offering, which is equal to that, as, *e.g.*, to him who denies a money-deposit. (Hence "call again" is not under that category, as he does not deny.) Therefore, says Rabha, withholding and robbery are one and the same. And why is it written separately? That one, by doing this, transgresses two negative commandments.

MISHNA XI.: The commandment: "In the same day you shall give his wage," and also the negative, "there shall not abide . . . until morning," applies to men, cattle, and vessels; however, the transgression is only when the laborer demanded it, but not otherwise. If the owner has transferred him to the storekeeper or money-changer (and he does not pay him immediately) there is no transgression.

A laborer who claims his wages when his time for collection is not yet elapsed, collects his money with an oath (in case the owner says, You were paid already), but not after the lapse of

time. If, however, there are witnesses that he has demanded his money in due time and did not get it, he may collect it with an oath even thereafter.

To a proselyte who promised not to worship any more idols, and not to commit adultery, but not to conform to all other Jewish laws, the commandment, "Thou shalt pay him the same day," applies. However, not the negative commandment, "There shall not abide," etc.

GEMARA: According to whom is the statement of our Mishna? Not to the first Tana, nor according to R. Jose bar Jehudah of the following Boraitha: It is written [Deut. xxiv. 14]: "Of thy brethren," means to exclude idolaters; "or of thy strangers," means a real proselyte;* "that are in thy land," means a proselyte who has only promised not to worship idols. This all treats of the wages of man; whence do we know that cattle and vessels are to be included? Therefore it is written, "in thy land"—*i.e.*, all which is in thy land—and for all of them the transgressions of the five cited verses apply. From this it was said that there is no difference between the wages of man, of cattle, and of hired vessels; the verse, "in the same day," etc., applies, and also the verse, "there shall not abide . . . until morning." R. Jose b. Jehudah, however, said, that to a proselyte of the second kind mentioned above, the first verse, "in the same day," applies, but not the other one; to cattle and vessels neither applies, but "Thou shalt not withhold" does apply.

Now if the Mishna would be in accordance with the first Tana, then the proselyte in question would be a difficulty; and if with R. Jose, then the cattle and vessels stand in the way. Said Rabha: Our Mishna is in accordance with a Tana of the disciples of R. Ishmael, who taught elsewhere the very same as our Mishna does.

What is the reason of the first Tana of the above Boraitha? He takes into consideration the analogy of the expression "hired," which is written in Deut. xxiv. 14 and Lev. xix. 13. As in the former case the law of robbery applies to a proselyte, cattle, and vessels, the same is the case there with wages. And R. Jose b. Jehudah does not take this analogy into consideration. But even then, why should not the law of "in the same day,"

* The Hebrew term for this is Garkho, literally, "thy coinhabitant." The word Gar, however, means also a proselyte. The Talmud explains it *thy* proselyte, *i.e.*, one who promised to keep the whole Jewish law.

etc., apply to cattle and vessels also? Taught R. Hanina: Because it is written [Deut. xxiv. 15]: "That the sun may not go down upon it, for he is poor." This signifies that this law applies only to those who can become poor or rich, excluding cattle and vessels, to which such conditions cannot apply. The first Tana, however, needs this verse, because of the law that if there were two laborers, a poor one and a wealthy one, and he has cash at that time to pay only one of them, the poor has the preference. And R. Jose maintains that this is deduced from *ibid.* 14. The first Tana, however, maintains that both of the above-cited verses are needed; one to give preference to the poor over the rich, and the other to give preference to the poor over the mendicant; and there is a necessity for both, as we could not infer one from the other. *E.g.*, if it were written that the poor laborer has preference over the mendicant, one might say that because the mendicant is not ashamed to demand it, and because the rich laborer is ashamed to make demand, the poor laborer is not to be preferred; and if it were written concerning a wealthy laborer and a poor one, one might say that because the wealthy man does not need it, and a mendicant needs it as much as the poor laborer, the latter is not to be preferred; therefore both are written.

What does R. Jose deduce from the words, "with thee," from the above-cited verse? That which R. Assi said: That even if he was hired only to press one cluster of grapes, if he was not paid in time, there is a transgression of "there shall not abide . . . till morning." The first Tana, however, maintains that this can be deduced from [Deut. xxiv. 15] "his soul longeth," etc., which signifies that the law applies to all things for which "his soul longeth."

It was said: From the words, "the soul longeth," etc., is to be inferred that one who withholds wages is considered as if he would take out the soul. And R. Huna and R. Hisda differed in the explanation of it. According to one it means the soul of the withholder himself, and according to the other the soul of the laborer. The reason of the former is [Proverbs, xxii. 22, 23]: "Rob not the poor . . . and despoil the life of those that despoil them"; the reason of the latter is [*ibid.* i. 19]: "It taketh away the life of those that own it."

Is only when the laborer demanded it, etc. The rabbis taught: One might say that he is guilty even when the laborer does not demand. Therefore it is written, "with thee," which means

with thy knowledge. (And if he does not demand, how should he know that he needs it?) And lest one say that he is guilty even if he has no cash at that time, therefore it is written, "with thee"; and lest one say that he is guilty even if he has transferred him to a storekeeper or money-changer (with his consent), therefore it is written "with thee."

The schoolmen propounded a question: If the storekeeper or the money-changer failed to pay him, may he return his claim to the owner or not? According to Rabha he may, and according to R. Shesheth he may not. Said Rabha: My statement is based upon the teaching of the Mishna, which states "there is no transgression," from which we infer that the transgression does not apply, but the obligation remains. R. Shesheth, however, interpreted this expression, that he is no more subject to that law.

R. Shesheth was questioned: Is piece-work subject to that law or not? Shall we assume that the master acquires title to the improvement of an article given him, and therefore when he returned it and was not paid, it is to be considered as a loan, for which there is no transgression; or that the master does not acquire title and it is considered labor? And R. Shesheth answered, It is subject. But there is a Boraitha that it is not. The Boraitha treats if he has transferred him to a storekeeper or money-changer.

Collects his money with an oath. For what purpose have the rabbis enacted the oath? Said R. Na'hman in the name of Samuel: These enactments were made to serve as a rule forever; in such cases as are biblical, the oath is to be taken by the employer, and the rabbis have removed the oath from him to the laborer for the sake of his livelihood (*i.e.*, that he should be able to take an oath immediately and collect the money).

But is it correct that for the sake of the laborer the right of the employer should be taken away? With this his right is not taken away, as it is more pleasant for the owner that the oath shall be given to the laborer, so that laborers shall not say that he pays his laborers with oaths. But why can you not say the reverse, that it may be more pleasant for the laborer if the employer takes the oath, that the employers shall not say that he is an unjust claimant? Therefore it must be said that the reason is, that because the owner has many laborers, it is easy for him to make a mistake in giving to one man instead of the other and swear falsely. But if so, why should not the laborer

be paid without any oath? To quiet the mind of the employer. But why should it not be enacted that the owner shall pay in the presence of witnesses? This would be too much trouble. But why should it not be enacted that it shall be paid in advance? Because it is convenient to both to have the payment after (for the owner, as perhaps he has not yet prepared it, and for the laborer, as he may lose it while laboring). If so, why should not the law be the same concerning a stipulation; and there is a Boraitha that if the specialist says: Your stipulation was to pay me two dinars for this my work, and the employer says only one, the plaintiff has to bring evidence (and if he has none the defendant takes an oath)? Stipulations are different, because they are usually borne in mind. But if the reason is because the owner is liable to make a mistake, why should not the same law apply even if the time has elapsed, and the statement of our Mishna is not so? It is because usually one would not easily transgress the law, "There shall not abide," etc. But was it not said that the owner is liable to make a mistake, as he has many laborers? This is before the time elapsed, but thereafter one is reminded of his duty. But is then the laborer suspicious of robbery? Concerning the owner there are two hazakahs; one that it is not likely that he would transgress by not paying, and the other that the laborer would not leave his wages without any claim. The laborer, however, has only one hazakah, that he would not demand robbery; therefore the preference is given to the employer.

If there are witnesses, etc. But is he not demanding now? Said R. Assi: The witnesses are that he did so in time. But perhaps he has paid him afterwards? Said Abye: The witnesses are to testify that he had demanded in time, and afterwards was not paid. But does this hold good forever (*i.e.*, that the laborer must always bring witnesses when he demands wages)? Said R. Huna bar Uqba: It means one day after time is elapsed, it was granted that he shall take it with an oath.

MISHNA XVII.: If a creditor has to pledge his debtor, he may do so only by court; and even then he has no right to enter his house, as it is written [Deut. xxiv. 11]: "In the street shalt thou stand." If he had mortgaged him two vessels, he may take only one; he also has to return a pillow for the night and the plough for the day. If the debtor dies, however, he has not to return it to his heirs. R. Simeon b. Gamaliel, however, said that even to the debtor himself he is not obliged to

return only the first thirty days; thereafter he may sell it out in the presence of the court.

GEMARA : Said Samuel: Even the messenger of the court has a right only to take away from him in the street, but not to enter his house.

But does not our Mishna state that he shall pledge him in the court, of which it is understood that the court may pledge him even in his house? In this case Tanaim differ, as we have learned from the following Boraitha: The messenger of the court who came to pledge a debtor must not enter the house, but stand on the street; and the debtor has to bring the pledge out to him, as it is written: "In the street shalt thou stand, and the man" (which may be interpreted the messenger of the court and the creditor). And another Boraitha: If the creditor himself comes to pledge him he must stand outside, and the debtor has to bring him the pledge, but if this is to be done by the messenger of the court, he may enter the house; however, he has no right to pledge cooking utensils, and he also must leave two beds, and a feather-bed for a wealthy man, and a bed and a mat of reeds for the poor one; for him, but not for his wife and children, as the cases of estimation and creditor are equal, concerning the essentials of the debtor, that it must be left to him.

The master said: Two beds, etc. For whom? It is not for his family, as it is stated "for him only." Why, then, are two beds necessary? One for eating and one for sleeping? And this is according to Samuel, who said: That to all sicknesses I know a remedy except to the following three: if one eats unripe dates on an empty stomach, if one wraps himself with a wet *μεθυσιν* on the naked body, and if one takes his meal and immediately goes to sleep without walking four ells.

A disciple taught in the presence of R. Na'hman: We have to leave for the debtor if he owes to an ordinary creditor. The same essentials which are left by the collector in case of an estimation must be left also in case of a common creditor.

Said R. Na'hman to him: According to the law all his goods are sold out for the sake of the creditor, as, according to R. Simeon b. Gamaliel, after thirty days even the pillows must be sold out, and you say that here shall be applied the law of estimation.

But whence do we know that the Halakha prevails in accordance with R. Simeon b. Gamaliel? Perhaps it prevails in ac-

cordance with the first Tana of our Mishna. The disciple who taught in the presence of R. Na'hman said that so is the law, even in accordance with R. Simeon, and therefore R. Na'hman's objection. But perhaps even R. Simeon b. Gamaliel means to say that only things which are not absolutely necessary are sold, but not that which is. If it were borne in mind that so is the decree of R. Simeon, then all the things would be considered absolutely necessary for him, as Abye said that R. Simeon b. Gamaliel, and R. Simeon, R. Ishmael, and R. Akiba—all of them hold that in this respect all Israel are equal to princes. R. Simeon b. Gamaliel and R. Simeon in Tract Sabbath (pp. 228, 276), and R. Ishmael and R. Akiba in the following Boraitha: If one owed a thousand zuz and wears a stola worth almost the same price, it is to be removed and replaced by another one according with his dignity; however, it was taught in the name of Ishmael and R. Akiba that all Israel are fit for such a stola. But according to that which was borne in mind first, that we sell out only what is not necessary, it is correct with a pillow and a cover that they can be sold out, and cheaper ones bought. But a plough, to what purpose should it be sold, as all the ploughs are alike? Said Rabha b. Rabba, *i.e.*, in case his plough was a silver one. R. Haga opposed. Let the creditor say: Is it my duty to support you? Said Abye to him: Yea, it is so, as it is written [Deut. xxiv. 13]: "And unto thee shall it be as righteousness before the Lord thy God."

The schoolmen propounded a question: If things belonging to a debtor are to be sold out, has the court to consider which should be sold and which left to him, or is all sold out? Come and hear. Rabbin sent a letter: I have questioned this from all my masters, but there was no reply. The question, however, was as follows: If one vowed a mana for the preparation of a temple, and the treasurer came to collect this money from his property, does he take all that belongs to that man, or are the essentials to be left him? And to this question R. Jacob in the name of R. Pada and R. Jeremiah in the name of Ilpha said that it must not, because an *a fortiori* conclusion is to be drawn from a creditor who is obliged to return necessary things. Nevertheless, when, selling out, nothing is left, so much the more as in the case of the sanctuary, which has not to return, that nothing should be left. R. Johanan, however, maintains concerning estimation [Lev. xxvii.]: It is said, "a particular vow," to

the estimated value, and in case of estimation necessary things are left; the same is the case with the sanctuary.

Rabba bar Abuhu met Elijah at a cemetery of idolaters, and questioned him about the law in question in regard to a creditor, and he replied: There is an analogy of the expression "poor" used in both estimation [*ibid.*, *ibid.* 8] and creditor [Lev. xxv. 35], from which we infer that the same law is to be applied in both. Rabba then questioned him: Is not your master a priest, a descendant of Aaron? Why then do you stand on a cemetery? And he answered: It seems that you have never studied Section Taharot (purifications), in which there is a Boraitha: R. Simeon b. Johe said graves of idolaters do not defile, as it is written [Ezek. xxxiv. 31]: "And ye, my flock, the flock of my pasture, are men," which signifies that ye are called men, but not idolaters. Rejoined Rabba: My circumstances hardly allow me to study the four necessary sections (Festivals, Damages, Women, and Holiness); should I undertake to study the remaining two, which are not used at the present time? Elijah then asked, What does he mean? And he answered: I cannot make my livelihood. He then took him to paradise, and told him to take from the leaves lying on the floor in the garden, and he did so. While going out he heard some one saying: Who else has consumed his share in the world to come as Rabba did? He then shook his garment, and the leaves fell out. However, his garment retained the smell of them, and he sold it for three thousand dinars, and he donated them to his sons-in-law.

The rabbis taught: It is written [Deut. xxiv. 13]: "And if he is a poor man, thou shalt not lie down with his pledge," from which it is to infer that if he was rich he may. How is this to be understood? Said R. Shesheth, *i.e.*, if he is a poor man you must not lie down while his pledge is in your house, but if he is wealthy it does not matter.

The rabbis taught: If one lends money to his neighbor, he has no right to pledge him, is not obliged to return, transgresses all the commandments which are in the Scripture concerning (pledging). What does it mean? Said Rabba: He must not pledge, and if he did so, he must return in case the pledge be taken thereafter; but if he took the pledge at the time the money was lent, he is not obliged to return; however, he transgresses the above commandments.

R. Shizby taught in the presence of Rabba: It is written

[Ex. xxii. 25]: "Thou shalt restore it unto him by the time the sun rises" *—a garment used by day and pledged at night, and [Deut. xxiv. 13]: "Thou shalt punctually deliver him the pledge again, when the sun goeth down," means a garment which is used at night and was pledged in the day-time.

R. Johanan said: If the pledge was returned and the borrower died, the lender has a right to take it away from his children. An objection was raised. R. Mair said: Since it was pledged, why then the returning and pledging again? For the purpose that the sabbatic year should not make it free and it should not be considered personal property of his children in case of death. We see, then, that only in case it was pledged again this law holds good, but not if it is already in the possession of his children. Said R. Ada b. Mathna: Have you not tried to explain the curiosity of pledging and returning in some way? Explain it then thus: If it is to be returned, why then the pledging altogether? For the purpose that the sabbatic year shall not free it, and it shall *never* be considered the property of his children.

The rabbis taught: The verse [Deut. xxiv. 10]: "Thou shalt not go into his house to take his pledge," signifies that in his house only you shall not go; you may, however, go into the house of his surety, and it is so written [Proverbs, xx. 16]: "Take away his garment because he has been surety for a stranger." And it is also said [*ibid.* vi. 1-4]: "My son, if thou hast become surety for thy friend," which means, if you were surety, then give him what you have assured, and if you have no money, see some friend, who shall ask him to favor you. "Into his house you must not go" to regain money loaned, but you may do so, for the payment of your work (with your shoulders), for your ass, for your man, or your pictures if you have not made this as a loan to him.

MISHNA XIII.: A widow must not be pledged whether she is rich or poor, as it is written [Deut. xxiv. 17]: "Thou shalt not take in pledge the raiment of a widow."

GEMARA: The above is the decree of R. Jehudah. R. Simeon, however, said that only a poor one must not be pledged,

* Bo Hashemesh is the Hebrew term, which can be explained "the sun rises and also it goes down." (See Isaiah, ix., Gen. xxvii.; in both places the word Bo is used.) Hence, Shizby explains, the first the sun rises and the second it goes down.

because it must be returned (daily), and she would get a bad name among her neighbors, but to a rich one it does not matter. (The reason of that statement will be explained in the Third Gate in its proper place.)

MISHNA XIV.: One who pledged a nether and upper mill-stone transgresses a negative commandment and is guilty for two articles, as it is written [*ibid.*, *ibid.* 6]: "No man shall take to pledge the nether or the upper mill-stone" (and not this only, but all other articles which are for the preparation of food), "for he taketh a man's life to pledge."

GEMARA: R. Huna said: He who has pledged the nether in question is punished with stripes prescribed for a negative commandment twice, for two negative commandments, for the nether and for man's life; both the nether and the upper mill-stone, he is to be punished thrice. R. Jehudah, however, maintains for each part of them, but not for man's life, as that verse signifies that all other working instruments are under the same law.

There is a Boraitha in accordance with R. Jehudah: If one has pledged a pair of scissors, or a team of cows, he is guilty for two crimes. If, however, he pledge only one of them, he is guilty for one; and another Boraitha states: Lest one say that he is guilty for one crime even if he pledge a pair, therefore it is written: "He shall not pledge the nether or the upper mill-stone." As these are separate instruments used together, one is guilty for each of them separately; so also is the case with all other instruments of such a kind.

There was a man who pledged a butcher knife from his debtor, and Abye told him to return it, as it is an instrument used for preparing food; and for his debt he shall summon the butcher. Rabha, however, maintains that this is not necessary, as the pledger could claim, I bought it. Therefore the whole value of this pledge can be collected for his debt. But did not Abye hold the same theory? Why should this be so different from the case which happened in Nahardai, that goats have consumed peeled barley, and the owner of the barley took the goats for pledge, and has claimed more than the value of it, and the father of Samuel decided that he could collect from them the whole value? There it was different, as the barley was not for hire and loan, but the knife was for loan and hire. And R. Huna b. Abin sent a message: That all things which are for loan and hire, the one who claims that he has bought it is to be

trusted. But did not Rabha hold this theory? Has he not taken away from orphans a pair of scissors and a book of Hagada because they were for loan and hire? Rabha may say that a knife which became spoilt by frequent use one is particular not to lend.

CHAPTER X.

RULES CONCERNING HOUSES, GARDENS, AND OTHER REAL ESTATE
OWNED IN PARTNERSHIP, AND WHAT MAY OR MAY NOT BE
DONE IN PUBLIC THOROUGHFARES.

MISHNA I.: If one owns a house, the upper chamber of which belongs to another, and it falls, the wood, stones, and all other materials are to be divided accordingly (*i.e.*, he who has had a greater share in this building takes more). If some stones or bricks are still saved, an investigation is to be made, from which part of the building the stones were most liable to break; then the saved ones belong to that part which was not liable to break. If, however, one of them recognizes some of his stones, he may take them, provided he reckons them to his account.

GEMARA: From this statement it is to be investigated which part was more liable to break. We may infer that the cause of the ruin was known; then let us see if it was ruined because of the lower, which could not hold the upper part any longer; then the materials which lie in that place where the lower part was placed belong to its owner, and the materials beside it belong to the upper part; and if it was ruined by a storm or a stroke so that the upper part fell first, then there can be no doubt that the upper bricks are the broken ones. Why then the above statement? The Mishna treats in case the material was removed immediately after the falling occurred by the street cleaner, who paid no attention to the cause and the manner of its falling. If so, let us see under whose control they are now, and for the other party who is the plaintiff it is to bring evidence? Partners usually are not particular in such a case where the materials are placed.

Provided he reckons them to his account. Rabha was about to say that it must be divided according to the value, *i.e.*, that he must get broken ones for the amount of his partner's saved ones. Hence he is benefited by his claim that he recognizes the stones belonging to him. Said Abye to him: On the con-

trary, this will not benefit him, but damage, as according to his claim he recognized all that belongs to him; consequently all other stones do not belong to him, but to his partner. Therefore he said the Mishna meant that his partner shall take other saved stones according to the number he took by recognizing, and the benefit of such a claim is that if his bricks were of more value than the others his partner has nothing to say against the quality.

MISHNA II.: If the attic was ruined and the owner of the house declined to repair it, the tenant has a right to take his residence down in the house until his attic be repaired. R. Jose, however, said the owner has to repair the roof, and the tenant the rain leaders.

GEMARA: Does the Mishna mean entirely ruined, so that it is impossible to live in, or even if it was ruined in part, *e.g.*, four ells? According to Rabh, as he may use the lower part instead of the ruined, the greater part is meant, and according to Samuel, even a small part; it is disagreeable for one to live in two places. But let us see how the case was. If he hired *this* chamber, he may claim that so is his fate; if any chamber, let him hire another one for his tenant. Said R. Ashi: The case was that the owner said: "This upper chamber of *this* house is rented to you," and with such an expression he subjects the house to the chamber. This is as Rabin b. R. Ada reported in the name of R. Itzhak: It happened that one said to his neighbor, "I sell you this vine which is placed upon the persicum." Finally the latter was thrown out, and the case came before R. Hiye, who decided that the owner must furnish him with another persicum as long as the vine exists.

R. Abba b. Manuel questioned: When the tenant goes to dwell in the lower apartment, must the owner vacate it for the tenant, or should they dwell together; as the owner may say, "I have not rented it to you, that I should be put out"? Should you decide that it is so, there would be another question. If there were two upper chambers, one above the other, and the lower became spoiled, should we say the tenant shall go to dwell in the upper one? Or he may claim: "I have rented to ascend one story, and am obliged to ascend two"? This question remains.

There were two who used to live in two upper chambers, one above the other, and the topmost became spoilt, and when the rain came through it did damage. Who is to make the re-

pairs? R. Hiye b. Abba said the occupant of the upper chamber, and R. Ilai, in the name of Hya b. Jose, said the occupant of the lower one. Shall we assume that the above differ the same as R. Jose and the rabbis of our Mishna differ (*i.e.*, R. Jose holds that the party doing the damage must remove the cause of it; and therefore he maintains that the tenant has to repair the rain leaders, and the rabbis hold that the injured party has to remove the cause of damage, and therefore they say that the owner has to repair even this). How could it be borne in mind that the sages of our Mishna differ in the case cited above? Are they not contrary to this opinion in the case of removing a tree (Baba Batra, p. 256)? It can only be said that the above Amoraim differ the same as the above Tanaim differ in the place cited. However, the point on which the Tanaim of our Mishna differ is this: Who must strengthen the roof? The rabbis hold, the smearing with clay of the roof and the rain leaders strengthens, hence, it is the obligation of the owner, and R. Jose holds that the above is only for straightening the roof? There shall not be any holes, and therefore it is the duty of the tenant to make the walking upon it more convenient.

But did not R. Ashi declare, when he was at the place of R. Kahana, that we all have decided that R. Jose admits that one is responsible for damage done to his fellow by things which come directly from him (though it is the obligation of every one to keep aloof from damaging things, so that the owner of it is not responsible for the carelessness of the injured one)? This is only as, *e.g.*, if one has planted a tree that did no harm when planted, but thereafter when the roots spread; but, *e.g.*, if one pours water, and while going downward it injures, he is responsible. Hence R. Hya's statement above that in such a case the lower one has to repair is not in accordance with R. Jose's theory. The case mentioned above was not direct, as he washed his hands at another place on the roof and the water rested there, and afterwards it flowed down from another place.

MISHNA III.: A house with an attic belonging to two persons which becomes ruined: the owner of the upper one requires the rebuilding and the owner of the house refuses; the former may rebuild the house and dwell in it until the latter returns him the expenses. R. Jehudah, however, maintains that even in such a case he is considered a tenant who must pay his rent (as

he has not his own house); therefore the owner of the attic rebuilds the house and attic, roofs it, and then he may make his dwelling down in the house until the expenses are paid.

GEMARA: Said R. Johanan: At three different places R. Jehudah teaches us that it is forbidden for one to derive benefit from the property of his neighbor, although the latter loses nothing; namely, in the case of our Mishna, also in case of changing the color by dyeing (First Gate, p. 216), and finally in case of the payment of a part of his debt, that R. Jehudah decrees that the note for collection loses its former force even if so stipulated. (Baba Batra.)

(Says the Gemara:) After all these statements we are not sure of such a decree by R. Jehudah, as all the three have their reasons; here because of spoiling the house while used, hence the owner loses by paying as for a new one; in the case of dyeing, because of changing of the agreement, and there is a Mishna above, p. 188, that he who does so must suffer; and also concerning the payment of a part of his debt, because it is only an *asmakhta*, which according to his theory above, p. 160, gives no title; but in cases where one does not suffer at all, and the other derived some benefit, may be that he (Jehudah) does not object.

R. A'ha b. Ada in the name of Ula said: If the owner of the lower part wants to rebuild his house with unhewn stones instead of hewn ones, his partner cannot protest (because the building with them is stronger than of the hewn ones), but if *vice versa*, he may prevent him. The same is the case with half bricks instead of whole ones (Rashi explains that between two half bricks, little stones and cork were laid, so that the wall became thicker by a span), and so it is with cedars instead of sycamores. To diminish the number of windows, and also the height of the building, his partner has no right to protest; if, however, the owner wanted to rebuild him the attic, just the reverse is the case, as the lower part may protest against a heavier attic which may damage his house. But how should the law be decided if both of them have no money to rebuild it? As R. Nathan of the following Boraitha: The owner of the lower part takes two shares and the upper one a third, and according to anonymous teachers the lower one takes three-quarters and the upper one one-quarter. And Rabba said: Practise as R. Nathan said, as he was a judge and always went into the deepness of the law. He reasoned that the upper building damages a third of the

lower (*i.e.*, that if the upper one were not upon it, it would hold a third more), therefore a third he must take.

MISHNA IV.: The same is the case with an olive-press which was placed under a garden. (Rashi explains that it means of two brothers who inherited them, one took the olive-press, the other the garden), and the roof of the press-house became ruined, the owner of the garden may descend and work up the bottom of the press-house for seed, until the roof of it will be repaired.

A wall or a tree which falls suddenly on a public thoroughfare, and causes damage, the owner is not responsible. If, however, time was given to him for cutting off the tree or the wall, and it fell after the time elapsed, he is responsible. If one's wall is placed at a neighbor's garden, and it falls (into his neighbor's garden), and he insists that the stones should be removed, the owner of them, however, says: "They are yours (as I renounce my ownership of them)," he is not to be listened to. If, however, the owner of the garden accepted his offer, and after a reconsideration he offers him his expenses for the removing, and repairs his stones, he is also not to be listened to.

The same is the case with a laborer who was hired to work with straw and hay, and when he demanded his pay, if the employer said to him: Take the articles in which you were engaged, for your payment, he must not be listened to. If, however, the laborer accepted, and after reconsideration the employer told him: Take cash for your hire and leave the articles to me, he must not be listened to.

GEMARA: Rabh said that the Mishna meant that the greater part of the roof was spoilt, but if only a small part, *e.g.*, four ells, he may work up his garden, and for the space spoilt he should use the bottom of the press-house. But Samuel said: It means even four ells, as it is disagreeable for one to sow in two places; and both cases of their differing were necessary to state; as if the former only, one might say that only concerning a dwelling Samuel disagreed with Rabh, and concerning sowing he agrees; and if the latter, one might say concerning sowing Rabh agrees with Samuel; therefore both were taught.

If time was given. What time is fixed for such a case by the court? Said R. Johanan: "Thirty days."

If one's wall was placed, etc. From the expression, "he offered him his expenses," it is to be understood that after the gardener has already removed; but if the reconsideration had

been before the removal, the owner of the wall has still the right to them, even if it was accepted by the gardener; why, then, let his estate give him title as R. Jose said above (p. 195). R. Jose's statement holds good when the former owner of that article agrees to give him title; here, however, he does not, as his former proposition was made only to win time for removing.

The same is the case with a laborer, etc. It was necessary for the Mishna to teach both cases, as in the former case only, one might say: It is because the gardener has nothing to demand from the owner of the wall; but in the latter case, where the laborer has to demand his money from the employer, he may be listened to, as people say: From a debtor of thine accept even bran in payment; and of this case only, one might say, as soon as he accepted, he acquires title, because he had money at his employer's, but in the former case the gardener does not acquire title, even if he accepted, as he has nothing to claim from the wall man; therefore both were necessary.

He must not be listened to. But have we not learned in a Boraitha that he may be listened to? Said R. Na'hman: This presents no difficulty. The Boraitha speaks of an ownerless article (which some one hired a laborer to remove without notifying him that it is such; and after he was through, he said, "Take this for your labor"), he may be listened to; and our Mishna treat of his own work. Rabha objected to R. Na'hman from the Boraitha above (p. 20), which states that if a laborer who was hired for the whole day finds an article, it belongs to his employer, from which it is easily understood that in our case, when he was hired to remove an ownerless article, the one who hired him acquired title to it, hence the drawing of the labor gives no title to him. Why then should the employer be listened to if he tells him to take it for his work? Therefore said R. Na'hman, both the Mishna and the Boraitha speak of ownerless articles; however, the cases are different, as the Mishna speaks of lifting (*i.e.*, that the laborer has removed the article), and the Boraitha speaks of looking (*i.e.*, that the laborer was hired to guard it by looking), so that there was no act on the part of the laborer which could give him title, and so neither of them has as yet acquired title; therefore the employer is listened to.

Said Rabba: If looking gives title to an ownerless article or not, the Tana'im of the following Mishna differ: The watchmen appointed to watch aftergrowth (of barley for omer) in the sab-

batical year, receive their wages from the treasure of the sanctuary. R. Jose, however, maintains, if one likes to do this for nothing he is allowed. Said the sages to him: According to your theory the omer would be brought from the donation of an individual. Is it not to assume that the point of their differing is whether looking gives title? According to the first Tana it does, and therefore if the watchman did it for nothing, he acquires title to it (as growth is ownerless in a sabbatical year); and R. Jose holds that looking does not give title, and the congregation acquires title on them when delivered to them. The saying of the sages is to be explained thus: According to your decision, that one can watch without any payment, in accordance with our theory that looking gives title, the omer could be brought by an individual?

Said Rabha: All agree that looking gives no title, and the point of differing is whether it is to be feared for mighty men, who would take possession of the aftergrowth, being ignorant that it belongs to a sanctuary. The first Tana holds that such is to be feared, and therefore the sages enacted that the watchmen shall get four zuz, so that it shall come to the ears of the above that the sanctuary laid its hand on it, and they will keep aloof from it. R. Jose, however, holds that such an enactment was not made, and the sages said to him: According to your decision the watchman remits his four zuz to the congregation (as we are sure that four zuz were enacted), and so his four zuz in which they had no share will always be considered his, and if the congregation buys daily offerings for it or other things, it is considered from an individual (which is not allowed), and so said Rabin when coming from Palestine, that R. Johanan is also of the opinion that the above is the point of their differing.

MISHNA V.: One must not place his manure upon a public ground, unless it is immediately taken away by those who want to use it. Clay must not be soaked or bricks made upon a public thoroughfare; however, one may knead clay if needed for building, but not for bricks. For a building at a public place they must use the material as soon as it is brought, that it shall not be left there a long time, and even then, if they cause damage, the owner is responsible. R. Simeon b. Gamaliel maintains that one may prepare material for his building during thirty days.

GEMARA: Our Mishna is not in accordance with R. Jehudah, who said (First Gate, p. 66) that one may do so in the season.

Abye said: R. Jehudah with his decision just quoted, R. Simeon b. Gamaliel with his decision in our Msihna, and R. Simeon with his decision (First Gate, p. 145), that if damage was done there is no responsibility, are teaching that as soon as one placed his property with the permission of the court, he is not responsible for damage done by it.

The rabbis taught: If a hewer of stones has transferred them to the polisher, and they cause damage while under his control, the latter is responsible; the polisher to the drier, the latter to the carrier, and the latter to the builder, the builder to the architect; all of them are responsible if damage was done through the stones while under their control only, but as soon as one transfers them to the other, his responsibility ceases. If, however, the stones fall from the line they were placed upon, all of them are responsible. But have we not learned in another Boraitha that the very last one is responsible, while all others are free? This presents no difficulty. The first one speaks of a case where all of them undertook to build this building in partnership, and the second of a case where they were hired day laborers.

MISHNA VI.: When two gardens were placed one above the other, and some herbs were grown between them, according to R. Mair the herbs belong to the higher garden, and according to R. Jehudah to the lower one. Said R. Mair: (My decree is correct;) if the higher would remove his earth, there would be no herbs. Answered R. Jehudah: If the lower one would care to fill up his garden with earth to make it alike with the higher one, the same would be the case. Rejoined R. Mair: As either of them can prevent the other, we have to investigate from what sources the herbs exist. R. Simeon, however, maintains that the upper one may use that which he can reach with his hand, and the remainder belongs to the lower one.

GEMARA: Said Rabba: The sages of our Mishna do not differ concerning the rest of the herbs, that they belong to the upper one; they, however, do differ concerning the branches. R. Mair holds that the branches must go with the roots, and R. Jehudah does not agree with his theory, as we have learned in the following Boraitha, that that which comes out of the roots and the branches belongs to the owner of the estate. So is the decree of R. Mair. R. Jehudah, however, says that the branches belong to the owner of the tree. This is concerning business, and the same we have learned concerning Arla (the third year

of planting, of which the fruit is forbidden for use), and both cases were necessary to teach, as if only one case, one might say that they differ only concerning business, but not concerning prohibited things, and *vice versa*.

R. Simeon maintains, etc. Said the school of R. Janai: Provided he does not exert himself to reach them. Ephraim the scribe, the disciple of Resh Lakish, said in the name of his master, that the Halakha prevails in accordance with R. Simeon. This was reported to the King Sabura,* and he said: We are grateful to R. Simeon for his decision.

* Rashi explains that the King Sabura was acquainted with the Jewish law, as well as with the Persian, and Thosphoth agree with him.

END OF BABA METZIA AND VOLUME XII.

~~FEB 10~~ 1998



3 2044 017 602 269

200
100

11





This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

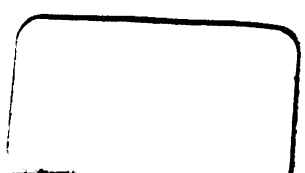
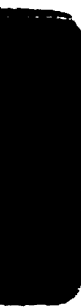
About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

NEDL TRANSFER



HN 35K4 T



NEW EDITION
OF THE
BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and
Translated into English

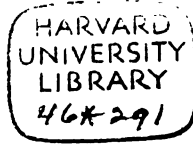
BY
MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACT BABA BATHRA
(LAST GATE, PART I.)

Volume V. (XIII.)

BOSTON
NEW TALMUD PUBLISHING COMPANY
100 BOYLSTON STREET



EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.
2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.
3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waibayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.
4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.
5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.

Copyright, 1903, by
MICHAEL L. RODKINSON.

TO HIM

**WHO FOR HIS PHILANTHROPY AND HUMANITY IS BELOVED AND
HIGHLY PRAISED BY THE PEOPLE OF GREATER
NEW YORK AND COUNTRY**

**THE HONORABLE SAMUEL GREENBAUM
JUSTICE OF SUPREME COURT**

**THIS VOLUME IS RESPECTFULLY DEDICATED BY HIS ADMIRER
AND FRIEND**

MICHAEL L. RODKINSON

New York, January 1, 1902.

CONTENTS.

CHAPTER I.

RULES AND REGULATIONS CONCERNING HOUSES, YARDS, AND FIELDS IN PARTNERSHIP OR CONJOINTLY; THE SHARING IN PARTITIONS, FENCES, AND WALLS; LOOKING INTO OTHERS' PROPERTY; CLAIMS PAID BEFORE DUE; DUTIES OF ONE TO HIS CITY—STREETS, ETC.; CITIZENSHIP BY LAPSE OF TIME, AND CONCERNING THE SIZE OF A YARD LIABLE TO DIVISION . . . 1

CHAPTER II.

RULES AND REGULATIONS CONCERNING SPACE TO BE LEFT BETWEEN ONE'S PROPERTY AND ANOTHER'S, BE IT OF ONE OR TWO KINDS. UNDER WHAT CONDITIONS A TENANT MAY PLACE AN OVEN IN HIS DWELLING. UNDER WHAT CIRCUMSTANCES A SHOP IN A YARD MAY BE PREVENTED. CONCERNING THE SPACE TO BE LEFT BETWEEN A CITY AND PIGEON-COOPS, TREES, BARNs, CEMETERIES, AND TANNERIES . . . 55

CHAPTER III.

RULES AND REGULATIONS CONCERNING OCCUPANCY (HAZAKAH)—AT WHAT TIME AND IN WHAT RESPECT IT GIVES TITLE. REPLEVINS BY COURT. PROPERTIES OCCUPIED BY A DEFENDANT WHO IS MIGHTIER THAN THE PLAINTIFF BUT EQUAL IN EVIDENCE. A PROTEST AGAINST OCCUPANCY IN ONE'S PRESENCE OR ABSENCE BY ONE'S OPPONENT. THE WRITING OF BILLS OF SALE AND DEEDS OF GIFT. OCCUPANCIES WHICH CAME FROM INHERITANCE. THE OCCUPANCIES OF SPECIALISTS, PARTNERS, GARDENERS, AND GUARDIANS. OBTAINING PROPERTIES FROM THE CONTRACTING COLLECTORS OF DUTIES AND TAXES. BAILMENTS—OF WHOM THEY MAY BE ACCEPTED. PERSONAL PROPERTIES TO WHICH THE LAW OF OCCUPANCY DOES AND DOES NOT APPLY. OPENING OF WINDOWS AND DOORS TO NEIGHBORS' OR PARTNERS' PROPERTIES, AND BUILDING OF CAVES, PITS, ETC., UNDER PUBLIC GROUND 83

CHAPTER IV.

RULES AND REGULATIONS CONCERNING UNCONDITIONAL AND CONDITIONAL SALES OR GIFTS OF BUILDINGS, HOUSES, AND PALACES: WHAT IS AND WHAT IS NOT INCLUDED; AND ALSO CONCERNING YARDS, BATH-HOUSES, AND PRESS-HOUSES FOR OIL AND WINE. SALES OF WHOLE CITIES, VALLEYS, FIELDS, WELLS, ETC.	147
---	-----

CHAPTER V.

RULES AND REGULATIONS CONCERNING SALES OF SHIPS, BOATS, ANIMALS, AND TEAMS; CONCERNING BROODS OF PIGEONS AND BEASTS; TREES, WITH THE GROUND AND WITHOUT. HOW TO ACQUIRE TITLE TO FRUIT AND FLAX. OF ARTICLES WHICH BECAME DEARER OR CHEAPER BETWEEN THE TIME OF SALE AND DELIVERY. AT WHAT TIME THE WHOLESALERS AND STOREKEEPERS HAD TO CORRECT THEIR WEIGHTS AND MEASURES, AND OF WHAT MATERIAL THE WEIGHTS MIGHT AND MIGHT NOT BE MADE	167
--	-----

APPENDIX TO MISHNA I., CHAP. III., PAGE 83	214
--	-----

SYNOPSIS OF SUBJECTS

OF

TRACT BABA BATHRA (LAST GATE).

CHAPTER I.

MISHNAS I. TO III. In case of dividing partnerships in a yard, where and of what the wall shall be built. Is overlooking another's property considered injurious? Of what size the yard must be to be fit for division. May a prayer-house be taken apart before the new building is ready? The legend of Herod the great with Simeon b. Shatuh. How Herod built the Temple without the consent of the Roman government. Concerning partitions, fences in partners' gardens, and valleys. May or may not one be compelled to join in the expenses of fences if one's estate is surrounded by his neighbor's on three sides? If there is a wall, and one of the owners claims that his neighbor did not bear his share of the expense. A debtor who says: I paid my debt before due. If the plaintiff demanded his money long after due. He who claims, "I have never borrowed," is to be considered as if he should say, "I have never paid." How and where is a parapet to be made and of what size? If there were two courtyards one upon the other; there were two tenants, and the roof of the lower one sank; there was one who built a wall against the window of his neighbor, etc. Two brothers divided a bequest, a palace and a fine garden, and the latter built a wall on the edge of the garden. There was a note belonging to orphans, against which the other party showed a receipt, 1-16

MISHNA IV. The sharing in the building of a gate to a courtyard as well as to a city wall. Who are obliged to pay taxes and duties of a city? Rabbi opened his barns of grain in the years of famine, etc. How long must one dwell in a city to be taxed? Charity must be collected by two persons and distributed by three. May one be pledged or not for charity? Who of the poor must be investigated before support, and who supported immediately without inquiry? What about one who begged from door to door? The virtue of charity equals the sum of the virtues of all the other commandments together. "I was told by the child who was corrected by his mother," etc. The one who is doing charity secretly is greater than Moses our master. How is the verse, Prov. xxi. 21, to be understood? Whosoever makes it his business to do charity will be blessed with sons having wisdom, wealth, etc. The discussion of Aqiba with Tarnusruphus. As the yearly household expenses for one are appointed (in Heaven) on each Rosh Hashana, so are his

losses. Grace is charity which nears the redeeming, etc. How may the horn of Israel be raised? Rabban Johanan b. Zakkai questioned his disciples as to the meaning of the verse, Prov. xiv. 34, etc. Iphra Hurmiz, the mother of King Sabur, sent four hundred dinars for charity to R. Ammi, etc. If one bought a tract of land, however small, he is considered a citizen immediately, 16-32

MISHNA V. Partners cannot compel each other to divide. This is the rule: If, after division, each part retains its former name, then one can compel his partner to divide. A yard must be divided in accordance with the doors, etc. The four ells which are allowed for each door are for unloading. If one of the inhabitants of an alley desires to open the door leading from his yard to another alley. Inhabitants of alleys who desire to make doors to the street may be prevented by the public. Prophecy was taken away from the prophets and was given to the wise, to lunatics, and children (how this is to be understood). There was a man who bought an estate near to the estate of his father-in-law (who had no male children). The law, "Either you concede or I concede," when is it applied? The case of female slaves whom Huna bequeathed to his sons. May or may not the books of the Bible be bound together? What must the size of the holy scrolls be? What was placed in the ark, and how. The order of the Prophets, and who wrote them? Who was Job—an Israelite or a Gentile—and at what time did he exist, if he existed at all? The legends about Satan and Job. Satan was more afflicted than Job himself, etc. Satan and Peninnah both intended (with their accusations) to please Heaven, etc. The explanation of the passages addressed out of the storm wind, etc., etc. Why was not Job doubly rewarded with daughters, as he was with sons and with all his property? There are three to whom the Holy One, blessed be He, gave a taste of the world to come in this world. There are six whom the angel of death has not dominated. There are four who died without sin, 32-54

CHAPTER II.

MISHNAS I. TO III. How much space is to be left between one's property and another's? For whom is it to remove himself from supposed injury, the supposed injurer or him who would be injured? One must remove a pond for steeping flax from herbs, garlic from onions, and mustard from bees. Three spans space, and plastered with lime—are both needed, or does one of them suffice? Is one allowed to void his urine near the wall of his neighbor? Under what circumstances one may or may not place an oven in a lower story of a house. Can one of the partners in a yard prevent his partner from establishing a store in it, or not? At what age a child may be taken to school. The enactment of Joshua b. Gamla concerning teaching of children. In what circumstances the claim, "You are cutting off my livelihood," applies? "I doubt whether an inhabitant of one alley can prevent one of another alley from competing with him." The legend of R. Dimi's dry figs. How much space is to be left from one wall to an opposite one, and how much to a window, 55-67

MISHNAS IV. TO XVII. To what distance a ladder must be removed from one's neighbor's pigeon-coop. The distance between a pigeon-coop and the city. If a case which we should judge by a majority would be different if

according to proximity, how is it to be judged? How much space is to be left to the city when planting a fruit tree outside; and how much to a wild one, to a carob, and to a sycamore. How much to barns, to cemeteries, and to tanneries. The Shekhinah occupies every place. The world is like a balcony without the fourth wall, etc. On what side of the city a tannery may be placed. He who desires to increase his wisdom shall recite his prayers towards the south, etc. To a well a distance of twenty-five ells must be left when planting a tree, etc. One must not plant a tree near his neighbor's field, etc. A tree which bears fruit to the measure of a kab is forbidden to be cut down. A tree which is within sixteen ells of the boundary of another's estate is considered robbery, etc. If the branches of a tree are inclined towards another's field, what is to be done? The branches of a tree which overhang public ground may be cut off, so that a camel with its rider may pass freely, 67-82

CHAPTER III.

MISHNA I. The law of occupancy—to what it does and does not apply. Whence is it deduced? What time is needed for it, and how a protest against it should be made. Must the three years of hazakah be interrupted? Who testifies as to the occupancy of houses? The many cases of occupied houses which the owners claimed, brought before different rabbis of the Amoraim who decided differently. If one claims, "It was from my parents," and the other claims the same. There was one who said: "I possessed a document but lost the true one, and this is a correct copy." There was another case similar concerning a hundred zuz in cash. It was murmured among people that Rabha b. Sharshum had appropriated land belonging to orphans, and Abayi sent for him. One snatched a piece of silver from his neighbor and the case was brought before R. Ami. There was a boat about which two parties quarrelled, each claiming that it was his. If each of the parties claim: "This estate belonged to my parents." If witnesses testify that the plaintiff has loaded a basket of fruit from this field on the shoulders of the defendant, the hazakah is effected immediately. Is ploughing a hazakah, or not? If one has made a hazakah on the trees and another upon the ground, has the owner of the trees a share in the ground? . . . 83-100

MISHNAS II. AND III. There are three lands concerning the law of hazakah. If one runs away from a city because of crime, and one occupies his estate, the law of hazakah applies. How should one protest? Is a protest not in one's presence to be considered? Under what circumstances the court announces to the defendant that his property will be sold. How is it when he told them to write a deed of gift without an explanation? A hazakah to which there is no claim is not to be considered. How so? What happened to Anan and Kahana, who placed their fences on others' estates. If the father has consumed one year and his son two, or *vice versa*, or each of them one year and the buyer from them one year, is it considered a hazakah? The law of hazakah does not apply to specialists, farmers, etc. May one who is supposed to be interested in a case be a witness? Has one a right to say: "I cut myself off from this estate entirely"? If A has robbed B of a field and has sold it to C, then D comes with a claim, has B then any right to be a witness for C? If one sold a field to his neighbor without

security, he has no right to qualify as a witness concerning it. The announcement of Rabha or Papa about an article which a Gentile takes away from an Israelite. If one has given his garment to a specialist, the latter claiming two zuz and the owner one. If one has exchanged his utensils for another's in the house of a specialist, etc. "Come and I will tell you what the swindlers of Pumbeditha are doing." May a gardener be taken as a witness in case of a claim, or not? A robber—neither he nor his son has hazakah, but his grandson has. A specialist or a gardener who has ceased his profession, a son who was separated from his father, and a woman who was divorced—all of them are considered, in a case of hazakah, with men in general. If one sold his estate by duress, the sale is valid. Why so? Tabba hanged Pappi on a tree, to compel him to sell him his field. If witnesses testify they signed a note whose amount was not yet paid, but was prepared by the borrower in case he should find some one who would make him the loan. "I did so only with the intention of pleasing my husband, but not with the intention of selling it." Is there no occupancy in the estate of a married woman? If one borrowed from his bondsman and encumbered his estate for him by a document, and afterwards he freed him? One must not accept bailments from women, slaves, or children. If one who was the business man of the house, and the bills of sale and notes were in his name, claims: "All this is my own"—what should be the evidence? Concerning a gift or an inheritance of brothers. Is it not the duty of every Israelite to save the property of his neighbor from damage when seeing danger is near? There cannot be a better hazakah than lifting up, as this act gives title to one in everything. The estate of idolaters, if sold to an Israelite, and the latter has not made a hazakah on it, it is like a desert. If an Israelite buys a field from a Gentile and another Israelite comes and takes possession of it (before the bill of sale reaches the buyer). "I was told by the Exilarch Uqban the following three things: (a) That the law of the government should be respected as a law of the Torah," etc., 100-134

MISHNAS IV. TO X. What, and under what circumstances, collusive witnesses have to pay. If there were three brothers and one stranger. There is a difference in usage of articles—in some cases hazakah applies, and in some not. Does this rule always hold good? The wonderful sayings and acts of Bnaha. Hazakah does not apply to movable pipes attached to drains, etc. What is to be considered an Egyptian window? To an enclosure the size of a span in width, hazakah applies. One must not open windows to the yard even when he is a partner in it. One must not open, in a yard belonging to partners, a door or window opposite that of one's partner, etc. One must not make a hole in public ground. "There were enclosures from R. Ammi's property facing an alley," etc. When the second Temple was destroyed, many of Israel separated themselves from eating meat and drinking wine. Such a thing must not be decreed, which the majority of the congregation could not endure, 134-146

CHAPTER IV.

MISHNAS I. TO V. If one sells a house unconditionally. If one sells a property, he must write in the bill of sale: "I reserve nothing of it for myself." If E owns a field adjoining A's field from east to west, and B's from

north to south, and he comes to sell it, etc. If A and B were partners in a field, and A sold his share to C. If one sold a house with the stipulation that the upper *diata* (chamber) was reserved for him. If one has sold the house to one man and the *diata* to another. Title is not given to a well, although there is mentioned that one sold the depth and the height. The difference between a sale and a gift. If one sold a house, he sold with it the door, the bolt and lock, but not the key. If one sold a yard, the houses, walls, cellars, and caves are included, but not movable property. If one sells a press-house, the sale includes the trough, the press-beam or press-stone, etc., 147-158

MISHNAS VI. TO IX. If one sells a bath-house the sale does not include the boards on the floor. If one sells a town, the sale includes houses, etc., but not movable property. If one sells a field, the sale includes the stones which are needed for its use. From the passage, Gen. xxxiii. 17, we infer that the boundary is sold to the buyer with the field biblically. A depositary who claims that he had returned the bailment, etc. In selling a field, if it contains a well, cistern, etc., they are not included in the sale 158-166

CHAPTER V.

MISHNAS I. TO V. How should one acquire title to a boat? To a promissory note title is given by transfer and bill of sale: acquire title to it and to all the debts it contains is traditional and also according to common sense. A bill of sale to a wagon does not include the mules when not hitched, and *vice versa*. May the amount paid serve as evidence? If one sells an ass, the harness is not included. The *khumni* is not included in the harness. What does *khumni* mean? If one sold a she-ass, its foal is sold; but if a cow, the calf is not. If one buys the brood of a pigeon-coop; of a bee-hive. If one buys a tree for cutting it down, he must begin a span high from the ground; an inoculated sycamore, three spans; a trunk of sycamores, two. If exactly three spans, it is beneficial for the growth of the tree, etc., 167-175

MISHNAS VI. TO IX. If one buy two trees within his neighbor's field, the ground beneath is not sold; if three, it is. Concerning the firstfruit offerings. If the branches were wide-spreading. How much space is to be left between the trees in question, that it should be considered the buyer's? A practised act is more important for evidence. How should the ground belonging to the buyer be measured? If one has sold two trees situated in his field and one on the boundary. There are four legal customs concerning sales. If one sold dark-red wheat and it was found to be white, or *vice versa*, etc. By what acts is title given to fruit and to flax? The vessels of the buyer give title to him in every place, except on public ground. There are four legal customs concerning sellers, etc. To real estate title is acquired by money, deed, or hazakah; and to personal property title is given by drawing only. To a thing which is usually lifted up, title is given by lifting; and usually drawn, by drawing. If one hires a servant to work for him in the barn for one dinar a day, with the stipulation that he shall work for him for the same price in the harvest-time. If one sold wine or oil, and it becomes dearer or cheaper, 175-190

MISHNAS X. AND XI. If one sends his little son to the storekeeper with a *pundiun* (dupondius), but the child loses the issar and breaks the glass. If

one take a vessel from a specialist, to examine it, he is responsible for an accident. The wholesaler has to clean his measures once within thirty days. Must overweight be given, and how much? The punishment for false measuring is harder than for adultery. It is harder for the cheating of a commoner than for the cheating of the sanctuary. The scales must be hanging three spans in the air, etc. Weights must not be made of tin, lead, cassiterite, or other kinds of metal. One must not keep in his house an unjust measure, even if he uses it for a chamber. If the elders of the city want to enlarge the measures, it must not be more than a sixth of them. From the verse Ezek. xlv. 12 may be inferred three things, etc. "Those who forestall fruit," etc.—who are meant thereby? There must not be exported from Palestine things by which a livelihood is made. It may be prayed by blowing of horns even on Sabbath, when business becomes dull. One must not emigrate from Palestine to other provinces, unless the price of grain has increased, etc. "When Abraham our father departed from this world, all the great men of the nations stood up in a file and said," etc. "I remember when a child used to break a piece of carob, threads of honey would leak out," etc.,

190-203

HAGADAH.

The well-known legends of Rabba b. b. Hana : Waves, Hurnim ben Lilith, roebuck of one day, alligator. The fish which destroyed sixty cities. The fish with two fins. About the leviathan, male and female. The banquet of the upright in the world to come. The bird with her head in the sky. The geese from which a whole river of fat was running. The Arabian merchant who accompanied Rabba in the desert, and showed him the dead of the desert at the time of Moses. The place where Korach with his company was swallowed up, where the earth and the sky meet, etc. What R. Johanan has to tell. Jehudah of Mesopotamia. What happened with Eliezer and Jehoshua while on the ship. What Huna b. Nathan told. The canopies (*chupas*) for each upright in the world to come. The ten *chupas* made for Adam the first in paradise. About Hiram the King of Tyre who claimed to be a God. The increase of Jerusalem in the future, . . . 203-213

APPENDIX.

Usucapio in the Roman Law 214

TRACT BABA BATHRA (LAST GATE).

CHAPTER I.

RULES AND REGULATIONS CONCERNING HOUSES, YARDS, AND FIELDS IN PARTNERSHIP OR CONJOINTLY; THE SHARING IN PARTITIONS, FENCES, AND WALLS; LOOKING INTO OTHERS' PROPERTY; CLAIMS PAID BEFORE DUE; DUTIES OF ONE TO HIS CITY—STREETS, ETC.; CITIZENSHIP BY LAPSE OF TIME, AND CONCERNING THE SIZE OF A YARD LIABLE TO DIVISION.

MISHNA I.: Partners in a courtyard surrounded by two houses, each of them belonging to one of the partners, one of whom (or both) may desire to make a *Me'hitza* (partition) in the yard, the wall is to be built in the middle exactly. The material for it and all other things must be as is customary in the country; viz. : in the case of unhewn stones (of which the thickness is usually six spans) each of them has to give his share of space and material for three spans; in the case of hewn stones, for two and a half; in the case of half-bricks, between which are usually inserted sand and small stones, for two; and in the case of whole bricks, one and a half spans from each suffice. Therefore, when it happens that such a wall falls, the space and material of it belong to both equally. The same is the case with a garden in places where they are usually fenced: if one of the partners desires to construct a fence, the other cannot prevent him, nor withhold his share of the expense. In valleys, however, in places where it is not usual to fence, one cannot compel his partner to share with him, but he may build a fence about his own portion, and make an enclosure on the outside (as a sign that it belongs to him only); and therefore should such a fence fall, the material belongs to him alone. If, however, such is built conjointly, it must be in the exact middle, and an enclosure is to be made on both sides (as a sign that it was built conjointly); and therefore should it fall, the space and material belong to both.

GEMARA: The schoolmen, in interpreting the Mishna, were about to explain the word Me'hitza as meaning division, according to Numbers xxxi. 43, where the word Ma'htzis is used in the sense of divided into halves; and the Mishna comes to teach that when both have decided to divide their grounds, one of them can compel the other to join in building such a wall, even if he object to do so, from which it is to be inferred that looking into the other's property is considered injurious. But perhaps the expression Me'hitza means only a partition, according to what we have learned in a Tosephtha, that if a partition (which divides the vine from other kinds of products) break, the owner of the other products has to notify the owner of the vineyard twice that he should fence it, and if he does not do so, the products are prohibited and the owner of the vineyard is responsible. And as in this Tosephtha the word Me'hitza is used with the meaning of a fence, so it may be that in our Mishna also it means a fence. And the Mishna teaches that if both have decided to build a fence, then each of them must join in its making, but not otherwise. From which it is to be inferred that looking into another's property is not considered injurious? If it should be so, then why does the Mishna state "the *wall* must be," etc.? It ought to be, "*it* must be built." On the other hand, if the Mishna means that they have decided to divide, why the expression "Me'hitza"? It ought to be "to halve," as people say: "Come to halve our goods"; and also, if looking is considered injurious, why the statement of the Mishna, "if *both* like to do so"? Even if one of them desires, his partner may be compelled to join with him, so as to prevent injurious looking in. Said R. Assi in the name of R. Johanan: Our Mishna treats of a small yard which was not liable to division (it did not contain eight ells), and then only when both consent to divide can one compel his partner, but not otherwise. But then what comes the Mishna to teach? That when the yard is not sufficient for a division, and both wish to do so, they may? Is it not taught plainly farther on? From that teaching one may say that he can compel him only to join in erecting a border-mark, but not a wall. It comes to teach us that the same is the case even with a wall. But if so, why the other statement of a border-mark? There it is needed because of the last part of the Mishna, which teaches that with the Holy Writ it is different: it is not allowed to be divided, even if both consent to do so. Now, the Mishna is explained as treating of

a yard which is not sufficient for division. Then what matters it—even if they have both decided to divide their grounds, could they not retract? Said R. Assi in the name of R. Johanan: 'It treats of a case in which it was already done with the ceremony of a *sudarium*. But even then, what matters it? After all, it was decided only verbally, and they may retract? It speaks of a case in which the parts of each were already marked off. R. Ashi, however, said: It speaks of a case in which each of them has already made a *hasakha* (settlement) on his part, so that they have acquired title and can no more retract. (The expression in the Mishna for half-bricks is *khphisin*.) Said R. A'ha b. R. Ivia to R. Ashi: Whence do we know that this expression means half-bricks and the additional span is for the stuff which is put between them? Perhaps it means unhewn stones, and this additional span is for the projecting corner. And he answered: The meaning of the words of the Mishna is traditionally so explained.

Said Abayi: A span is needed only when, between the half-bricks, small stones and sand are put, but if only clay, a span is not needed. Shall we assume that a wall, four ells in height, of hewn stones needs the thickness of five spans? Was not the height of the walls of the first Temple thirty ells, and the thickness only six spans, and it nevertheless held? The additional span sustained it. Why, then, did they make the walls of the second Temple still thicker? Because a thickness of six spans can sustain only a height of thirty ells, but not a greater one, and the second Temple was much higher. And whence do we deduce it? From [Haggai, ii. 9]: "Greater shall be the glory of this latter house than that of the former." Rabh and Samuel, and according to others R. Johanan and R. Elazar, differ in the explanation of this verse. According to one, it means the building itself; and according to the other, it means the years of its existence. In reality, however, it was in both respects more glorious.

The schoolmen propounded a question: Does the Mishna mean, by giving the sizes, with the lime, or without? Said R. Na'hman b. Itz'hak: Common sense dictates that it means with the lime; for without the lime the sizes mentioned in the Mishna would not be correct (since without the lime it would not hold, and the lime, of course, enlarges the size). But can it not be said that it means without the lime, and because the size of the lime does not reach a span, therefore the Mishna does not count

it? But does not the Mishna state a span and a half? It may be said that, because the two halves make a span, therefore it is counted. Come and hear! (Erubin, p. 28:) "The cross-beam in question must be wide enough to hold a half of a brick, which is three spans in length and in width." There it treats of a great one, and it seems to be so, as it says: "A half of a brick, three spans," etc., from which it is to be inferred that there is a smaller half-brick which is not of the size mentioned, and this is the size in our Mishna, where both half-bricks together measure only three spans with the lime. R. Hisda said: One must not take apart a prayer-house until another one is built; according to some, because it may be neglected by accident, and according to others, because until the new one be built there they will have no place for prayer. And the difference is that, when there is another place for prayer, according to the latter it may be done.

Maremar and Mar Zutra used to take apart the summer house of prayer in the winter, and the winter house of prayer in the summer. Said Rabhina to R. Ashi: How is it? When the money for the new building has already been collected by the treasurer, may the old be taken apart, or not? And he answered: Even then a redeeming of prisoners may happen, for which the sum might be used. But how is it if the whole material for the new building was already prepared? And he rejoined: Even then the above case can happen, and the material would be sold out for this purpose. If so, then even when it is already built? And he replied: A completed building it is not customary to sell for such a purpose. And this was all said in case no sign of ruin was seen in the old building; but if there were such, it might be taken apart immediately. R. Ashi, for example, saw such in the prayer-house at Sura, and took it apart and placed his bed there, and did not take it out until the whole building was ready. It is said farther on that Baba b. Buta advised Herod to take apart the old Temple for the purpose of building a new one. Was this not against the law, as declared above by R. Hisda: "One must not take apart," etc.? If you wish, you may say he saw a sign of ruin in the old one; and if you wish, it may be said it is different with a king, who usually does not retract from his word, as, *e.g.*, Samuel said, that if the king should say, "I will remove this great mountain," it would be done.

Herod was a servant of the Hasmoneans, and there was a

little girl among them upon whom he cast his eyes. One day he heard a voice saying that a servant who should rebel that day would succeed. Then he slew all his superiors except this little girl; and when she saw that he intended to marry her, she ascended to the roof and proclaimed: "If it happen that one shall claim himself descended from the Hasmoneans, be it known that he is a slave, for all the Hasmoneans were slain except myself, and I now commit suicide by throwing myself from this roof." Said Herod to himself: Who insists upon what is written [Deut. xvii. 15]: "From the midst of thy brethren shalt thou set a king," etc.? The rabbis, as the leaders of Israel. He therefore slew all the rabbis, and left only Baba b. Buta, to take advice from him when needed; but he blinded him. One day Herod came (incognito) and sat before him, saying: "Let the master see what the bad slave Herod has done." And he answered: "What can I do to him?" And he said: "Curse him." But Baba answered with the verse [Eccl. x. 20]: "Even in thy thoughts, thou must not curse a king." Herod said: "But he is not a king at all." And Baba answered: "Let him be only rich, it is written [ibid., ibid.]: 'In thy bed chambers, do not curse the rich.' And even if he be only a ruler, it is written [Ex. xxii. 27]: 'A ruler among thy people, thou shalt not curse.'" And Herod said: "This is only when he does as the people of Israel do; but he, Herod, does the contrary." And he rejoined: "I am afraid of him." Herod continued: "But there is no one who could tell him, as only you and I are here." And Baba rejoined with the above-cited verse: "For a bird of the air can carry the sound," etc. Then rejoined Herod: "I am Herod, and did not know that the rabbis were so careful. Had I been aware of this, I should not have slain them; but now I crave your advice; perhaps as to that you will find some remedy for me." And Baba answered: "You have blinded the eye of the world, as it is written [Num. xv. 24]: 'If through inadvertence of the congregation.'* Go, therefore, and occupy thyself with the eye of the world, which is now the Temple, as it is written [Ezek. xxiv. 21]: 'I will profane my sanctuary . . . the desire† of your eyes,' and so I advise you to rebuild the Temple."

* The Hebrew expression is, "Me'ainai hoaida," literally, "from the eyes of the congregation"; hence the leaders are called the eyes of the congregation.

† The expression in Hebrew is "Ma'hmad Ainechem," literally, the *delight* of your eyes.

And Herod said: "I fear the Roman government." Re-joined Baba: "Send a messenger to Rome, for which it shall take a year until he shall reach there, and let him remain there a year, and his returning shall also take a year, and during the three years you can take apart this Temple and build a new one." Herod did so, and the answer was: "If you have not as yet taken apart the old one, let it remain so; if you have already taken it apart, do not build a new one; and if you have already taken apart and also rebuilt, such is the custom of bad slaves: they seek advice after the thing is already done. It is true, you are now the ruler. Your record, however, is in our archives, in which it can be seen that you are not a king, nor a descendant of kings. It is only marked, 'Herod, the servant, has made himself free.'" It was said that he who had not seen the new Temple of Herod had not, in all his life, seen a fine building. "With what material did he build it?" asked Rabha. With ornamented marble stone of different colors, the stones being not in a straight line, but alternately projecting and receding, the gaps being intended to receive the lime. He intended to cover it with gold, but the rabbis advised him not to do so, because as it was it looked as effulgent as the waves of the sea.

But why did Baba give Herod such advice? Did not R. Jehudah in the name of Rabh, or in the name of Jehoshua b. Levi, say that Daniel was punished for giving good advice to Nebuchadnezzar, as it is written [Dan. iv. 24]: "Therefore, O king, let my counsel be agreeable unto thee, and atone for thy sins by righteousness," etc.? With the Temple it was different, for except by the king, it could not be rebuilt at all. And whence do we know that Daniel was punished? He was thrown into the lions' den [ibid. vi.].

"*And all other things*," etc. What does the expression *all* add? Those places where it is customary to make such a partition of thorns.

"*Therefore, if it happens that such a wall fall*," etc. Is this not self-evident? It means that, should the wall fall into the part of one of them, or if, in the building thereof, one of the partners should build it all on his part, lest one say that then the other partner should be considered as a plaintiff for whom it is to bring evidence, it comes to teach us that this is not so.

"*The same is the case with a garden*," etc. Does not this paragraph contradict itself? It states: "The same is the case, etc., where it is customary to make a fence"; from which it is

to be inferred that if it was not customary, one cannot compel another to join. Then how is to be understood the last part, which states: "In a valley, etc., where it is not customary to make a fence," etc.; from which it is to be inferred that if there be no such custom at all, he may be compelled to join? And this is contradictory, since even concerning a garden, where there was no such custom at all, he is not to be compelled. So much the less in a valley, where there is no such custom? Said Abayi: It means to say thus: In a garden, even where it was not the custom, and in a valley, where it was the custom, to make a fence, the partner may be compelled to join. Said Rabha to him: If it is so, to what purpose is it stated "*however*." "Therefore," said he, "it means thus: concerning a garden, where there is no custom at all, it must be considered as if it were customary to make a fence; however, in a valley, where it is not the custom, it is to be considered as though the custom were *not* to fence. Therefore in the first case he is to be compelled to join, and in the second he is not."

"*But one may put the fence in the space of his own part*," etc. How shall the enclosure be put? Said R. Huna: It shall be inclined toward the inside. Why not toward the outside? Because then the partner could cut it off and claim that the wall was built conjointly. But can the same not be done even when it inclines toward the inside? The joining (to the fence) would be recognized. But does not the Mishna state plainly, "*outside*"? The objection remains.

R. Johanan, however, said that the Mishna means not exactly an enclosure, but a sign smeared with clay, the extent of an ell, outside. And why not inside? Because then the partner could mark such outside, to claim that it was done by both. But even now, the partner can scrape it off for the purpose of making such a claim? Scraping can be recognized (as artificial). If, however, the partition were made of thorns, there can be no remedy with a sign, unless one writes it on a note and puts it for safekeeping in the court.* So Abayi maintains.

"*If, however, such was built conjointly*," etc. Said Rabha of Pharziqa to R. Ashi: Why, then, the enclosure at all? And

* In the text it reads that R. Na'hman said there can be made a sign by *Sinuphi Irikhi*. Luria corrected it to read *Ribhi* instead of *Irikhi*, but failed to give any explanation. The explanation of Rashi is so complicated that we cannot understand it. Ashri, however, and Rabono Gershon omit all this, and we therefore have followed their example.

he answered: The Mishna treats of a case in which one has already made such an enclosure on one side; the other should follow him on the other side, as a sign that the wall belongs to both. And he asked: Does the Mishna teach a remedy against a swindler? And R. Ashi rejoined: Is not the first part, which states that an enclosure should be made (inside or outside), a remedy against a swindler? To which he answered: The first part teaches a law, and by the way gives also the advice which should be the remedy against a swindler; but in the last part it does not teach a new law at all, as it is self-evident that when they have joined in the wall the material belongs to both (and the new teaching is only the remedy against a swindler)? Said Rabbina: The last part treats of a case in which the wall was made of thorns, and comes to teach that it is not as Abayi said above, that there is no remedy except by a note, etc.; but that if the enclosures are made on both sides it suffices.

MISHNA II.: If one's estates surround those of his neighbor on three sides, and he has fenced all the three sides, the neighbor is not to be compelled to join in the expense (so long as it is open on the fourth side). Said R. Jose: If the neighbor fenced the fourth side of his field, then he must join in the expense of all the fences.

GEMARA: Said R. Jehudah in the name of Samuel: The Halakha prevails in accordance with R. Jose. And there is no difference whether the fourth fence was built by the surrounder or by the surrounded (as in either case his [the neighbor's] field is now protected). It was taught: R. Huna said: He must take an equal share in all the expense, and Hyya b. Rabh maintains that he has only to pay for the cheapest fence-rails. An objection was raised from our Mishna, which states that when he has fenced all three sides the neighbor is not to be compelled; from which it is to be understood that if he has fenced the fourth side also, then the neighbor must join. Then the decision of R. Jose, who said that when the fourth was fenced he must join in the expense of all the fences, is to be understood that he differs with the first Tana in that, according to him, he must share all the expense equally, while according to the first Tana he must pay only for cheap fence-rails. And this explanation can be correct only in accordance with R. Huna. But according to Hyya, who said that all of them treat only about the payment for cheap fence-rails, what, then, would be the point of difference between the first Tana and R. Jose?

It is to be explained as to the surrounder and the surrounded. According to the first Tana, even when the surrounder has fenced the fourth side, the surrounded has to pay, for the reason stated above; and according to R. Jose, only when the surrounded himself has fenced the fourth side, from which we see that the other fences pleased him; but if the surrounder did so, the surrounded has nothing to pay.

Runya's estate was surrounded by that of Rabhina on all four sides. And when he asked him to join in the expense of fencing, he would not listen. "Join at least in the expense for cheap fence-rails." He would not listen. "Give something for the protection of your estate"; and he would not. One day Runya was engaged in gathering dates from his trees, and Rabhina said to his gardener: "Go and fetch one bunch of dates." And Runya rebuked him. Then said Rabhina to him: "Now your intention that your trees should be protected, if not from thieves, at least from goats, is clear." And he answered: "Goats can be prevented by the voice." And Rabhina rejoined: "But even then you must have a man who shall lift up his voice." Finally Runya came before Rabha, who told him that he should go and settle with Rabhina as well as he could, as otherwise he would decide in accordance with R. Jose as explained by R. Huna.

The same Runya bought a field which was attached to one of Rabhina's, and the latter was about to prevent him, in accordance with the law of preëmption. Said R. Saphra b. R. Ieba to Rabhina: "People say, Zala, who is poor, needed for his family as much bread as Zalla the rich. Permit then the poor Runya, who has already one estate among your estates, to have another one, so that he can make a living."

MISHNA III.: If a wall which separated courtyards falls, the owners of both sides have to join in rebuilding it (to the height of four ells). If there is a wall, and one of the owners claims that his neighbor did not bear his share of the expense in building it up to the height of four ells, he is not to be trusted unless he brings evidence (as it is considered that his neighbor did so at the time it was built). Above four ells, one cannot compel his neighbor to join with him. If there *were* a wall above that height, and the neighbor built another one near it to the same height, with the intention of roofing, he has to share in the expense, even before roofing; and if he claims

that he has already joined in the expense, he is not to be trusted unless he brings evidence.

GEMARA: Said Resh Lakish: "A debtor who says: 'I paid my debt to the creditor, when the time had not yet elapsed,' is not to be believed, as usually creditors are glad to be paid in due time."

Abayi and Rabha both said: It may happen that one unexpectedly got money and thought, "I shall pay my debt before it is due, so I shall not be troubled thereafter." An objection was raised from our Mishna, which states that he is considered to have paid at the time it was built. Now let us see how was the case. If the defendant claims that he has given his share of the expense in time, there is no reason why he should not be believed; it must then be said that he claims to have paid it before it was due, and nevertheless the Mishna states that he is to be believed? The case of the Mishna is different, as with every brick or every piece of material that was used the time for payment is considered due; *i.e.*, it is not to be considered that he is claiming to have paid before it was due. Come and hear the other part of the Mishna concerning the height over four ells, which is considered not to have been done conjointly. Let us see how was the claim. If the defendant claims: "I have joined with you in time," why should he not be believed (he is the defendant, and it is for the plaintiff to bring evidence)? It must be, then, that he claims that he has joined before the time due, and we see that he is not believed. There is another reason why he should not be believed, as usually one would pay no money before he is positive that the court will decide against him. R. Papa and R. Huna b. R. Jehoshua acted according to Abayi's decision, and Rabha b. Mar R. Ashi acted according to Resh Lakish, and so the Halakha prevails. And even in the case of orphans, although the master said elsewhere that he who comes to collect from the estate of orphans cannot do it without taking an oath; yet in our case the "hazakha" rule, that one does not pay when it is not due, is strong enough even concerning orphans.

The schoolmen propounded a question: If the plaintiff demanded his money after the time has long elapsed, and the defendant claim that he had paid when it was as yet not due, shall we say that the above standing rule, that one does not pay before due, denies the theory of giving consideration to a claim which appears trustworthy, for the reason that, why should he

tell a lie which only injures him, as, *e.g.*, the defendant could say: "I have paid in time" (and then it would be for the plaintiff to bring evidence), while claiming "I have paid before due," the burden of proof lies upon him, or perhaps such a claim is to be considered even with the standing rule? Said R. A'ha b. Rabha to R. Ashi: Come and hear! If one claims, "I have a *mana* with you," and the debtor answers, "Yea"; on the morrow, when he demands his money, the debtor says, "I have already paid you," then he is free. If, however, he says, "You have nothing with me," he is responsible. Is it not to be assumed that by the expression, "I have paid you," it means in time, and the expression, "You have nothing with me," means, "I have paid you before due"? Hence we see that such a claim is not considered? Nay, the expression, "You have nothing with me," means, "You have never loaned it to me," as the master says elsewhere: He who claims, "I have never borrowed," is to be considered as if he should say, "I have never paid."

"*If, however, he has built another wall,*" etc. Said R. Huna: If he has built only a half-wall, it is the same as if he should build the whole. And R. Na'hman said: He has to join only for the half he has built, but not for what he has not. R. Huna, however, admits that if the neighbor built something opposite the party wall, the corner of his house attaching it to the party wall, then he has not to join in the expense except so far as he has built; and also R. Na'hman admits that if he has prepared in his wall a place for roofing it (from which is to be seen that he intends to continue the wall and to roof it), he must join immediately. R. Huna said the holes in the wall prepared for placing the roofing beams, which were prepared by one of the partners, do not support the claim of the other partner, who says he has joined with him in the building of the whole wall (claiming that if he should not do so he would not expend so much money in an uncertainty, perhaps his partner would not join with him and would not allow him to open windows to the side of his yard), even when the *μελαθγωω* (the holes which hold the beams) for the roofing beams have already been placed, as the builder may say, "I have prepared the whole thing, with the purpose of not damaging the wall through making holes in it, being sure that this would suit you, and you will join in the expense afterward." R. Na'hman said: If one has placed on his neighbor's wall little *boards* for roofing, it is not to be consid-

ered that the consent of his neighbor suffices for roofing it with *beams*. In the reverse case, however, such is to be considered sufficient. The same said again: If the dripping of water from one's roof into a neighbor's yard take place, it gives him a right to put a pipe on the roof so that the water may run to one place in the same yard; and the same is the case in the reverse, but not if the roofing be of small branches, so that it contains numerous interspaces, thus spoiling the earth where there is dripping through the interspaces. R. Joseph, however, maintains that even this is allowed, and so he acted.

R. Na'hman in the name of Rabba b. Abuhu said: If one let a chamber of his house to his neighbor, and this was a house with many rooms for different tenants, the tenant may use the holes which are in the wall, the beams which protrude up to four ells from his chamber; and if this was an upper chamber, he may also use the thickness of the wall on the roof, if customary to use same; but he has no right to use the front yard. R. Na'hman himself, however, maintains that he has a right to the front yard also, but not to the rear yard; and Rabba maintains that he has a right in the rear yard also.

Rabhina said: A roof which is made for shade, if one has attached it to the wall of his neighbor, it is not to be considered as "hazakha" until the lapse of thirty days. However, if there be no protest after thirty days, it is a "hazakha" (and the owner is trusted if he claim that he has done this with his neighbor's consent). If this, however, was done for the purpose of a booth for the Feast of Tabernacles, after seven days it is considered a "hazakha." If, however, one has attached the roof with clay, it is considered a "hazakha" immediately (as this he would not do without consent).

Abayi said: If there were two houses on both sides of a public thoroughfare, each of the owners has to make a parapet to half of his roof, but not exactly opposite each other (*i.e.*, one may make it on the north and the other on the south), and each of them has to add a little to his half (for the purpose of preventing looking into his neighbor's property). [Questioned the Gemara:] Why only on a public thoroughfare—should it not on a private thoroughfare be the same? The law of a public thoroughfare it was necessary for him to teach, lest one say: "One may claim it is anyhow needed for you to make a parapet to prevent the people passing in the street from looking into your property; therefore make the whole parapet on your property,

and I will bear half of the expense." So he comes to teach us that he may answer: "From the public thoroughfare one can see only in the daytime, but not at night"; or, "Only when I am standing, but not when I sit," and also, "When one likes to look. For you, however, it is to be seen in any circumstances." The master said: "Each of them has to make a parapet to half a roof," etc. Is this not self-evident? He means to say that if one has already done his part, lest one say his neighbor has a right to say to him, "Take from me the expense, and make all of it (as it is too much trouble for me to find a laborer for such a small work; and if you had not done yours, I would have taken laborers to do the whole of it on my property and taken from you your share of the expense)," it comes to teach us that his neighbor may say, "As you do not wish to spoil your roof by the weight of the entire parapet, so I do not wish to spoil mine." R. Na'hman in the name of Samuel said: On a roof which looks into the yard of one's neighbor, he has to make a parapet to the height of four ells. However, between the roofs he need not. And R. Na'hman himself maintains that four ells is not necessary, but a partition of ten spans is. To what purpose? If to prevent looking, then four ells are necessary; and if only for separation of the roofs, in case one step beyond his roof, he should be accused of intention to steal, then any partitions suffice, and if to prevent goats or sheep from straying, a small partition which they cannot jump over suffices? It is for the second purpose mentioned above; but if there should be any separation, he may say, "I stretched my hand over to the neighbor's roof because I wanted to measure the boundary lines on the roof," which is not likely for him to say when the partition is of ten spans. An objection was raised from the following: "If his courtyard was higher than the roof of his neighbor, it is not to be taken into consideration." May we not assume that it means that no parapet *whatever* is needed? Nay. It means the *consideration* of a parapet of four ells, but one of ten spans is required.

It was taught: If there were two courtyards, one upon the other, according to R. Huna the lower one has to build from his upper side upwards until he reaches the upper one, and the higher one continues; and according to Ula and R. Hisda the higher one has to share in the expense of the lower one also; and there is a Boraitha which supports R. Hisda as follows: If there were two courtyards, one upon the other, the upper one

cannot say, "I will begin to build from my property," but he must share with the lower one; and if, however, his courtyard were higher than the roof of his neighbor, he has nothing to do with him.

There were two tenants, one in the upper and one in the lower part of a house, and the roof of the lower one sank, and he called on the upper one to rebuild it. He declined, saying, "My residence is not spoiled." Then the lower one asked of him permission to rebuild the whole thing at his own expense, but the upper one responded, "I have no place in which to live until you shall have rebuilt." Then he wanted to hire a residence for him, but he was told, "I do not want to trouble myself by removing." And to the claim of the lower one that he could not live in the house, he answered, "Thou canst bow thy head when going out and coming in." Said R. Hama: The upper one's claim could be taken into consideration, provided the roof had not reached down to the height of ten spans from the floor of the house; but if it so reached down, the lower one may claim, "This place belongs to my property, and it must be removed." And all this is said when there was no stipulation at the time of building; but if there were, the upper one may be compelled to share in the rebuilding. But to what extent must it have sunk that the lower one should have the right to rebuild? Said the rabbis, in the presence of Rabha, in the name of Mar Sutra b. R. Na'hman: He has quoted his father answering this question, that if the height was less than is stated (Chapter VI., Mishna 4), the height should be the half of the length and the breadth together. And Rabha answered: Did not I tell you, you should never hang a *βίχος* (clay pot) on R. Na'hman's neck? (It means that nonsense should not be quoted in his name.) For I know R. Na'hman's decision was: "If it was spoiled from the ordinary use of a dwelling." However, after all, to prevent controversy the law should state some dimension. Said R. Huna b. R. Jêhoshua: If the height decreases so that the bundles of sticks usually made in the city of Mehusa cannot be brought in and be manipulated.

There was one who built a wall against the window of his neighbor, and to the claim of his neighbor, "You darken my place," he answered him, "I will close up at my expense this window and make you a new one above." But the other party refused, saying, "By doing so you will spoil my wall." He said then: "I will take apart your wall unto this place and

build you a new one." The other rejoined: "The old wall will not bear the new building." He then offered to rebuild the whole wall from top to bottom and to make him a new window, and again he refused, saying that one new wall would not correspond with the three old ones. Finally the other party agreed to rebuild the whole house, and still he refused: "I have no place to live." And even then his neighbor agreed to hire for him a residence, and he again responded, "I do not want the trouble of removing." And R. Hama decided that the law cannot compel him to comply with the wish of his neighbor. But to what purpose is this stated? Has not R. Hama declared his decision in the above case? He meant to say that even if he has used the house in question for keeping straw and wood only, even then he cannot be compelled.

There were two brothers who divided a bequest. One took a palace and the other took a nice garden which was in front of it; and the latter built a wall on the edge of the garden, and to the claim of his brother that he darkened his house, he answered, "I built it on my property." And Rabh decided that the law is not against him. Said Rabhina to R. Ashi: Why should this case differ from the case in the following Boraitha: Two brothers divided a bequest. One took a vineyard and the other took a field. The owner of the vineyard is entitled to four ells of the field for the entering of animals to work it up, etc., as it is considered that so was the stipulation at the time of the division. (Hence we see that the requirements of the vineyard are taken into consideration. Why should it not be the same with the palace of the above case?) And R. Ashi answered: There the owner of the vineyard paid to his partner the difference between the two estates, and consequently the stipulation that his vineyard should be worked up was made. To this Rabhina rejoined: Do you mean to say that in the case of the palace there was not any settlement about the value of the two parts of the bequest? Does the law speak of fools? And R. Ashi rejoined: It may be there was a settlement, and the man of the garden took his share for the value of the building of the palace, but they had not made any settlement for the value of the air. But should there not be taken into consideration the rightful claim of the man of the palace, that he has paid him the difference for a palace, and then it was changed into a dark chamber like a prison? Said R. Shimi b. Ashi: The name of the palace does not change even after the wall is

built, and the gratification which the owner of the garden received was for the name. As we have learned in the Middle Tract (p. 275), if one said, "I sell you the estate, which contains a kur of earth, and there is no more than a half," etc., the sale is valid, as it is so called. But still, what comparison is this? There he sold him a piece of ground which was so named, and the buyer is aware of what he bought; but here, could not the man of the palace say: "I have agreed to this division for the purpose of living in it as my parents did, and now it is darkened"? Said both Mar the Elder and Mar the Younger, the sons of R. Hisda, to R. Ashi: The Sages of Nahardai, among them R. Hama, decided according to their theory elsewhere, that they hold with R. Na'hman, who said in the name of Samuel that brothers, after the dividing of a bequest, have no claim for a path, for windows, for ladders, and for canals, each on the other (as they ought to take these into consideration when dividing), and must be strict on this law, as this was enacted once for all. Rabha, however, maintains that such a claim is always to be taken into consideration.

There was a note belonging to orphans, against which the other party showed a receipt, and R. Hama decided not to collect on this note because of the receipt, and not to destroy it until the orphans should have grown up, as they might find some evidence against the receipt. R. A'ha b. Rabha questioned Rabhina: How does the Halakha prevail in all cases like the above-mentioned? and he answered: All of them are to be practised in accordance with R. Hama, except in the case of the receipt, as witnesses should not be considered by us as liars.* Mar Sutra b. R. Mari, however, said that even in the last case R. Hama is right; for, if the receipt were genuine, they would have made use of it while the creditor was still alive, and because they did not do so forgery was to be feared.

MISHNA IV.: Partners of a courtyard must share in the expense of building a gate or a door to it, if one of them demands it. R. Simeon b. Gamaliel, however, says: Not all courtyards need a door (the Gemara will explain which need one and which do not). An inhabitant of a city has to share in the building of a wall around the city, with the doors and the bolts. R. Simeon b. Gamaliel, however, maintains that not all cities need one. How long must one dwell in a city to be con-

* In ancient times promissory notes were written mostly by witnesses.

sidered a citizen of it? Twelve months. If, however, he has bought a dwelling-house in it, he is considered a citizen at once.

GEMARA: Shall we assume that a gate to a courtyard is considered a good thing? Is it not a fact that there was a pious man to whom Elijah appeared frequently, and after he had built a gate to his courtyard Elijah did not speak to him thereafter (because this prevented poor men from entering for their needs)? This presents no difficulty. If the door is to be opened from inside, it is not good; but if from outside (so that any one can open it), it is a good thing.

"*Building a gate or door to it,*" etc. There is a Boraitha: R. Simeon b. Gamaliel said that only a yard which is near the public thoroughfare needs a gate, but not one which is not near to it. The rabbis, however, maintain that a courtyard which is even far away from a public thoroughfare may need a gate; for it may happen that people will pass into it from that which is at the thoroughfare, and will cause harm to the owner's property. And also to a city which is far from the boundary a surrounding wall is not required, according to R. Simeon; and the rabbis maintain that each of them may require one in war time. R. Elazar questioned R. Johanan: How shall such a tax be apportioned: according to the number of souls, or to the number of houses, or according to one's wealth? And he answered: According to the number of houses; and thou, Elazar, my son, put nails in this Halakha (that it never escape from thy mind).

R. Jehudah the Second taxed the rabbis for this purpose, and Resh Lakish said to him: The rabbis do not need any guard, as it is written [Ps. cxxxix. 18]: "Should I count them," etc. Count whom—the upright? Can they be *more* than the sands? Is it not written [Gen. xxii. 17] that all Israel is only "*as the sand*"? You must then say that it means that the acts of the upright are *more* than the sands, etc. Now, the little sands guard the sea. So much the more should not the acts of the upright, which are *more* than the sands, guard *them*? R. Na'hman b. R. Hisda taxed the rabbis. Said R. Na'hman b. Itz'hak to him: By this act you have transgressed what is written in the Pentateuch, the Prophets, and the Hagiographa. The *Pentateuch* [Deut. xxxiii. 3]: "Yea, thou also lovedst the tribes; all their saints were in thy hand; and they, prostrate before thy feet, received thy words." Thus said Moses before the Holy One, blessed be He: "Lord of the Universe, even when thou lovest the tribes, the saints of Israel shall be in *thy*

hand" (*i.e.*, they shall be guarded by thee). For the further explanation of this verse R. Joseph taught that it means the scholars who drag their feet from town to town and from country to country to learn the Torah and to discuss about the commandments of the Omnipotent. The *Prophets* [Hosea, viii. 10]: "But even though they should spend gifts among the nations, now will I gather them; and they shall be humbled a little through the burden of the king of princes." And Ula said: This verse was written in the Aramaic language, and the expression *Yithnu* should be read *Yethano*, which means (in Aramaic) "to learn," and it is to be interpreted thus: If all the Israelites who are in exile should occupy themselves with the study of the Torah, the gathering of them would be at hand; but if only a few of them, they should be exempt from the burdens imposed by kings or princes. And the *Hagiographa* [Ezra, vii. 24]: ". . . no one shall be empowered to impose any tax, tribute, or toll," etc. And R. Jehudah said: This means, to free the scholars of the taxes of the government.

R. Papa had taxed orphans for digging a new well. Said R. Shesha b. R. Idi to him: Perhaps no water will be found (and then the money of the orphans would be taken for nothing, for they are not of age to relinquish their property). And he answered: I am taking the money; if there should be water, I will use it; if not, I will return it.

Rabbi opened his barns of grain in the years of famine, and said: This shall be for the use of them who have studied the Bible, Mishna, Gemara, Halakha, or Hagada, but not for ignorant men who have never desired to study anything. R. Jonathan b. Amram entered, and said: Rabbi, feed me. He asked him: My son, hast thou read the Bible? And he said no. Hast thou studied the Mishna, or anything? And he said no. "Then why should I feed thee?" And he answered: Feed me as people feed a dog or a raven. And he did so. After he went out, Rabbi was sorry, saying: Woe is me! that I have given my bread to an ignorant man. Said R. Simeon his son to him: Perhaps this man was your disciple, Jonathan b. Amram, whose custom it is not to derive any benefit from his wisdom. It was investigated, and they found that so it was. Then said Rabbi: My barns shall be open to every one, without any distinction. Rabbi's previous act, however, was in accordance with his theory elsewhere, that chastisements are inflicted upon the world only because of the ignorant men who do not desire to study anything.

"*How long must one dwell in a city,*" etc. There is a contradiction from the following. A caravan with asses or camels, who are travelling from one place to another, who took their rest in a city which was guilty of idolatry, and the caravan while being there were persuaded and worshipped idols, they are to be stoned, but their money must be saved for their heirs. If, however, they were there thirty days, they must be slain by the sword, as inhabitants of the town, and their money is to be confiscated (hence we see that thirty days' residence suffices to be counted a citizen). Said Rabha: This presents no difficulty. To be counted an inhabitant of the town, thirty days suffice; but to be a citizen, twelve months are required. As we have learned in the following Boraitha: If one vows that he shall derive no benefit from the citizens of this town, he must not so derive from them who have resided there for twelve months; but he may derive benefit from them who have resided there less than this time. If, however, he vows not to derive benefit from the *inhabitants* of this city, then he may derive from them only who have not resided as yet thirty days. But have we not learned in a Boraitha that a poor man who has resided thirty days in the city is entitled to get meals from the kitchen of the city charities? Three months entitles him to get cash for food from the treasury of the charities; six months, to raiment; nine months, to burial; and twelve months, he must share in the expense of fencing fields or gardens, which it was then customary to make of sticks in the shape of the Greek letter ϕ ? Said R. Assi in the name of R. Johanan: The statement in the Mishna, *twelve months*, means also the same.

The same said again in the name of the same authority: Every one, even orphans, must share in the expense of the fencing, except rabbis.

R. Papa said: To the repair of the wall of the city, for buying horses for the riders around the city (for watching and to ascertain what it needs), and for an arsenal, all, even orphans, must contribute, except the rabbis. The rule for this is that to everything from which they derive benefit they must contribute, even orphans. Rabba had taxed the orphans of Mar Mirion for charity. Said Abayi to him: Has not R. Samuel b. Jehudah taught that orphans must not be taxed for charity, even for the redeeming of prisoners? and he answered: I did so only to honor them.

Aiphra Hurmiz, the mother of King Sabur, sent a purse with

dinars to R. Joseph, saying: This shall be used for the highest charity. And he deliberated what kind of charity should be considered the highest. Said Abayi to him: As it is said above that orphans must not be taxed even for the redeeming of prisoners, it is to be inferred that redeeming of prisoners is considered the highest charity.

Rabha said to Rabba b. Mari: Wherefrom is the Rabbi's decision that redeeming of prisoners is the highest charity? And he answered: From what is written [Jer. xv. 2]: "Such as are destined to death, to death; to the sword, to the sword; to famine, to famine; to captivity, to captivity." And R. Johanan said all in this verse that is mentioned later is harder than what precedes it—as, for instance, "to be killed by the sword" is harder than a natural death, in accordance with the verse, as well as with common sense. The verse [Ps. cxvi. 15]: "Dear* in the eyes of the Lord is the (natural) death of the pious," accords with common sense—because from a natural death the corpse remains clean, but the sword defiles it with blood. And that famine is worse than the sword is also learned from the same, as in the verse [Lam. iv.], "Happier are those slain by the sword than those slain by hunger," etc., and common sense—for the latter has to suffer long and great pain, while the former's death is quick and sudden. Captivity, however, is harder than all of them, as in it all the before-mentioned sufferings are endured.

The rabbis taught: Charity must be collected by two persons and distributed by three. Collected by two, because an administering body must be constituted of no less than two; distributed by three, because it requires deliberation in judgment (as to whether the applicant is worthy of support, and to what extent): therefore it is likened unto a civil case which requires a body of three. The collecting of food is to be done every day; but cash for the charity treasury, only on the eves of the Sabbaths. Distributing of food is for every poor man, but cash is only distributed to the poor of the city. However, the elders of the city have a right to exchange, according to their discretion, money for food, or food for money. The elders of the city have also the right to fix the measures, and the prices of victuals and beverages, and also the wages of laborers, and to fine him or them who transgress their laws. The masters

* The expression in Hebrew is *Yogor*, which has two meanings—"dear" and "grievous": the Talmud takes the former meaning and Leeser takes the latter.

say: No administrative body should be less than two. Whence is this deduced? Said R. Na'hman: It is written [Ex. xxviii. 5]: "And *they* shall take the gold." An administration requires two; but to bestow trust, one is sufficient. And this is a support to R. Hanina, who said that it happened once that Rabbi appointed two brothers as treasurers of the charity (and two brothers are considered one in this office). But, after all, what "administration" is there in collecting charity? It is as R. Na'hman said in the name of Rabba b. Abuhu, that one may be pledged for charity even on the eve of Sabbath (hence it is administration). Is that so? Is it not written [Jer. xxx. 20]: "I will punish all that oppress them"? Also R. Itz'hak b. Samuel b. Martha said in the name of Rabh that it means even the collector of charity? This presents no difficulty. If the man is wealthy, he may be pressed and pledged as Rabha pressed R. Nathan b. Ammi and took from him four hundred zuz for charity. But if he is not wealthy, then the one who presses him will be punished. It is written [Dan. xii. 3]: "And the intelligent shall shine brilliantly, like the brilliance of the expanse." This means a judge who goes into the depths of the law and tries ever to decide according to the truth. "And they that bring many to righteousness shall be like the stars, for ever and ever." This means the collectors of charity. In a Bo-raitha, however, it is taught that the first part of the verse quoted means both the judges and the collectors, while the latter part means the instructors of children. Who, for instance, is meant? Said Rabh: "R. Samuel b. Shilath"—whom Rabh found once standing in a garden, and he said to him: "Have you left your honorable position (as I was told that you never left the children whom you are instructing, and now I see you standing without them)?" The answer was: "It is thirteen years since I have seen this part of my property, and even now my mind is with my pupils." (But there are only mentioned the judges, collectors, and instructors of children.) But how about the rabbis? Said Rabhina: The verse [Judges, v. 31], "But may those that love him be as the rising of the sun in his might," refers to them.

The rabbis taught: The collectors of charity must not separate themselves from each other (while they are engaged in collecting). However, one may go to collect from the storekeepers, while the other does so from the keepers of the stands in the market. Should it happen to a charity collector to find money

in the streets, he must not put it into his private purse, but into the purse of the charity, and when he shall reach home then he may take it out. The same is the case if he meets one of his debtors and he pay him what he owes him: he shall not put it into his private purse, but into that of the charity (to prevent suspicion), and when he comes home he may take it out.

The rabbis taught: The treasures of charity, if there be no poor among whom to distribute, they may exchange the smaller coins of the money collected for larger ones, but not from their private purse. And the same is the case with the collectors of food; if there be no poor, they may sell it to others, but not to themselves. The coins of charity must not be counted in pairs, but each one separately (in order to avoid suspicion).

Abayi said: Formerly my master would not sit on the rugs which belonged to the synagogue (because they were brought from the treasury of the charities); but after he heard that the elders of the city have the right to change the use of charity money as they see fit, he sat thereon.

Formerly (he said again), while being a treasurer, he used to have two purses—one for poor strangers and one for the poor of the city; but when he heard that Samuel said to R. Ta'hlipha b. Abdimi, "You can keep the money for charity in one purse with the stipulation that you may distribute it to whom you find worthy," he also kept the money in one purse, as he made the same stipulation with his congregation. R. Ashi, however, who was also a treasurer, said: I need no stipulation at all, as all the donations are intrusted to my discretion.

There were two butchers who made a stipulation that each of them should do business every alternate day, and he who should violate this agreement, the skins of his slaughtered cattle that day should be destroyed. And finally one did business on the day which was not his, and the partner destroyed his skins. And when the case came before Rabha, he made him pay. R. Jimar b. Shlamyah objected to him from that which was taught above, that they may fine them who act against the stipulation, and Rabha did not care to answer him. Said R. Papa: He has done right in not answering, as only when there is no court or honored man may partners make a stipulation between themselves. But if there be, then their stipulations are not to be considered when the court, etc., has no knowledge thereof.

The rabbis taught: One must not examine the treasures of charity, and also not the treasures of the sanctuary. Although

there is no direct support from the Bible, a hint of this is to be found [II Kings, xii. 16]: "And they reckoned not with the men into whose hands they delivered the money," etc.

R. Elazar said: It is advisable for one to count his money, although he has a trusted treasurer in his house, as it is written [ibid., ibid. 11]: "They put up in bags *after* having counted the money," etc.

R. Huna said: If one came to ask food, it may be investigated whether he is in need; but no investigation should be made of him who asks for raiment. This can be seen from the verse [Is. lviii. 7]: "Is it not to distribute thy bread to the hungry . . . when thou seest the naked, that thou clothe him?" etc., as the expression distribute, "*Porosh*" (with an *sh* instead of with an *s*), means investigate first and then give. And immediately after this it reads: "When thou *seest* the naked," etc., which means *at once*. R. Jehudah, however, maintains the contrary: No investigation for food, but for raiment. He appeals to common sense and to the verse. To common sense—he who requires food suffers the pangs of hunger, which is not the case with him who asks raiment; and the same cited verse is also to be interpreted thus: "Is it not to *distribute* thy bread," etc., means immediately, as the verse is to be explained according to its pronunciation and not the spelling;* "and if thou *seest* the naked," etc., means that he shall *show* you that he is so. And there is a Boraitha supporting R. Jehudah. If one say: "Clothe me," he must be investigated, but if he say: "Feed me," it must be complied with at once without any investigation. There is a Mishna (mentioned in Sabbath, p. 247): "If a wandering mendicant come to a town, he must be given a loaf which can be bought for a pundian (one forty-eighth of a sela), when the price of flour is one sela for four saahs. If he remain over-night, he must be given lodging; and if he remain over Sabbath, he must be given three meals for Sabbath." What is meant by lodging? Said R. Papa: A bed to sleep in and a pillow; and a Boraitha in addition to this states that if this mendicant was begging from door to door, then the congregation need not look after him.

There was a mendicant who begged from door to door, and R. Papa paid no attention to him. Said R. Samma b. R. Ieba to him: If the master pay no attention to him, then no one will

* Their Bibles must have been written differently, as in ours the spelling of the word is as it is pronounced.

mind him, and he may starve to death. But did not the Boraitha say that if he beg from door to door the congregation has nothing to do with him? This means that to him must not be given what is appointed for mendicants who don't beg at the door, but something is to be given him. R. Assi said: One may not refuse to give at least a third of a shekel yearly for charity, as it is written [Neh. x. 33]: "And we established for us (as one of the) *commandments* to impose on ourselves (to give) the third part of a shekel in every year," etc. And he said again: The virtue of charity equals the sum of the virtues of all the other commandments together, as it is written (in the just cited verse) "*commandments*," in the plural and not in the singular. Said R. Elazar: The gatherer of charity is deemed more virtuous than he who gives charity, as it is written [Is. xxxii. 17]: "And the work of righteousness (*i.e.*, *zedaka*—charity) shall be peace; and the effect of it quietness and security for ever," which means: If he was worthy of reward, he will distribute his bread to the hungry; and if he was not worthy of reward, the poor will be the members of his household.

Said Rabha to the inhabitants of Mehusa, his city: I pray you, see that there be concord among you, in order that ye shall have peace from the government. R. Elazar said again: When the Temple was in existence one gave his shekel, and he was atoned. Now, when the Temple is destroyed, if people do charity, well and good; if not, the idolaters come and take away their goods by force. Nevertheless, even this is counted as charity in Heaven, as it is written [Is. lx. 17]: ". . . and righteousness as thy taskmasters." (Even when given to the taskmasters, it is counted in Heaven as charity.) Said Mar Uqba: I was told by the child who was corrected by his mother, in the name of R. Elazar, as follows: It is written [Is. lix. 17]: "And he put on righteousness as a coat of mail," etc., which may be understood, that as in a coat of mail every little link thereof is counted in the number which is needed to make up such a coat of mail, so every little coin of charity is counted in Heaven, in the end making up a great amount.

R. Hanina, however, said from the following verse [ibid., lxiv. 5]: ". . . and like a soiled garment, all our righteousnesses . . ." As every thread of a garment makes it into a great garment, the same is it with charity, that every coin counts in the great aggregate.

Why was R. Shesheth called the child who was corrected by

his mother? Because it happened once that R. A'hadbui b. Ammi questioned him something concerning the law plagues; and while discussing this matter, the questioner answered him jestingly. R. Shesheth became dejected, and in punishment for this, R. A'hadbui became dumb, and forgot his studies. The mother of R. Shesheth came to him and wept before him, that he should pray for R. A'hadbui to be cured; but he did not listen to her until she said to him: "See the breasts by which you have been nursed," when he prayed, and R. A'hadbui was cured.

R. Elazar said: The one who is doing charity secretly is greater than Moses our master; as in regard to him it is written [Deut. ix. 19]: "For I was afraid of the anger, and the indignation . . ."; and regarding him who does charity secretly, it is written [Prov. xxi. 14]: "A gift in secret pacifieth anger, and a bribe in the bosom, strong fury." He differs, however, with R. Itz'hak, who says that one pacifies only anger, but not strong fury. Because he maintains that the beginning of the verse just quoted does not correspond with the end; as it was heard in his name that a judge who accepts bribery brings strong fury into the world.

R. Itz'hak said again: He who gives a coin to a poor man is rewarded with six blessings; he, however, who encourages him is rewarded with eleven. The six are [Is. lviii. 8, 9]: "Then shall break forth as the morning dawn thy light. . . . Then thou shalt call, and the Lord will answer." The eleven are [ibid., ibid. 10]: ". . . and satisfy the afflicted soul, then shall shine forth in the darkness thy light . . . And thou shalt be called," etc.

The same said again: It is written [Prov. xxi. 21]: "He that pursueth righteousness and kindness will find life, righteousness, and honor." How is this verse to be understood? Because he pursues righteousness, he will find righteousness? It means that whoever pursues righteousness and charity, the Holy One, blessed be He, will open unto him the ways of procuring money, in order that he may be able to do charity. R. Na'hman b. Itz'hak said that the Holy One, blessed be He, gives him the chance to find men who need and are worthy of support, so that he may have the full reward for it, in the world to come. What does he mean to exclude? He means to exclude what Rabha or Rabba lectured: It is written [Jer. xviii. 23]: ". . . in the time of thy anger deal thus with them."

Thus prayed Jeremiah before the Holy One, blessed be He: "Lord of the Universe! even when they overrule their evil thoughts and are about to do charity, Thou shouldst not give them the chance to support worthy men; but unworthy ones, for which they will get no reward in the world to come." R. Joshua b. Levi said: "Whosoever makes it his business to do charity, will be blessed with sons having wisdom, wealth, and who will preach *haggadah* (morality)." As it is written in the above-cited verse, "will find life," which means wisdom; "wealth," as in the same verse it is written *sedaka* (which means charity, and, usually, to be able to do charity, one must be wealthy); and "haggadah," as in the same verse it says "honor," and reads [Prov. iii. 35]: "The wise shall inherit glory. . . ."

There is a Boraitha: R. Mair used to say: If a common questioner discusses, "If your God likes the poor, why does He not feed them?" one may answer, "For the purpose of saving us from the punishment of Gehenna." This Tarnusruphus questioned of R. Aqiba, and the above was his answer. To which Tarnusruphus rejoined: It is, on the contrary, for this you should be punished with Gehenna; and I will give you a parable from which you will understand why: A king became angry at his slave and put him in prison, with the command that nobody should feed him; in spite of this, a person fed him and gave him drink. Would the king not be angry at and punish such a man? And ye Israelites are called servants, as it is written [Lev. xxv. 55]: "For unto me are the children of Israel servants. . . ." R. Aqiba answered: I will give you another parable, to which my previous answer is to be compared: A king became angry with his son, put him in prison, and commanded that nobody should give him food or drink; in spite of which command, one fed him and gave him drink. When the king became aware of it, would he not be grateful to this person and send him a present? And we Israelites are called children, as it is written [Deut. xiv. 1]: "Ye are the children of the Lord," etc. Tarnusruphus, however, said: Ye are named children, and also servants—children, when ye are doing the Omnipotent's will, and servants when ye act against His will. And you will admit that now ye are acting against His will (as your Temple is destroyed and ye are in exile, which would not be the case, if ye did His will). Hence he who favors you acts against the will of God. To which R. Aqiba answered: With

regard to this, it is written [Is. lviii. 10]: "And if thou pour out to the hungry thy soul, and satisfy the afflicted soul," etc. The "afflicted soul" refers to us in our present circumstances, and nevertheless the beginning of this verse favors such charity.

R. Jehudah b. Shalom lectured: As the yearly household expenses for one are appointed (in Heaven) on each Rosh Hashana, so are his losses. If he is worthy, he will act according to the beginning of the verse cited; but if not, the last portion of this verse, "the afflicted souls," will be the members of his own house. So Rabban Johanna b. Zakkai had seen in a dream that his nephews would lose in the current year seventeen hundred dinars, and he made them distribute this amount for charity. However, seventeen dinars remained with them, and on the eve of Atonement the government took them away from them. Then R. Johanna said unto them: "Fear not; seventeen dinars were taken from you, and you will lose no more." To the question: "Whence do you know?" he answered: "I have seen it in a dream." And to the question: "Why did you not inform us, as then we would have distributed the entire amount to the poor?" he answered: "In order that you give charity only for the purpose of doing the heavenly will."

It happened to R. Papa that, while mounting steps, he slipped, and nearly fell (and would have been killed; but was miraculously saved). Then he said: If this had happened, my enemies would have accused me of being a violator of the Sabbath or an idolater. Said Hyia b. Rabh of Diphti to him: Perhaps a poor man called upon you and you paid no attention to him. As we have learned in the following Boraitha: R. Joshua b. Kar'ha said: He whose eyes are shut to charity is likened unto an idolater; and this is to be taken from an analogy of expression in the following verses: Concerning charity it is written [Deut. xv. 9]: "Beware that there be not Belial in thy heart"; and concerning idolatry, it is written [ibid., xiii. 14]: "There have gone forth children of Belial." Hence the expression Belial makes the two above-mentioned acts equal.

There is a Boraitha: "R. Elazar b. Jose said: Charity and kindness done by Israel in this world, are defenders and peace-makers between them and their heavenly Father; as it is written [Jer. xvi. 5]: 'For thus hath said the Lord, Enter not into the house of mourning, neither go to lament nor to condole with them; for I have taken away my peace from this people,

saith the Lord, yea, kindness and mercy.' Kindness means bestowing of favors, and mercy means charity (hence, because these were taken away, therefore is the peace also taken away)."

There is another Boraitha: "R. Joshua said: Grace is charity, which nears the redeeming; as it is written [Is. lvi. 1]: 'Thus hath said the Lord, Keep ye justice and do *sedaka* * (charity).' The same used to say: Ten hard things were created in the world: A mountain is hard, iron cuts it; iron is hard, fire softens it; fire is hard, water extinguishes it; water is hard, the clouds bear it; clouds are hard, the winds spread them; the wind is hard, the body tolerates it; a body is hard, shaking breaks it; shaking is hard, wine dispels it; wine is hard, sleep removes it; death is harder than all of these, and charity saves from death; as it is written [Prov. x. 2]: '. . . but *sedaka* will deliver from death.'"

R. Dusthai b. Yannai lectured: Come and see how the manner of the Holy One, blessed be He, is not as the manner of human beings. When a human being brings a present to the king, there is a doubt whether it will be accepted or not; and if it be accepted, whether he will see the king. But the Holy One, blessed be He, is not so; if a man gives a coin to a poor man, he is rewarded and experiences the appearance of the Shekhinah; as it is written [Ps. xvii. 15]: "As for me, in *sedek* (charity) shall I behold thy face. . . ."

R. Elazar used to give a coin to a poor man before praying, quoting the above verse [ibid., ibid.]: "I shall be satisfied, when I awake, with contemplating thy likeness." What does it mean? Said R. Na'hman b. Itz'hak: "It means that scholars who keep sleep from their eyes in this world, the Holy One, blessed be He, satisfies them with the appearance of the Shekhinah in the world to come." R. Johanan said: It is written [Prov. xix. 17]: "He lendeth to the Lord, that is liberal to the poor." If this were not written, it would be impossible of conception; for it appears as if He becomes a servant to the lender; for it is written [ibid., xxii. 7]: ". . . and the borrower is servant to the man that lendeth." R. Hyya b. Abba, in the name of R. Johanan, said: It is written [ibid., xi. 4]: ". . . but *sedaka* will deliver from death"; and [ibid., x. 2]: "Treasures of wickedness will not profit aught; but *sedaka* will deliver from death." What do the two *sedakas* mean? One, that it

* The Hebrew term is *sedaka*; Leeser translates it "equity," according to the sense.

saved him from an unnatural death; the other, that it saved him from Gehenna. Which of them speaks of Gehenna? The one from chap. xi., as there is there mentioned the day of "wrath"; as it is written [Zeph. i. 15]: "A day of wrath is that day," etc., meaning Gehenna. And what kind of *sedaka* saves one from an unnatural death? If he gives, and knows not to whom, and he who receives it knows not from whom (if he gives his donation to the treasurer of charity). "Gives and knows not to whom" excludes the acts of Mar Uqba (who used to put four zuz every day in the slot underneath the door for one poor man, so that the poor knew not from whom he received it, but Mar Uqba knew to whom he gave it). "The receiver does not know from whom" excludes the acts of R. Abba, who used to wrap up some dinars in his handkerchief and, coming among the poor, stretch his hand containing it behind him, and the poor would take it out; so that he knew not who took it, but the poor knew who was the giver. An objection was raised from the following: What shall one do that he should have male children? R. Elazar said: He should distribute his money among the poor. R. Joshua said: He should enjoy his wife before he has intercourse with her. And R. Eliezer b. Jacob said: He shall not give a coin for the treasury of charity unless the treasurer is like unto R. Hananya b. Theradion. (Hence one must not always give to the treasury of charity?) The above Boraitha meant also when the treasurer was of that kind. R. Abuhu said: Moses said before the Holy One, blessed be He: "Lord of the Universe, how may the horn of Israel be raised?" To which He answered: "You should take charity from every one of Israel who is to be counted" [Ex. xxx. 12]. The same said again: King Solomon b. David was questioned: How great is the power of charity? and he answered: Go and see how David, my father, explained this [Ps. cxii. 9]: "He distributeth, he giveth to the needy: his righteousness endureth for ever; his horn shall be exalted in honor." Rabha, however, said, from the following verse [Is. xxxiii. 16]: "He shall dwell on high; rocky strongholds shall be his refuge; his bread shall be given him; his water shall be sure." And it is to be interpreted thus: "Why shall he dwell on high," etc.? Because to the poor he has given his bread, and to the down-trodden his water was sure. R. Abuhu said again: Solomon was questioned: Who is supposed to be the man who has a share in the world to come? And he answered with the verse [Is. xxiv.

23]: “. . . and before his ancients in glory” (which means him who is respected in his old age for the wisdom which he gathered during all his life. As it happened to Joseph b. R. Joshua, who was in a state of catalepsy, and when he awoke his father asked him: What have you seen in the upper world? And he answered: I have seen a reversed world: he who is here highly esteemed is there considered of the lowest class, and *vice versa*. His father rejoined: Not a reversed world, but a rational one, have you seen. He continued questioning: And how are we considered there? And he answered: The same as in this world. I also heard a saying: Happy are they who come here with their study in their hands. I also heard that those who were killed by the government, none of the creatures could approach them (because of their high standing).

Who is meant by those who were killed by the government? Shall we assume that R. Aqiba and his comrades are meant? Is it only because they were killed? (They were the greatest men of the generation, aside from this.) It meant them who were killed in Louda. (See Tract Taanith, pp. 45-46.)

There is a Boraitha: Rabban Johanna b. Zakkai questioned his disciples as to the meaning of the verse [Prov. xiv. 34]: “*Zedaka* exalteth a people; but the disgrace of nations is sin.” And R. Eliezer answered: “*Zedaka* exalteth a people” means Israel, as it is written [II Sam. vii. 23]: “And who is like thy people, like Israel, the only nation on the earth?” And “the disgrace of nations is sin”—all the *zedaka* and kindness of the nations, if they indulge in them only for the purpose of becoming great or gaining a good name, is a sin for them. R. Joshua (one of the disciples) answered the first half-verse same as R. Eliezer; and the second half: If the nations do so even in order that their kingdom shall continue to exist for a long time, as in the case of Nebuchadnezzar [Dan. iv.]. Rabban Gamaliel answered the first half of the verse as above; the second half: It is a sin for the nations if they do so solely to pride themselves thereon against other nations. So he who is proud without cause falls into Gehenna, as it is written [Prov. xxi. 24]: “The presumptuous and proud, scorner is his name, who dealeth in the wrath of presumption.” And by wrath is meant Gehenna, as mentioned above. Said R. Gamaliel: For the right interpretation of this verse we are still in need of the Modaith; as R. Eliezer b. Modaith interpreted it thus: The first part as above, and the second part: If the nations are doing so only for

the purpose of insulting Israel; as it is written [Jer. xl. 3]: "Now the Lord hath brought it . . . because ye have sinned," etc., which was said by Nebusaradan. R. Ne'hunia b. Hakana, however, answered: This verse is to be interpreted thus: *Zedaka* and kindness exalt a nation, meaning Israel; but to the nations it is considered a sin-offering. Their master, R. Johannan b. Zakkai, rejoined: It seems to me that Ne'hunia's interpretation is better than yours and mine. "Than mine! Did he also say something about this?" Yea; as we have learned in the following Boraitha: "Said to them R. Johannan b. Zakkai: As a sin-offering atones for Israel, so does charity atone for all other nations."

Iphra Hurmiz, the mother of King Sabur, sent four hundred dinars for charity to R. Ammi, and he did not accept it, but forwarded it to Rabha, who accepted it, in order to have peace with the royal house. R. Ammi, however, became angry, and said: Does Rabha not accept the verse [Is. xxvii. 11]: "When its boughs are withered, they shall be broken off; women will come and set them on fire; for it is not a people of understanding," etc.?

But why does R. Ammi become angry? Did he not want to maintain the peace with the royal house? He thought that this money ought to be distributed among the Gentile poor only. Rabha also did so, but R. Ammi was not aware of it.

There is a Boraitha: It was said about Benjamin the Upright, who was a treasurer of charity, that at one time a woman came to him in the years of famine, asking him to feed her. And he told her: I swear that there is nothing in the treasury of charity. But she rejoined: Rabbi, if you will not feed me, you will find a woman with her seven children dead. He then fed her from his own pocket. At a later time he became sick and was near to death; the angels said before the Holy One, blessed be He: "Lord of the Universe, Thou hast declared that he who saves one soul of Israel is like unto him who has saved a whole world; and Benjamin the Upright, who has saved a woman with her seven children, should he die in his prime?" Immediately the adverse decree was torn, and a Boraitha states that twenty-two years were added to his life.

The rabbis taught: It happened with the King Monbas, who had distributed his treasure and that of his parents, in the years of famine, that his brothers and the whole household murmured against him, saying: Your parents saved and always added to

the treasure of their parents, and you are distributing all this! And he rejoined: My parents saved their riches in this world, and I save in the heavenly treasury. As it is written [Ps. lxxxv. 12]: "Truth will grow up out of the earth, and righteousness will look down from heaven." My parents saved in their treasury, which brought them no interest, and I have saved in such a treasury as does bring interest. As it is written [Is. iii. 10]: "Say ye to the righteous, that he hath done well; for the fruit of their doings shall they eat." My parents have saved in a place which can be reached by a hand, but I have saved in a place that can be reached by no hand. As it is written [Ps. lxxxix. 15]: "Righteousness and justice are the prop of thy throne: kindness and truth precede thy presence." My parents have saved for their descendants, and I have saved for myself. As it is written [Deut. xxiv. 13]: ". . . and unto thee shall it be as righteousness before the Lord thy God." My parents have saved money in their treasury, and I have saved souls in my treasury. As it is written [Prov. xi. 30]: "The fruit of the righteous is of the tree of life; and the wise draweth souls to himself." My parents have saved for this world, and I have saved for the world to come. As it is written [Is. lviii. 8]: ". . . and before thee shall go thy righteousness; the glory of the Lord shall be thy reward."

"If, however, he bought a dwelling-house," etc. Our Mishna is not in accordance with R. Simeon b. Gamaliel of the following Boraitha, who says that if one bought a tract of land, however small, he is considered a citizen immediately. But have we not learned in another Boraitha that he taught, if one bought a tract of land which is even only fit to build a house upon? There are two Tanaim who have reported differently in his name.

MISHNA V.: Partners cannot compel each other to divide a courtyard unless each of the parts measures at least four ells; nor can a field be divided unless each part measures at least nine kabs for sowing. R. Jehudah, however, says: Nine half-kabs. Nor can a garden be divided unless each part measures at least half a kab for sowing. R. Aqiba, however, says: A quarter. Neither can one compel his partner to divide a dining-room, a turret, a pigeon-coop, a cloth, a bath-house, or an olive-press house, unless each has enough room to continue his former work. This is the rule: If, after division, each part retains its former name, then one can compel his partner to divide; but not otherwise. All this is said when the partners disagree;

however, when they do agree, they may do as they please. An exception is the Holy Writ, if they possess it, which must not be divided, even if both agree to do so.

GEMARA: Said R. Assi in the name of R. Johanan: The four ells mentioned must be measured after doors and partitions necessary have been placed. And he may be supported from the following Boraithas: As one of them states that a courtyard is not to be divided unless each part contains eight ells, and another one states, unless four ells; to explain the contradiction, it is to be said that one treats without the doors and partitions, and the other treats with them.

R. Huna said: A yard must be divided in accordance with the doors (it means, he who possesses more doors is to get a greater share). R. Hisda, however, maintains that four ells must be allowed for each door, and the remainder should be divided equally. There is a Boraitha which supports R. Hisda: "All the doors which are in a yard, the owners of them have a right to four ells for each one; if one possesses one door, and another one two, the former takes four, and the latter eight ells; and the remainder is to be divided equally. If, however, one of them possesses a gate which measures eight ells, he has a right to eight ells opposite it, and four ells in the yard." What is meant by the additional four ells? Thus said Abayi: He takes eight ells in the length and four ells in the width of the yard. Amemar said: An excavation in the yard which contains *granum* of fruit for the food of cattle, four ells is to be measured to it on either side. However, this is said when the owner has no separate door for it; but if he has one, four ells to the door only are to be measured. R. Huna said: "To a balcony the law of four ells does not apply, as the four ells which are allowed for each door are for unloading, and to and from the balcony one goes through the door of the house. R. Shesheth objected from the following: Gates of houses, as well as gates of balconies, have a right to four ells? The Boraitha speaks of a balcony which is partitioned with windows; if so, then it is self-evident, as it is a good chamber? It means that the partitions did not reach the ceiling. The rabbis taught: A gate, a balcony, or a gallery to which doors of the upper compartments open, and from which steps lead down to the court, have each a right to four ells. And even if five houses were open to this gallery, no more than four ells are allowed. R. Johanan questioned R. Jannai: Has a chicken-coop a right to four ells,

or not? And he answered: The four ells are given for unloading, and here he can load and unload through the roof of the chicken-coop. Therefore it has no right to four ells.

Rabha questioned R. Na'hman: In the case of a house which is only half roofed, how is the law about the four ells in question? And he answered: It is not entitled to them—not only when it is roofed from inside, so that it is easy for one to go in to unload; but even when it is roofed from outside, he may take the trouble of entering from inside to unload.

R. Huna questioned R. Ammi: If one of the inhabitants of an alley desires to open the door leading from his yard to another alley, may the inhabitants of that alley prevent him, or not? And he answered: They may. He questioned him also: Lodgings for the government militia, how should they be arranged? In accordance with the number of souls or in accordance with the number of doors? And he answered: In accordance with the number of souls. And so also have we learned in the following Boraitha: Manure in the yard is to be divided in accordance with the doors of the house; and military lodgings, in accordance with the number of souls.

R. Huna said: If one of the inhabitants of an alley desires to make a fence around the entrance, the other inhabitants may prevent him, because he extends their way (making them walk around his fence). An objection was raised from the following: If there were five courtyards open to the alley (which was, in turn, open to the street), all of them may use the place bordering on the fifth yard which is nearest the street (for loading, unloading, etc.). The fifth, however, may use only its own place, but not the places near the other yards. The same is the case with the first three at the place near the fourth yard, the first two at the third, and only the first one at all of them, while none of them have the first one. (Hence we see that to the first one none of them has a right; and this objects to R. Huna's theory, who said that *none* of them have a right to make a fence around their entrance.) Regarding this law, Tanaim of the following Boraitha differ: One of the inhabitants of an alley who desires to open his door into another alley, the inhabitants of that alley may prevent him. If, however, the door was *there*, only it was shut, and he wanted to open it, they cannot prevent him. So is the decree of Rabbi. R. Simeon b. Elazar, however, maintains, that if there were five yards opening to an alley, all of them may use the places which border upon the yards in

the alley. And to the question, "Where are yards mentioned?" it was said that this Boraitha is not complete, and should read thus: "And the same is the case with five yards which open into an alley: all of them may use the fifth which is nearest the street, and the fifth can use only its own place, etc. So is the decree of Rabbi. R. Simeon, however, maintains that all of them may use the places alike."

The master says: If there was a door, and it was shut, the inhabitants cannot prevent him. Said Rabha: This law holds good only when he had not broken the hinges; but if he had broken the hinges, it is supposed that he had not intended to open the door again, and the inhabitants can prevent him from doing so. Said Abayi to him: The following Boraitha supports you: "If there was a house with a closed door, the four ells for unloading applies to it; if, however, the owner broke the hinges from the door, he has lost his right to them." Rabba b. b. Hana, in the name of R. Johanan, said: Alleys which are open to a road which leads to another city, and the inhabitants of this city desire to close them, the inhabitants of that city may prevent them; not only when there is no other road to that city, but even if there was another road, they can also prevent them. As R. Jehudah, in the name of Rabh, declared: A thoroughfare which is occupied by a majority, it is prohibited to spoil.

R. Annan, in the name of Samuel, said: Inhabitants of alleys who desire to make doors to their ends which are open to the street may be prevented by the public. The schoolmen were about to interpret this that it meant only the first four ells which are attached to the public ground, but not beyond this. As R. Zera said elsewhere, in the name of R. Na'hman: The four ells which are attached to the public ground are to be considered as the public ground itself. In reality, however, it is not so, as R. Na'hman's decision there was only regarding the law of defilement; but here it might happen that the street should be crowded and many people would enter beyond the four ells.

"*Nor can a field be divided,*" etc. And R. Jehudah does not differ with the first Tana, as each of them speaks in accordance with the custom in his country. But what is the law in Babylon? Said R. Joseph: It can be divided if there is enough to plough for a day. How is this to be understood? If it means in the days of sowing, when the earth has already been ploughed, then the ploughing will not last two days, and in one day it could not be

completed; and if in the days of ploughing, then in the time of harvest there will not be a day's work (and it is a trouble to hire laborers for a fraction of a day)? If you wish, it may be said that it means a day of ploughing and sowing together; and if you wish, it may be said that it means a day of sowing and artificial watering. R. Na'hman said: A valley can be divided when there is for each part a day's artificial watering. "A vineyard," says the father of Samuel, "three kabs for each part." And so also we have learned in the following Boraitha: "If one says: 'I sell you a part of the vineyard,' it is no less than three kabs. So is the decree of Symmachos." Said R. Jose: "Such a decree is only prophetic, as I see no ground for this." How is the law in question to be decided in Babylon? Said Rabha b. Qisna: There shall be no less than three bushes, each of them containing no less than twelve branches of grapes, to dig which is a man's day's work.

Said R. Abdimi of the city 'Haifa: Since the Temple was destroyed, prophecy was taken away from the prophets and was given to the wise. (How is this to be understood?) Can a wise man not be also a prophet? In other words, were all the prophets fools? He means to say, that although it was taken away from the prophets who were not wise, it was not taken away from the wise ones. Said Amemar: And a wise man is better than a prophet, as it is written [Ps. xc. 12]: ". . . obtain (*nobbi**) a heart endowed with wisdom." And usually, who is dependent upon whom? The smaller is dependent upon the greater. Hence wisdom is greater than prophecy. Said Abayi: This theory may be supported from the fact that one great man declares something new, and exactly the same had been said by another great man. Said Rabha: "What support is this? It may be that both of them are equal in wisdom. Therefore," said he, "it happens frequently that a great man declares something new, and afterwards it is found that Aqiba b. Jose has already declared so (and it is hard to say that he was equal in wisdom to R. Aqiba). R. Ashi, however, objected also to this: It may happen that in this one case he was equal in wisdom to him. And he supported this from the fact that it very often occurs that a sage declares a Halakha, and afterwards it is learned that the same was already said to Moses on Mount

* The expression in the Bible is *ve'nobbi*, which has two meanings—"to obtain," and also "a prophet." The Talmud takes it literally, that a prophet has a heart of wisdom. Leesser translates according to the sense.

Sinai. But even then, perhaps it was by chance, as it happens that a blind man accidentally seizes something. It means that he declares also the reason of it.

R. Johanan said: Since the Temple was destroyed, prophecy was taken away from the prophets and was given to lunatics and small children. What is meant by lunatics? Thus it happened to Mar b. R. Ashi, who was standing in the market of Mehuza and heard a lunatic say that the future head of the college in Suria would be Tibumi (Mar's name was Tibumi). And he said: "Who among the rabbis signs his name Tibumi, if not myself? Hence I shall succeed." And he went to Suria. In the mean time the rabbis of the college intended to appoint R. A'ha of Diphthi as their head. However, when they heard that Mar had arrived, they sent to him two of the rabbis to take his advice, and he detained them. Then they sent another two, and he did the same with them. Finally ten of them arrived, and then he began to teach and to lecture, and proclaimed himself as the head of the college. [He did so because one must not begin to lecture if there are less than ten persons present.] R. A'ha then applied to himself the saying of the sages: He to whom harm has been done by heaven, has no hope of relief in the near future, and *vice versa*.

And what in regard to the children? For example, the little daughter of R. Hisda was sitting on the knee of her father, and Rabha and Rami b. Hama were sitting opposite, and to the question of her father, "Whom of them would you like to marry?" she answered, "Both of them." And Rabha immediately rejoined: "I shall be the last one." (And so it was. Rabha married her after the death of her first husband, Rami b. Hama.)

R. Abdimi of 'Haifa said again: Before one eats and drinks he has two hearts, and after this he has only one, as it is written [Job, xi. 13].* Said R. Huna b. R. Joshua: Who is used to wine, even if his heart is locked like a virgin's, the wine opens it; as it is written [Zech. ix. 17]: ". . . and new wine the virgins."

R. Huna b. R. Joshua said: It is certain that when a first-born among his brothers (who is entitled biblically to two shares) comes to inherit his shares in real estate, he is to be given two portions adjoining. But how is it if the first-born has died

* The expression in this verse is *nabub yilabab*; literally, "The empty one shall receive two hearts." Leeser's translation does not correspond.

without children, and the surviving brother marries his wife and takes his shares—does the law of preëmption apply to him also, as to the dead brother, or not? Abayi said: He is to be treated just as the dead one. And Rabha said: It is written [Deut. xxv. 6]: "And it shall be that the first-born," etc., which signifies that he shall be treated as the first-born in that respect, but not respecting the division of a heritage.

There was a man who bought an estate near to the estate of his father-in-law (who had no male children), and when they came to divide the inheritance of the father-in-law, he insisted that the estate at the boundary of the one he bought should be given to him. Said Rabha: Such a claim, if not listened to, it would be equal to the acts of Sodomites. Therefore they must be compelled to comply with his wish. R. Joseph opposed: Could not his brothers-in-law claim that this estate was pleasant to them as the estate of Bar Marion (which was then known as the best estate)? And the Halakha prevails in accordance with R. Joseph (if the estate needs no artificial watering). Should one of brothers who are about to inherit two estates of dry land, each of which has a pond for watering, buy an estate adjoining one of the two estates in question, and demand that this should be given him as his share—said Rabha: As each of them has a pond for watering, his claim is a right one; and if declined, it would be a Sodomite custom. R. Joseph, however, opposed this, saying: His brother can claim: "It might happen that one pond would become dry and we should be compelled to water both estates from one pond; but as he has bought another estate, the pond will not be sufficient for watering all of them, and mine would remain dry." And the Halakha prevails in accordance with him also in this case.

If the inheritance consists of two estates which are watered from one pond, and one of the brothers has bought an estate adjoining one of these, and demands this adjoining one as his share—said R. Joseph: His claim is a right one, as the above reason cannot apply here; and, therefore, if it should not be listened to, it would be a Sodomite custom. To which Abayi opposed: One can claim: "It is better for me to have my estate between your two, and then it will be better preserved." However, the Halakha prevails again with R. Joseph, as the latter claim is not to be considered. If two brothers inherit an estate which has a river on one side and a pond on the other, the

estate must be divided diagonally so that each half borders on both the river and the pond.

"*Nor a dining-room,*" etc. But how is it when there is not so much space for each? According to R. Jehudah the law, "Either you concede or I concede," must be applied. One of them can say: "Either I pay you cash for your share, and the whole estate remains for me, or *vice versa*." And R. Na'hman said: Such a law cannot be applied, and they must remain in partnership. Said Rabha to R. Na'hman: According to your decision, that the law of concession does not apply in such a case, how is it, then, if a first-born and his brother have inherited from their father a slave, or an animal which is not fit for slaughtering—how shall they divide it? (A first-born is entitled to two-thirds; and therefore he took as his instance a first-born, because it is more difficult for them to remain partners.) Answered R. Na'hman: Because I say even then they must remain partners, and the slave or animal in question must serve to one two days, and to the other one.

An objection was raised from the following: If there is a bondsman only in half (as, for instance, he has been a bondsman of two masters and was freed by one of them), he may serve his master one day, and attend to his own business the other day. So is the decree of Beth Hillel. Said Beth Shammai: Such a law is partial, as you have satisfied only the master, but not the bondsman; as the bondsman cannot marry a female slave, for he is half free, nor can he marry a free maiden, because he is half slave, shall it be decided that he shall remain unmarried? This would also be improper, as the world is created for reproduction; as it is written [Is. xlv. 18]: "Not for naught did he create it: to be inhabited did he form it." And therefore he can compel his master to set him free, and accept a note for half his value. And Beth Hillel changed their decision and yielded to that of Beth Shammai. (Hence we see that in such a case the law of concession applies?) Here it is different, as the concession is not an even one for both partners; for the bondsman can only demand of the master to accept half his value for freeing him; but the master cannot demand of the bondsman to sell him his free half, as this is against the law.

Another objection was raised: Two brothers, one of them rich and the other poor, inherit from their father a bath- or a press-house. If it is rented to somebody, they must certainly divide the rent; but if the bath was made for their private use,

the rich brother can say to the poor one: You may hire or buy servants who will prepare the bath for your use, but I will not pay for half the work, or buy olives and press them in the press-house. (Hence we see that the law of concession does not apply ?) Here also the concession is not even, as the poor one has no money to offer to pay for his share in the inheritance. Come and hear another objection from our Mishna. "If, after the subdivision, each part can retain its former name," etc., but if not, it must be appraised in money and one of the partners must concede his share to the other when he is paid. (Hence the law of concession applies ?) On this point Tanaim differ, as we have learned in the following Boraitha: "If one of the partners says to the other: 'Take your share in full, and I will take the remainder,' he must be listened to. R. Simeon b. Gamaliel, however, says that he must not."

Now let us see. If the case be similar to that of our Mishna, why should R. Simeon b. Gamaliel object? We must say, then, that the Boraitha cited is not complete, and it should read thus: "You take the prescribed quantity for your share, and I will take the remainder; or, I will concede or else you concede"—he is to be listened to. And R. Simeon b. Gamaliel said: "Nay." Hence Tanaim differ. The case may be similar to that quoted in our Mishna, and the reason of R. Simeon why he must not be listened to, is this: He may claim: "I have no money to pay for your share, and I do not want to accept a present from you." As it is written [Prov. xv. 27]: "He that hateth gifts shall live."

Said Abayi to R. Joseph: R. Jehudah's decision, that the law of concession applies, is in accordance with Samuel, who said, concerning the Holy Writ, that if it was a property of two partners "it must not be divided even when both agree," the case being only when it was bound in one volume; but if bound in two parts, they may. And this can also be correct when the law of concession does not apply; for if it were applied, then there would be no difference whether bound in one or in two parts. R. Shalman, however, explained the decision of Samuel: When both partners agree to divide.

Amemar said: The law of concession is to be applied. Said R. Ashi to him: And what about R. Nah'man's decision? And he said: I do not hold with him. "Is that so? Did it not happen to Rabba and R. Dimi, the sons of Hinna, that their father bequeathed unto them two female slaves, one of them

able to cook and bake, and the other to spin and weave; and they came before Rabha, and he decided that the law of concession did not apply here?" "There was another reason; viz., both brothers needed the services of both slaves. And to decide, 'You take one and I take the other,' would not be the law of concession." But did not Samuel decide that when bound in two parts they might divide? It is already explained above that he speaks of a case when both partners are willing to do so.

The rabbis taught: One may attach the Pentateuch to the Prophets, and both to the Hagiographa, and keep them in one volume. So is the decree of R. Meir. R. Jehudah, however, said: "Each of them is to be kept separately." The sages said, furthermore, that the book of each Prophet must be kept separately. Said R. Jehudah: It happened with Beithus b. Zonin, that he had eight books of the Prophets attached together, with the permission of R. Elazar b. Azariah. According to others, however, he had the books, but they were each of them kept separately. Said Rabbi: It happened once that the Pentateuch, Prophets, and Hagiographa, attached to one another, were brought to us, and we approved it.

After each book of the Pentateuch, four lines must be left blank when copying. The law is the same regarding each book of the Prophets; except in the case of the books of the Twelve Prophets, three lines after each is sufficient to be left blank. However, if one book ends at the bottom of the page, the next book may be begun right at the top of the next page without leaving any lines blank.

The rabbis taught: "If one wishes to attach the scrolls of the Pentateuch, Prophets, and Hagiographa to one another, he may do so, provided he leaves a whole page blank at the beginning, and at the end enough blank space to wrap around the entire scroll; and he may begin a new book at the top of a page when the previous book ends at the bottom of the page preceding. And if he wishes to separate the books afterwards, he may do so." How is this to be understood? It is self-evident that a separate book is better than if attached. It means to say one may begin at the top of the page; as then, if he decides to separate the books, it will be easier for him to do so. There is a contradiction in the following Boraitha, which states: "There must be blank space at the beginning and at the end of each book, sufficient to wrap it up." To wrap what up? Around

the whole book? Then it contradicts the former Boraitha which states that at the beginning one page is sufficient; and if it means only one page, then it contradicts the above, which states "enough at the end to wrap around the book"? Said R. Nah'man b. Itz'hak: This Boraitha also means to leave blank space at the beginning and at the end, as prescribed. R. Ashi, however, said: The latter Boraitha speaks of the Holy Scrolls, as we have learned in the following Boraitha: "All scrolls are rolled (around *one* holder) from right to left; the Holy Scrolls are rolled towards the middle (and must be attached to *two* holders); and a blank page must be left both at the beginning and at the end." And R. Eliezer b. R. Zadok said: So wrote the scribes of Jerusalem their Holy Scrolls.

The rabbis taught: The length of the Holy Scrolls must not exceed the circumference; nor must the latter exceed the length.

Rabbi was questioned about the prescribed dimensions of the Holy Scrolls. He answered: Six spans in length when written on double parchment will be equal to the circumference; and when on ordinary parchment, I do not know what length.

R. Huna wrote seventy Pentateuchs, and in only one of them the length happened to be equal to the circumference. R. A'ha b. Jacob wrote only one, on calf-skin, and the measurements happened to be just as prescribed; and the rabbis cast their eyes upon him, and he died.

[Said the rabbis to R. Hamnunah: Is it true that R. Ammi wrote four hundred Pentateuchs? And he answered: Perhaps he wrote only one verse [Deut. xxxiii. 4]: "The law which Moses commanded us, is the inheritance of the congregation of Jacob," four hundred times. Similarly to this, Rabha questioned R. Zera: Is it true that R. Janai had planted four hundred vineyards? And he answered: Perhaps such as contain five trees, two on each side and one behind (which, in regard to the law of Kilaim, is considered a vineyard).]

An objection was raised: The ark which was made by Moses was two and a half ells in length, one and a half in width, and one and a half in height: all these measurements were taken with an ell of six spans. The tablets which were brought down by Moses were six spans square and three spans thick: they were placed in the ark lengthwise. Now, how much space did the tablets occupy in the ark? Twelve spans. Then three spans of space were left. Take off one span for the two walls of the ark, each of which was half a span, then two spans' space

was left, where the Holy Scrolls were placed. As it is written [I Kings, viii. 9]: "There was nothing in the ark save the two tables of stone," etc. The expressions "nothing" and "save" are an *exclusion* after an *exclusion*; and there is a rule that where such is to be found, it means an *inclusion*; and here the Holy Scrolls are included, which were in the ark. Now the length of the ark is accounted for. How is the width to be accounted for? The tablets occupied six spans in width; and from the remaining three one span must be deducted for the two walls. This leaves two spans of empty space, to the end that the Holy Scrolls should not be crushed while being taken out or returned. So said R. Mair. R. Jehudah, however, maintains that the ell was of five spans. The tablets, which were six spans square and three thick, were placed in the ark lengthwise, and occupied twelve spans, thus leaving only one-half span of space: one finger (a quarter of a span) for each wall. This is for the length. As to the width, the tablets occupied six spans; and from the remaining space of one and a half spans take off half a span—one and a half fingers* for each wall—leaving then one span; and this was occupied by the pillars. As it is written [Solomon's Song, iii. 9 and 10]: "The pillars thereof," etc. And also the casket in which the Philistines placed the gift to the God of Israel was put alongside. As it is written [I Sam. vi. 8]: "Ye must put in a casket alongside of it, and then send it away," etc. And upon the casket the Holy Scrolls were placed. As it is written [Deut. xxxi. 26]: "Take this book of the law, and put it at the side of the ark," etc. We see, then, that it was placed at the side and not within the ark. But what is to be *included* from the two *exclusions* mentioned above? The broken tables, which were first broken by Moses. Now, if it is borne in mind that the circumference of the Holy Scrolls was six spans, its diameter must have been two spans, as there is a rule that everything with a circumference of three spans has a diameter of one span. Now, as it was said above, that the Holy Scrolls were rolled toward the middle, then the diameter must exceed two spans, for the space in the middle between the two rolls could not be reckoned in the two spans. How, then, could it get in? Said R. A'ha b. Jacob: "The Holy Scrolls which were written by Moses (of which the king read the por-

* "One and a half fingers"—meaning the little finger, of which there are six to a span.

tion belonging to him, and the high priest read on the Day of Atonement in the court of the Temple) were rolled from left to right only, in one roll." But even then, how can you put in a thing which is two spans in thickness into a space of only two spans? Said R. Ashi: "A piece of the parchment was left out from the roll, so that it could be put in the two spans, and what was left was lying on the top." But according to R. Jehudah's theory, where were the Holy Scrolls placed before the Philistines sent the casket? A little board was attached to the pillars, and the Holy Scrolls were put upon it.

The rabbis taught: "The order of the prophets is as follows: Jehoshua, Judges, Samuel, Kings, Jeremiah, Ezekiel, Isaiah, and the Twelve Prophets." Let us see: Hosea, of the Twelve Prophets, was before Isaiah, as it is written [Hosea, i. 2]: "The beginning of the word of the Lord," etc. This certainly cannot be understood that he was the first of the prophets to whom the Lord spoke since the time of Moses, as there were many prophets after Moses preceding Hosea. And therefore R. Johanan explains that he was the first of the four prophets who prophesied at that period; viz.: Hosea, Isaiah, Amos, and Micah. Hence he was before Isaiah. Why is he placed after? Because his book is counted among the Twelve, among whom were Haggai, Zechariah, and Malachi, who were the last of the prophets: therefore his book is placed together with theirs. But why was the book of Hosea not separated, and placed first? Because his book is small, and if it were placed separately it would become lost. However, was not Isaiah before Jeremiah and Ezekiel? Why is he not placed first? Because "Kings" ends with the destruction of the Temple, and the whole book of Jeremiah speaks of the destruction, and that of Ezekiel at the beginning speaks of the destruction and at the end of consolation, while Isaiah's entire book speaks of consolation: destruction was put next to destruction, and consolation next to consolation.

The order of the Hagiographa is as follows: Ruth, Psalms, Job, Proverbs, Ecclesiastes, Song of Solomon, Lamentations, Daniel, Book of Esther, Book of Ezra, and Chronicles.*

* Rashi explains the reasons of the order of the Hagiographa, which, in his opinion, was arranged in order of time, and maintains that Job was written after Ruth and Psalms, the two latter having been written, according to him, by David; and concerning the Songs, he says: "It seems to me that Solomon said or wrote them in his old age." However, the order of our Scriptures is different, and they are cer-

And who wrote all the books? Moses wrote his book and a portion of Bil'am [Numbers, xxii.], and Job. Jehoshua wrote his book and the last eight verses of the Pentateuch beginning: "And Moses, the servant of the Lord, died." Samuel wrote his book, Judges, and Ruth. David wrote Psalms, with the assistance of ten elders, viz.: Adam the First, Malachi Zedek, Abraham, Moses, Hyman, Jeduthun, Asaph, and the three sons of Korach. Jeremiah wrote his book, Kings, and Lamentations. King Hezekiah and his company wrote Isaiah, Proverbs, Songs, and Ecclesiastes. The men of the great assembly wrote Ezekiel, the Twelve Prophets, Daniel, and the Book of Esther. Ezra wrote his book, and Chronicles—the order of all generations down to himself. [This may be a support to Rabh's theory, as to which, R. Jehudah said in his name, that Ezra had not ascended from Babylon to Palestine until he wrote his genealogy.] And who finished Ezra's book? Nehemiah ben Chachalyah.

There is a Boraitha in accordance with him who said that the last eight verses of the Torah were written by Joshua; namely: "It is written [Deut. xxxvi. 5]: 'And Moses the servant of the Lord died,' etc. Is it possible that Moses himself should have written 'and he died'? Therefore it must be said that up to this verse Moses wrote, and from this verse forward Joshua wrote. So said R. Joshua, according to others R. Nehemiah." Said R. Simeon to him: Is it possible that the Holy Scrolls should not have been complete to the last letter, and nevertheless it should read [ibid., xxxi. 26]: "Take this book of the law," etc. Therefore, we must say that up to this verse the Holy One, blessed be He, dictated, and Moses repeated and wrote it down; and from this verse forward He dictated, and Moses with tears in his eyes wrote it down; as thus it is read [Jer. xxxvi. 18]: "Then said Baruch unto them, With his mouth did he utter clearly all these words unto me, and I wrote them in the book with ink."

According to whom, then, is the following—that R. Joshua b. Aba, in the name of R. Gidel, quoting Rabh, said: "The last eight verses of the Pentateuch, when read from the Holy Scrolls, must be read by one person without any interruption"?

tainly not in the order of time, as modern critics ascribe a much later period of time to almost all the books, and we are still ignorant of the reason why the order was changed in the canons we possess from that in the Talmud, and who it was that substituted the existing order.

Should it not be in accordance with R. Simeon? It may be also in accordance with R. Simeon; and the reason for the exception of these eight verses is because, as there was already a change at the writing by Moses (as said above), the change is made also here. "Joshua wrote his book"; but is it not written there: "And Joshua died"? This was written by Elazar. But is it not written there: "And Elazar died"? The book was finished by his son Pinchas.

"Samuel wrote his book." But is it not written: "And Samuel died"? The book was finished by Gad the seer and Nathan the prophet.

"David wrote the Psalms," etc. But why did the Boraitha not enumerate also Ethan the Ezrachite? Said Rabh: "The latter and Abraham are identical." It enumerates Moses, and also Hyman; did not Rabh say that by Hyman is meant Moses? There were two Hymans.

"Moses wrote his book," etc. This is a support to R. Levy b. Lachma, who said that Job lived in the time of Moses.* Rabha, however, said: Job lived in the time of the spies which were sent by Moses to investigate Palestine.

One of the rabbis was sitting before R. Samuel b. Na'hmeni and said: Job never existed; and is mentioned in the Scripture only for an example. Said he to him: The Scripture is against your theory, as it states plainly [Job, i. 1]: "There was a man," etc. But according to your theory it is also written [II Sam. xii. 3]: "But the poor man had nothing," etc. Was it so in reality? It was written only for an example! The same may be said concerning Job? If it were so, why, then, his name and the name of the country he came from?

R. Johanan and R. Elazar both said that Job was among the ancestors of the Babylonian exiles; and his college was in Tiberias.

An objection was raised: There is a Boraitha: "Job's age was from the time when Israel came to Egypt until he left it." Read: "As many years as the Israelites were in Egypt." Another objection was raised. There were seven prophets who have prophesied to the nations, viz.: Bil'am and his father, Job, Eliphaz the Themanite, Bildad the Shuchite, Zophar the Na'amathite, and Elihu ben Barachel the Buzite. (Hence we

* His support is from an analogy of expression; and the Gemara discusses the analogy, but it is too complicated, and therefore omitted. The same is the case with the saying of Rabha farther on.

see that Job was a Gentile ?) And according to your theory, was then Elihu, just mentioned, a Gentile ? He was certainly an Israelite, as it is written, "of the family of Ram." And why is he called a prophet of the nations ? Because his prophecies were for the nations. The same can be said concerning Job. But did not the Jewish prophets also prophesy for the nations ? The Jewish prophets prophesied to Israel, and to the nations also, but the above-mentioned seven have prophesied for the nations only.

There is an objection from the following: A pious man was among the nations, and Job was his name; and he came to this world only for the purpose of receiving his reward. The Holy One, blessed be He, however, brought chastisements upon him, and he began to blaspheme; the Lord then doubled his reward in this world, so that he should have no share in the world to come. (Hence we see that Job was a Gentile ?) On this point Tanaim of the following Boraitha differ: R. Elazar said: Job was in the time of the Judges; as it is written [Job, xxvii. 12]: ". . . deal in such vanities ?" And which generation was one entirely of vanities ? It is the generation of the Judges. R. Joshua b. Karha said: Job was in the time of Ahasuerus; as it is written [Job, xlii. 15]: "And there were not found such handsome women as the daughters of Job," etc. And in which generation were handsome women searched for, if not in the generation of Ahasuerus ? [But perhaps it was in the time of David, when handsome women were also searched for [I Kings, i. 3] ? There they searched only among the daughters of Israel, but in the time of Ahasuerus it is written, "in all the land."] R. Nathan said that Job was in the time of the Queen of Sheba, as it is written [Job, i. 15]: "When the Sabeans made an incursion." [And R. Samuel b. Na'hmeni said in the name of R. Jonathan: He who translates *Malchas Sheba* "the queen of Sheba" is in error, as the right translation is "the government of Sheba."] And the sages said: He was in the time of the Chaldeans, as it is written [ibid., ibid. 17]: "The Chaldeans posted themselves," etc. Still others said that Job was in the time of Jacob and has married Dinah, Jacob's daughter. (They infer it from an analogy of expression, *Nebala*.) And all the just mentioned sages hold that Job was an Israelite, except the last, who maintains that he was a Gentile. R. Johanan said: It is written [Ruth, i. 1]: "And it came to pass in the days when the judges judged," etc. It means it was a generation that

judged the judges. If, *e.g.*, the judge said to them: "Take out the toothpick from thy tooth," they answered: "If thou wilt take the beam out of thy eyes, I will remove the toothpick." If, *e.g.*, the judge said to one: "Thy silver is become dross," the answer was: "Thy wine is drugged with water" [Is. i. 22] (*i.e.*, if the judge accused one of a small transgression, the accused said to him: "Thou thyself art a greater sinner than I am").

It is written [Job, i. 6-9]: ". . . that the accuser (Satan) also came in the midst of them," etc. Satan said before the Lord: "I have sped all over the world, and found no trusty man like thy servant Abraham, to whom thou didst say [Gen. xiii. 17]: 'Arise, walk through the land in the length of it and in the breadth of it; for unto thee will I give it.' And notwithstanding this, when he searched for a grave to bury his wife Sarah, and did not find one until he bought it for four hundred silver shekels, he did not murmur or bear in mind anything against thee." "Then said the Lord to Satan," etc. Said R. Johanan: That which was said about Job is more important than that which was said about Abraham, as regarding the latter it is written [ibid., xxii. 12]: "Now I know that thou fearest God," etc. And regarding the former it is written [Job, i. 1]: "And this man was perfect and upright, and fearing God and eschewing evil." What is meant by "eschewing evil"? Said R. Aba b. Samuel: Job was liberal with his money; it is customary, if a laborer has done some service to the value of half the smallest coin, that the employer takes him to the store-keeper, buys something for this coin, and gives the laborer the half due him. Job, however, gave him the whole coin for such services. "Then Satan answered, Is it for nought that Job feareth God? . . . the work of his hands hast thou blessed." What does this mean? Said R. Samuel b. R. Itz'hak: "Any one who took a coin from Job for business, has succeeded." And what means, "And his cattle are far spread out in the land"? Said R. Jose b. Hanina: His cattle have changed the order of the world. Usually wolves kill goats; Job's goats, however, killed wolves.

"But only stretch forth thy hand," etc. [ibid. 11-19]: "The oxen were ploughing, and the she asses were feeding beside them." How is this to be understood? Said R. Johanan: From this is to be inferred that the Holy One, blessed be He, gave Job a foretaste of the world to come (as about the world

to come it is written [Jer. xxxi.] that pregnancy and birth in a woman occurred together). "A fire of God," etc. [to ii. 5]. Satan again answered the Lord, as said above.

"And Thou hast incited me against him," etc. Said R. Johanan: If this were not written it would be impossible for a human being to conceive it: the Scripture speaks of the Lord as if He were a human being who can be influenced through incitement.

There is a Boraitha: Satan descends and tempts human beings; then ascends and accuses them; then takes the order and takes the soul of him whom he has tempted.

"Then the accuser answered the Lord," etc. [ibid., ibid. 4-8]. Said R. Itz'hak: Satan was more afflicted than Job himself. It is similar to a master who says to his servant: "Break the barrel, but save the wine" (without letting him have a vessel to save it in). So was it with Satan; the Lord told him to take Job's body, but to save his soul. Said Resh Lakish: From this we see that he who is called Satan is himself the evil spirit who tempts one to sin; and he himself is the Angel of Death, as he was told to save the life: from which it is to be seen that the life of man was in his hands.

R. Levi said: Satan and Peninnah both intended (with their accusation) to please heaven. Satan, who had seen that the Lord was favorable toward Job, feared that through the justice of Job Abraham's merits would be forgotten, and, therefore, he spoke as above. And Peninnah, as it is written [I Sam. i. 6]: "And her rival also provoked her continually, in order to make her fret," etc. It means for the purpose of making her pray and have a child. R. A'ha lectured the same in the city of Paphniah, and Satan came and kissed his feet for this.

"With all this, did not Job sin with his lips." Said Rabha: "With his lips he did not sin, but he sinned in his heart." What was it? [Job, ix. 24]: "Is a land given up to the wicked? He covereth the faces of its judges: if this be not the truth, who is it then?" * Said Rabha: Job was about to turn the dish face downwards (*i.e.*, to deny the might of the Lord).

* This is the exact translation of Leeser, which we follow in our edition. The Bible commentaries differ in the explanation of this passage, which is very complicated, and Leeser, following one of them, explains it all as a question. The latest commentator, Dr. Benjamin Szold of Baltimore, interprets it according to the Talmud, that the first half should not be understood as a question, but as a fact; and it seems to us he is right.

Said Abayi to him: Job spoke only about Satan. On this point Tanaim differ. About the just cited verse R. Elazar said: Job was about to turn the dish face downwards. And R. Joshua said to him: Job spoke only with regard to Satan. It is written [ibid. x. 7]: "Still it is within thy knowledge that I am not wicked, and there is none that can deliver me out of thy hand." Said Rabha: Job wanted to free the whole world of a trial. He said thus: Lord of the Universe, Thou hast created an ox with parted hoofs, and us without (and Thou hast commanded that only creatures with the parted hoofs shall be eaten, but Thou couldst have made it the reverse). Thou hast created Paradise, and Thou hast created Gehenna; Thou hast created the upright, and Thou hast created the wicked. Who can prevent Thee? (Hence no reward and no punishment should be dealt, as all was done according to Thy will!) And what have Job's colleagues answered to this? [ibid. xv. 4]: "Yea, thou truly makest void the fear (of God), and diminish-est devotion before God." Which means that the Holy One, blessed be He, has created the evil spirit, and He has created wisdom as a remedy against him.

Rabha lectured: It is written [ibid. xxix. 13]: "The blessing of him that was ready to perish came upon me; and the heart of the widow I caused to sing for joy." From the first half of this verse we learn that he used to rob a field belonging to orphans, improved it, and returned it to them; and in the latter half we learn that if there was a widow whom no one wished to marry, he put his name upon her, saying that she was his relative, and then it was easy for her to marry. It is written [ibid. vi. 2]: "Oh, that my vexation could be truly weighed, and my calamity," etc. It was said by or to Rabh: The earth may cover Job's mouth for this. He makes himself a comrade of providence [ibid. ix. 33]: "There is no one who can decide between us, who could lay his hand upon us both." Said Rabha: For this also his mouth may be covered with earth: should a slave rebuke his master? [ibid. xxxi. 1]: "A covenant had I made with my eyes: how, then, should I fix my look on a virgin?" Said Rabha: He had not looked upon strange women, but Abraham had not looked even at his own wife; as it is written [Gen. xii. 11]: "*Now* I know that thou art a woman of handsome appearance," from which it is to be inferred that *before* that time he knew not that.

[Job, vii. 9]: "As the cloud vanisheth and passeth away:

so will he that goeth down to the nether world not come up again." Said Rabba: From this we see that Job denied resurrection. [Ibid. ix. 17]: "He that bruise me with his tempest, and multiplieth my wounds without a cause." Said Rabba: Job has blasphemed by the tempest, and by the tempest he was answered. Blasphemed by the tempest—as he said: "Lord of the Universe! Perhaps a tempest passed before Thee and changed to Thee the word *Iyabh* to *Oyabh*."* And by the tempest he was answered—as it is written [ibid. xxxviii. 1]: "Then did the Lord address Job out of the storm-wind. . . . Do but gird up like a mighty man thy loins: and I will ask thee, and do thou inform me."

So said He: "I have created many hairs on human beings, and for each hair I have created a separate hole; for if two should be nourished from one hole, it would blind the eyes of men; now from one hole to another it was not changed to me; and from *Iyabh* to *Oyabh*, should it be changed?" [Ibid., ibid. 25]: "Who hath divided off water-courses," etc. "There are many drops that I have created in the clouds, and for each drop there is a separate place; for if two drops should go into one, they would make the earth too soft, and it could not produce; these places were not changed to me." ". . . And a way for the lightning (that is followed by) thunders." "Many thunders have I created in the clouds, and for each thunder there is a separate track; for if two should go along the same track, they would destroy the world. The tracks were not changed to me; and from *Iyabh* to *Oyabh*, should it be?" [Ibid. xxxix. 1]: "Knowest thou the time when the chamois of the rock bring forth?" "The chamois of the rock is cruel towards its offspring, and when the time of bearing comes she ascends to the top of the mountain, so that the offspring should fall and die. And I send an eagle which receives it with its wings." "Markest thou when the hinds do calve?" "The hind has a narrow womb, and when the time of bearing comes, I procure a snake that bites her in the womb, so that she is able to bring forth the offspring. In both cases it must happen at the exact moment; for if it occurs a second before or a second later, the young in the first case, and the mother in the latter, would die. Now, from one second to the other

* Job in Hebrew is spelled *Iyabh*: *Oyabh* means enemy; and this means that perhaps the vowels were changed, thus rendering, instead of *Job*, *enemy*.

there never is a change; and from Iyabh to Oyabh, should it be changed?" [Ibid. xxxiv. 35]: "Job hath not spoken with knowledge, and his words are without intelligence." Said Rabha: From this it may be deduced that one is not to be made responsible for his words at a time when he is afflicted. [Ibid. ii. 11-13]: "When, now, the three friends of Job . . . and they met together," etc. What is meant by "they met together"? Said R. Jehudah in the name of Rabh: They all entered at one time the gate of the city where Job lived; although a Boraitha states that each of them lived three hundred parsas away from the others. But who informed them? According to some, each of them had a crown on which were engraved the pictures of his three colleagues; and if one of them became afflicted, the picture was changed. And according to others, they had in their garden three trees, each of which bore the name of one of the friends; and if one became afflicted, the tree was changed. Said Rabha: This is what people say: "Either to have colleagues like Job's, or death."

It is written [Gen. vi. 1]: "And it came to pass when men began to multiply . . . and daughters," etc. R. Johanan said: With a daughter, multiplication comes into the world, as in Chaldaic a girl is called *rabhia*; literally, *multiply*. Resh Lakish, however, maintains that with a daughter strife comes into the world, as *rabhia* means also *strife*. Said Resh Lakish to R. Johanan: According to your opinion, multiplication comes with daughters; why was not Job doubly rewarded with daughters, as he was with sons and with all his property? And he answered: Although they were not doubled in number, they were in beauty; as it is written [Job, xlii. 13-15]: "He had also fourteen * sons and three daughters," etc. And farther on it is written: "And there were not found such handsome women," etc.†

To R. Simeon, Rabbi's son, a daughter was born; and he became dejected. Said his father to him: With thy daughter came multiplication (*rabhia*). Said Bar Kapara to him: The

* *Shibha* in Hebrew means seven; so it is written in Job ii. In this passage it is written *shibhnah*, which, according to the Talmud, means *fourteen*; and double what was before, as all his property was doubled. Leeser has translated *seven*, giving no attention to the letter *nun* added in this word.

† In the text it is deduced from the names of the daughters; e.g., Yememah, *beautiful as the day*, etc. We have omitted this, as it is difficult, with the Hebrew words, each of which has several meanings, to point out which meaning it bears, and to discuss it. And it is also unimportant.

consolation of your father is very poor. The following Boraitha states: "The world cannot be without males and females. However, happy is he whose children are male, and woe to him whose children are female. The world cannot be without a spice dealer and a tanner (*burseus*); happy is he who is a spice dealer, and woe to him who is a tanner." On this point, however, the Tanaim of the following Boraitha differ. It is written [Gen. xxiv. 1]: "The Lord has blessed Abraham *bakhol* (in all things)." What does the word *bakhol* mean? R. Meir said: He was blessed in not having any daughters. R. Jehudah, however, said: He was blessed in having a daughter. Anonymous teachers say: He had a daughter with the name *Bakhol*. R. Elazar the Modai said: Abraham, our father, was an astrologer; and therefore all the kings from the West and the East came to his door to ask his advice.* R. Simeon b. Johanan said: A diamond was hanging on Abraham's neck, and when a sick man looked upon it, he was cured. And when Abraham passed away, the Lord sealed it in the planet of the sun. Said Abayi: This is what people say: When the day arrives, the sick become better. There is another explanation of the word *bakhol*—that as long as Abraham was alive Esau did not rebel. According to still others: "Because Ishmael repented in his days." That Esau did not rebel in his days is stated in a Boraitha to explain the verses Gen. xxv. 29–34 as referring to that day on which Abraham died. And that Ishmael had repented is explained by Rabha, in the name of R. Johanan, to Rabhina and to R. Hama b. Buzi thus: It is written [ibid., ibid. 9]: "And his sons Isaac and Ishmael," etc. And from the fact that Isaac is named first, although Ishmael was older, it is to be understood that Ishmael had repented and, knowing that Isaac was better than he, given him the preference. But perhaps the verse only does it because it was so, and Ishmael had nothing to do with it? Then the Scripture [ibid. xxxv. 29] would also say Jacob and Esau, and not according to the age, as it is now. Hence the previous construction is correct.

The rabbis taught: There are three to whom the Holy One, blessed be He, gave a taste of the world to come in this world; namely, Abraham, Isaac, and Jacob: Abraham—

* The term in the text for this is *aistagninuth*, and the commentators explain this to mean *astrologer*. According to Schönhak, however, it is composed of two Greek words, *steyw*, *roow*, which mean one who can fathom the mysteries of mankind.

because regarding him is written *bakhol*; Isaac—because regarding him is written *mikhol*; and Jacob—regarding whom is written *khol*. The same three overruled the evil spirit, as the words just mentioned are written regarding them.

The rabbis taught: There are six whom the Angel of Death has not dominated: the former three, and Moses, Aaron, and Miriam—the three former, because of the words mentioned; and the three latter, because it is written [Num. xxxiii. 38]: "By the order of the Lord," etc. There are seven whom the worms have not devoured: the former six, and Benjamin ben Jacob; according to others, also David—the former six, because of the reasons stated above; and Benjamin, because it is written [Deut. xxxiii. 12]: "The beloved of the Lord (is he), he shall dwell in safety," etc. There are four who died without sin, but because it was so decreed at the time when the serpent made Eve eat the fruit of the tree of wisdom; viz., Benjamin b. Jacob, Amram father of Moses, Jesse father of David, and Khilab b. David—to all of them traditionally, except Jesse the father of David, which is also deduced from the verse.*

* This also is deduced from different verses in the Scripture, in a very complicated way which would be of no interest to the English reader, and has therefore been omitted.

CHAPTER II.

RULES AND REGULATIONS CONCERNING SPACE TO BE LEFT BETWEEN ONE'S PROPERTY AND ANOTHER'S, BE IT OF ONE OR TWO KINDS. UNDER WHAT CONDITIONS A TENANT MAY PLACE AN OVEN IN HIS DWELLING. UNDER WHAT CIRCUMSTANCES A SHOP IN A YARD MAY BE PREVENTED. CONCERNING THE SPACE TO BE LEFT BETWEEN A CITY AND PIGEON-COOPS, TREES, BARNs, CEMETERIES, AND TANNERIES.

MISHNA I. : One must not dig a well near that of his neighbor, nor a channel, cave, aqueduct, or basin for washing, unless it be removed to a distance of at least three spans from that of his neighbor, and plastered with lime. Olive or poppy waste, dung, salt, lime, and flint-stones must also be removed to a distance of three spans, and must be covered with lime. To the same distance, seeds, ploughing, and urine must be removed from the wall; a handmill to a distance of three spans from the lower millstone, which is four from the upper millstone; and an oven three spans from the foundation, which is four spans from the upper rim.

GEMARA: The Mishna begins with a well and ends with a wall? Said Abayi, according to others, R. Jehudah: By the term "wall" is meant the wall of the well. But then it could teach: "Unless he removes it from the well," and it would be self-evident that the meaning is "from the wall of the well"? The Mishna comes to teach us by the way that a wall of a well must measure no less than three spans, in cases of selling and buying, as we have learned in the following Boraitha: "If one says, 'I am selling you the well with its walls,' the walls must measure three spans."

It was taught: If one comes to dig a well at the boundary of his neighbor's vacant plot, has he to remove it to the distance mentioned in the Mishna, or not? According to Abayi he has not, and according to Rabha he has. They differ with regard to a plot prepared for works only; but if it is not prepared for this, they both agree that he may dig at the boundary. And

even if it was according to Abayi, he is not obliged to remove the well to any distance. Even in accordance with the theory of the rabbis, who state farther on that if one comes to plant a tree near the well of his neighbor, he must do so at a distance of twenty-five ells, it is because the well was already in existence there at the time he comes to plant; but here the well does not as yet exist. And according to Rabha he must maintain the distance. Even in accordance with the theory of R. Jose, who says, farther on, that each of the neighbors has a right to do what he pleases on his own property, etc., it is because, when he begins to plant, roots which can injure the well do not as yet exist. But here the owner of the plot which is prepared for wells may claim: "Each time you use the spade at my boundary, you weaken my estate."

An objection was raised from our Mishna: One must not dig a well near that of his neighbor, from which it is to be inferred—near the already existing well; but if not, he may. And this contradicts Rabha's theory? He may answer: Was it not taught, in addition to this, that it means from the wall of the well?

Another objection from the latter part of our Mishna was raised, which enumerates all the things that are to be removed from the wall, from which it is to be understood that it speaks of an existing wall, but not if it is not yet in existence. And the answer was: This can also be explained that the Mishna comes to teach us that all the things which it enumerates are injurious to the wall.

Come and hear the following: A tree must be removed from a well to a distance of twenty-five ells. Does it not mean from an existing well? Here also it may be explained to mean that at a distance of less than twenty-five ells the roots are injurious to the well. But the same is the case if the well did not as yet exist. If so, then how should the latter part, which states that if the tree is already in existence one has not to cut it down, be understood? For if one must not plant a tree near a plot, even when it is only prepared for walls, how can such a case be found? As R. Papa explained elsewhere, it speaks of a case where one buys such. So it can also be explained here to mean: In case one bought such a tree, he has not to remove it.

Come and hear the following: One must remove a pond for steeping flax from herbs, garlic from onions, and mustard from

bees. Is it also not to be understood to mean already existing herbs? Here also it can be explained, even when it is only prepared for them, and it comes to teach that the things mentioned harm one another. But if so, how should the latter part: "R. Jose allows mustard. . . . Because the bees consume the blossoms of my mustard," be understood? As if one must remove the bees even from a place which is only prepared for mustard, how can such a case be found? Said R. Papa: "It means, when one buys such." But if so, then what is the reason of the rabbis' decision; and also according to R. Jose, why only with mustard? Should it not also be the same in the above case of herbs and flax? Said Rabbina: The rabbis hold that the injurer has to remove himself from the things which can be injured by him; *e.g.*, if the roots of a tree are injurious to a well, the tree must be removed, and not the well. (Says the Gemara:) From Rabbina's statement it is to be inferred that R. Jose holds that the injured one has to remove himself—then why only in the case of mustard? The same ought to be the case with the herbs. If there is a pond for steeping flax, the herbs should be removed, and not the pond? Therefore we must say that R. Jose is also of the opinion that the injurer must remove himself, and the reason of the herbs in question is because the pond does harm to the herbs, and not the herbs to the pond; but bees and mustard injure each other. And thus said R. Jose to the rabbis: The case of the herbs and pond is correct, because the pond injures the herbs, and not *vice versa*. But why should the same be in the case of bees and mustard, which injure each other? The rabbis, however, are of the opinion that bees do not harm mustard; for if they try to consume the mustard within the sown seeds, they cannot grasp them, by reason of their extremely small size. And if they do harm the leaves, it would not matter, for others will grow. But how can it be said that R. Jose holds that the injurer must remove himself—does not the following Mishna state: R. Jose said: Although the well was in existence before the tree was planted, the latter has not to be cut down, etc.? Therefore we must say that R. Jose holds that the injured one has to remove himself. And he said to the rabbi thus: My theory is, that the injured one must remove; but even in accordance with your theory, that the injurer must remove, your decision is correct in the case of the herbs in question, as the pond harms the herbs, etc. But why should it be the same in the case of mustard and

bees, which do harm each other? To which the rabbis answered as stated above. The mustard, however, harms the bees on account of its pungency.

"*Nor a basin for washing,*" etc. Said R. Na'hman in the name of Rabba b. Abuhu: The case is when it is a basin for soaking clothes (they used to soak clothes for several days in canine dung); but if it is a basin for washing, it is to be removed four ells (because of splashing while washing). And so also we have learned in the following Boraitha: "A basin for washing—four ells." But in our Mishna it is stated "three spans." Hence it must be explained that the Boraitha treats of a basin for washing, and is in accordance with R. Na'hman.

R. Hyya b. R. Iyya taught in our Mishna plainly: Provided there is a space of three spans from the edge of the soaking pond to the wall.

"*And plastered with lime.*" The schoolmen propounded a question: Does the Mishna state, "and plastered with lime" (which means that this must also be done), or, perhaps, "*or plastered with lime*" (which means that one of the two requirements suffices)? It certainly teaches "*and plastered with lime*"; for if it read *or*, then all parts of the Mishna would be taught together, as there is no difference between them. But perhaps it teaches separately, because the injurious effect is not the same in both cases: in the one case it is wetting from the well, while in the other it is the heat from the olive waste? Come and hear the following Tosephtha: R. Jehudah said: "If a flint-stone is placed by a human being between the properties of two persons, each of them may dig a well on his property at a distance of three spans from the flint-stone, provided the walls of the well be plastered with lime." We see, then, that only when that from which the earth becomes weak is placed there by a human being the lime is needed; but if it is there naturally, no lime is needed? Nay; the same is the case even when it is there naturally; and the expression "placed" is necessary, lest one say that in such a case the prescribed amount of space is not sufficient. Therefore he comes to teach us that it does not matter.

"*Olive or poppy waste,*" etc. There is a Mishna [Sabbath, p. 86]: "It must not be deposited . . . and also not in lime or in sand," etc. Why, then, here is sand not mentioned and a flint-stone is, while there the reverse is taught? Said R. Joseph: Because it is not customary to deposit victuals in flint-

stones. Said Abayi to him: "Is it, then, customary to so deposit in wool-flocks, and, nevertheless, it is mentioned there? Therefore," said Abayi, "the Mishnayoth rely upon each other." (*I.e.*, our Mishna relies upon the cited one in the case of sand, while the latter Mishna relies upon ours in the case of flint-stones, as the same is the case with both.) Said Rabha to him: "If such were the case, then the other things would not be repeated in both Mishnas; but some of them would be mentioned in one Mishna, and others in the other. Therefore," said Rabha, "the reason why a flint-stone is not mentioned in the cited Mishna is because a pot with victuals cannot be deposited there, as the flint-stone would break it. And the reason why sand is not mentioned here is because the nature of sand is such that it is warmed up by a hot thing, but it is cooled by a cold thing." (Hence, here, it must not be removed.) But did not R. Oshia teach us in his Boraitha that sand must also be removed? R. Oshia numbers it among the things which are injured by wetting. Let, then, the Tana of our Mishna also add this to the category of things that injure by wetting? Wetting is already dealt with in the case of the channel mentioned therein. But does not the Mishna state, "a basin for washing," which is also in the same category, although a channel has already been mentioned? Both must be mentioned, because one could not be inferred from the other, for the following reasons: If a channel only were mentioned, one might say because it is stationary—but for a basin for washing, which is not stationary, the space in question is not needed. On the other hand, if it mentioned only a basin for washing, one might say: "Because of the wetting by stagnant water which has been used for washing is injurious, but a channel does not matter." Therefore both had to be mentioned.

"*Seeds, ploughing,*" etc. Why is it necessary for both to be mentioned? If seeds must be removed, is it not self-evident that ploughing for the purpose of sowing is also meant? It means even when the seeds were sown in an unploughed field where they are not so deep. And would not ploughing be understood from seeds; as what is a field ploughed for, if not for sowing? It means even when it was ploughed for the improvement of trees. But why all this? It has already mentioned the things that injure by wetting; and as a field that has been ploughed or in which seeds have been sown needs wetting, it is self-evident that it must be removed? The Tana speaks

of Palestine, concerning which it is written [Deut. xi. 11]: “. . . from the rain of heaven doth it drink water.” Shall we then assume that the Tana holds that the rootlets proceeding from the planted seeds extend laterally so that unless the distance be at least three spans the wall may be injured? Have we not learned [Kilaim, VII. 1] that when one plants vines, he cannot sow seeds over them, unless there be a layer of earth at least three spans in depth over the vines; and a Boraitha in addition to this taught that he might sow on the sides of the plot where the vines are planted (even if not three spans deep; hence we see that the rootlets proceed from seeds downwards, and not laterally, for in the latter case it would be forbidden to sow the seeds even on the sides)? Said R. Haga in the name of R. Jose: The seeds are mentioned, not because the rootlets proceed laterally, but because they render the ground wherein they are sown friable, thus weakening the support to the wall of the well if placed too near it.

“*And urine.*” Said Rabba b. b. Hana: One is allowed to void his urine near the wall of his neighbor; as it is written [I Kings, xxi. 21]: “*Mashtin C'kir.*” But does not our Mishna state that urine must be removed to a distance of three spans? The Mishna means urine which has been collected in a urinal. Come and hear another objection from the following Tosephtha: “One must not void his urine against the wall of his neighbor, unless it be at a distance of three spans.” This is said concerning a brick wall, but in the case of one made of stones, a distance of one span is sufficient to prevent harm by softening the ground under the wall. And if the wall is built upon a rock, then it does not matter at all. Hence it contradicts Rabba b. b. Hana? This objection remains. But does he not cite a verse? The verse means even such a creature as habitually voids its urine upon a wall—namely, a dog.

“*A handmill,*” etc. Why so? Because it makes the ground vibrate. But have we not learned in a Boraitha that a horse-mill must be removed to a distance of three spans from the circumference, which is four spans from the funnel; and such a mill does not make the ground vibrate? Therefore it must be said that the reason of our Mishna is not the vibration of the ground, but the noise produced by the mill.

“*And also an oven,*” etc. Said Abayi: From this it is to be inferred that the foundation should be wider than the upper rim by one span. And this regulation relates to buying and selling;

for if its foundation did not contain a span more, the buyer may recede.

MISHNA II. : One must not place an oven in a lower story of a house, unless there be an empty space of four ells above it. If the oven is placed in an upper chamber, there must be at least three spans of stone-flooring under it; under a cooking stove only one span of stone-flooring is required. Yet when damage is caused, it must be repaired. R. Simeon, however, says: All these measurements are ordained so that, when they are complied with and damage is caused, one is not held responsible for it.

One must not establish a bakery or a dyer's shop under another's granary; and also not a stable. In reality, it was said that a bakery may be established under a wine store; but, at all events, not a stable.

GEMARA: But have we not learned in a Boraitha that an oven requires four spans, and a stove three? Said Abayi: That Boraitha speaks of bakers' ovens and stoves, and the oven mentioned in our Mishna is that of a private man, and similar to a baker's stove.

"*One must not establish a bakery,*" etc. A Boraitha states that if the stable has been established before the granary over it, it may remain.

"*In reality, it was said,*" etc. There is a Boraitha: It was allowed under a wine store, because it improves the wine; but not a stable, because it imparts a bad odor to the wine. Said R. Joseph: Our wine is harmed even by the smoke of a candle. Said R. Shesheth: A haystack is likened unto a stable (because when the hay is damp it becomes warm and emits an odor which harms the wine).

MISHNA III. : Partners in a yard can prevent one from establishing a store there, claiming that they cannot sleep on account of the noise produced by the people's coming and going. He, however, who makes utensils, which he sells in the market, cannot be prevented by the partners, with the claim that the noise of the hammer disturbs their sleep. The same is the case if one of them has a handmill, or if he is a teacher of children, as the claim that they cannot sleep on account of the noise is not to be considered.

GEMARA: Why, in the first part, is the claim of the noise from the people's coming and going considered, while in the latter part the noise of strange children is not considered? Said

Abayi: The latter part speaks of an instructor of children residing in an adjoining yard. Said Rabha to him: "If it were so, then the Mishna would state that in an adjoining yard it is permitted. Therefore," said he, "the latter part of the Mishna speaks of a school for children's education, and was stated after the enactment of Joshua b. Gamla. So R. Jehudah said in the name of Rabh: May the memory of Joshua b. Gamla be blessed, for, were it not for him, Israel would have forgotten the Torah, as in former times the child who had a father was instructed by him; but the one that had not, did not learn at all. The reason is that they used to explain the verse [Deut. xi. 19]: "And ye shall teach them to your children," etc., literally—*ye* personally. It was therefore enacted that a school for the education of children in Jerusalem should be established, on the basis of the following verse [Is. ii. 3]: ". . . for out of Zion shall go forth the law, and the word of the Lord out of Jerusalem." And still the child who had a father was brought to Jerusalem and instructed; but the one who had not, remained ignorant. It was therefore enacted that such school should be established in the capitals of each province; but the children were brought when they were about sixteen or seventeen years of age, and when the lads were rebuked by their masters, they turned their faces and ran away. Then came Joshua b. Gamla, who enacted that schools should be established in all provinces and small towns, and that the children be sent to school at the age of six or seven years (and after this enactment it was also enacted that the claim of the noise of school-children should not be considered).

Rabh said to the schoolmaster R. Samuel b. Shilath: If the child is under six years of age, do not accept him; but above that age, accept him and feed him (with knowledge) as you feed an ox. The same said again to him: When you must beat a child, do so with a shoe-strap only; if this produces the desired effect, then well and good; if not, leave him in the company of his comrades, whose steady progress he will see, and this will improve him. An objection was raised from the following: If one of the tenants of a yard wishes to establish an office for circumcision, a barber shop, a tannery, or a school for children, the other tenants may prevent him? It speaks of children of idolaters. But there is another Boraitha which states that if there are only two tenants, and one of them wishes to make one of the above-named establishments, the other one

may prevent him? This Boraitha also speaks of children of idolaters. Come and hear another Boraitha: He who has a house in a yard belonging to partners, must not rent this house for one of the above-named establishments; nor to a Jewish or a Gentile schoolmaster. This Boraitha speaks of the head schoolmaster of the entire city (who has all the subordinate schoolmasters under his control, and instructs them how to teach, which produces a great deal of noise).

Rabha said: Since the enactment of Joshua b. Gamla we do not transfer a child from the school of one city to that of another; but from one congregation to another we do. However, if there is a river between them, we do not, unless there is a bridge over it; but if there is only a dock, we do not. He said again: The number of children in a school must not exceed twenty-five, if there is one teacher; if the number is between twenty-five and forty, an assistant must be provided for him by the city; and if there are fifty, two teachers must be appointed. He said again: If there is one teacher who can perform his duties well enough, but there is another one who is still better, the former must not be discharged, lest his successor become too certain of retaining the position and will not attend to his work properly. R. Dimi of Nahardea, however, said: On the contrary, he will be even more diligent, as the jealousy of scholars increases wisdom. Rabha said again: If there are two teachers, one of whom is a good expounder, but is not particular about the exact pronunciation of the words in the Scriptures, while the other is particular in the latter respect but is not so good an expounder, the former should be appointed, as the errors will be corrected by themselves. R. Dimi of Nahardea, however, said: On the contrary, an error impressed upon the mind of a child remains there forever (therefore the latter should be given the preference), as it is written [I Kings, xi. 16]: "For six months did Joab remain there with Israel, until he had cut off every male in Edom." When he came before David, and was asked why he had done so, he said: Because it is thus written [Deut. xxv. 19]: ". . . thou shalt blot out each *sochor* (male) of Amalek." Said David to him: But we read *soicher* (remembrance, meaning both—males and females)! And Joab answered: "My master instructed me to pronounce *sochor*."* He then went to his master, and questioned him

*The Scriptures were then written without vowels, these being added at a later time.

how to pronounce this word, and he answered *sochor*. So he took out his sword, and wanted to kill him. And to the question of the master, "Why?" he answered: Because it is written [Jer. xlviii. 10]: "Cursed be he that doeth the work of the Lord negligently." And his master rejoined: "Let, then, this man (myself) remain in this course," and he answered him, quoting the end of the verse: "And cursed be he that withholdeth his sword from blood." Some say that he slew him, and others say that he did not. Rabha said again: An instructor of children, a planter, a butcher, a barber, and a scribe of the city are to be considered as if they were already warned (*i.e.*, if they neglect their duties they may be discharged without previous notice); as the general rule regarding this is: All irreparable damage done by a specialist, who is appointed as such, is to be considered as if he were previously warned. (An instructor of children who has spoiled a child cannot repair this harm; and the same is the case with a planter who has spoiled the trees; a butcher who, through his neglect, has made the meat illegal for use; a barber who has killed a man by performing venesection; and a scribe who has written the Holy Scrolls fallaciously.)

R. Huna said: If one of the inhabitants of an alley establishes a handmill there, and another one comes to do the same, the law gives the former the right to prevent the latter; for he may claim: "You are cutting off my livelihood." He is supported by the following: Fishermen must remove their nets from a fish which has already been marked by one of them while it was trying to escape from him to a distance that a fish is usually able to traverse. And to the question, How far is it? Rabba b. R. Huna said: "The distance of a *parsa*"? Nay, with fish the case is different, as they place spies (to look out for bait, and the former fisherman is certain that the fish will go to his bait and then he will surely catch it; but here his comrade may say to him: "I am not injuring your livelihood, as your customers will go to you and mine to me").

Said Rabhina to Rabha: Shall we assume that R. Huna is in accordance with R. Jehudah, who said (Middle Gate, p. 143) that a storekeeper must not furnish little children with presents of nuts, etc., for the purpose that they may call again—and the sages allowed this? Nay, it may be said that R. Huna's theory is in accordance with that of the rabbis also, as there they allow this for the reason that the storekeeper may say, "I bestow

nuts, you may give plums"; but here the claim, "You are cutting off my livelihood," is a right one, even in accordance with the rabbis.

An objection was raised. One may establish a store or a bath-house near or opposite to that of his neighbor, and the latter cannot prevent him from doing so, for he may say: "You can do business in your establishment, and I will do business in mine." (Hence this contradicts R. Huna's theory?) On this point Tanaim of the following Boraitha differ: "The inhabitants of an alley may combine to prevent one from another alley from opening a tailor shop, tannery, children's school, or any other specialist's establishment; but they cannot do so against an inhabitant of their own alley. R. Simeon b. Gamaliel, however, maintains that the majority can prevent an inhabitant even of their own alley."

R. Huna b. R. Joshua said: "It is certain to me that the inhabitants of one city have a right to prevent one of another city from competing with them, provided he does not pay the duties of the city. It is also certain to me that an inhabitant of an alley cannot prevent another inhabitant of the same alley; but I doubt whether an inhabitant of one alley can prevent one of another alley." And this question remains undecided.

Said R. Joseph: R. Huna, who prohibits competition in any specialty, admits that concerning instructors of children no competition is to be considered; as the master said that the jealousy of scholars increases wisdom. Said R. Na'hman b. Itz'hak: R. Huna also admits that no competition is to be considered in the case of peddlers in large cities, as the master said that Ezra has enacted for Israel that peddlers shall travel in the large cities, for the purpose that the daughters of Israel might easily procure their ornaments. This is only concerning travelling dealers; but the establishment of a stationary place may be prevented. And if the peddler is a young scholar for whom it is a humiliation to travel, he may be permitted to establish a stationary place; as Rabha permitted R. Yashia and R. Obadiah to establish a place of business against the then existing law of that city, saying that because they were scholars they would be hindered in their study by travelling.

There were three basket dealers who brought baskets to Babylon, and the inhabitants of the city prevented them. So they came before Rabhina, who said: They come from the country, and may sell their goods to countrymen who come

here on the market day; but only on that day, and in the market only, but may not traffic with their goods in private houses of the city.

There were wool dealers who brought wool to the city of Pumnahara, and the inhabitants there prevented them. They came before R. Kahana, who said to them: "They have a right to do so." They, however, claimed that they had to collect their debts, which must take time, and they had nothing to live on if they should be prevented from selling their goods; and he allowed them to sell as much as they needed for a livelihood only, while they were there, but not more.

R. Dimi of Nahardea brought dry figs in a boat. Said the Exilarch to Rabha: Go and see whether he is a scholar; then you may hold the market for him. And Rabha sent R. Ada b. Abba to examine him. He questioned him about something of the Law, which he could not answer. So R. Dimi said to him: Is the master Rabha? He tapped him good-naturedly on the sandal, and answered: "From myself to Rabha there is a great difference; but, nevertheless, I am your master, while Rabha is the master of your master." In consequence of this, the market was not held for him; and R. Dimi lost on his dry figs, and came to complain before R. Joseph, saying: See, master, what was done to me! And he answered: The One who neglected not to take revenge for the shame of the king of Edom, shall not neglect to revenge your shame. (The shame of Edom, as it is written [Amos, ii. 1]: ". . . because he burned the bones of the king of Edom into lime.") Consequently R. Ada's soul has gone to its rest. Then R. Joseph said: *I* have punished him, for *I* have cursed him. R. Dimi said: *I* have punished him, for he had caused my loss on the dry figs. Abayi said: *I* have punished him, for he used to say to the rabbis: While ye are licking bones in the college of Abayi, would it not be better for you to eat fat meat in the college of Rabha? And Rabha said: *I* have punished him, for, when he used to go for meat, he used to say to the butcher: You must give me meat before you give it to the servant of Rabha, as I am better than he. R. Na'hman b. Itz'hak said: *I* have punished him. For R. Na'hman b. Itz'hak was the head of the preachers in the days before festivals; and every day, before preaching, he reviewed his sermon together with R. Ada b. Abba. On that day, however, on which R. Ada b. Abba died, R. Papa and R. Huna b. R. Joshua detained him, so that he should explain to them what Rabha

lectured on the last Sabbath concerning cattle tithe, and he repeated for them all that Rabha said. Meanwhile the time for R. Na'hman's preaching arrived, and R. Ada did not call him. Said the rabbis to R. Na'hman: Why does the master sit? It is already dawning, and you have to go to preach. And he answered: I am sitting and waiting for the coffin of R. Ada. And, indeed, R. Ada's death was soon announced. It seems, therefore, that R. Na'hman had punished him.

MISHNA *IV.*: If one's wall is attached to that of his neighbor, he must not build a wall parallel to it unless he leaves an interval of four ells. One must also not build a wall opposite the windows of his neighbor, wherever they are to be found, unless it be at a distance of four ells.

GEMARA: But the Mishna declares that his wall was already attached to that of his neighbor. Who gave him the right to do so? Said R. Jehudah: It means that if one wished to do so he must not, unless he left the above-mentioned space. Rabha opposed: "But the Mishna states that it was already attached?" Therefore he said that the Mishna meant to say thus: If there was already a wall at a distance of four ells from that of his neighbor, and it fell, he must not build another one unless at the same distance, as the treading upon the earth between the two walls is useful for the strength of their foundations.* Rabh said: "The Mishna treats only about a wall of a garden (because, as inside there is no treading upon the earth near the wall, it needs the treading outside); but concerning a wall of a yard, it does not matter. R. Oshia, however, maintains that the same is the case with a wall of a yard also. Said R. Jose b. Hanina: And they do not differ; as the former speaks of an old town (where the ground is already trodden), while the latter speaks of a new town.

Our Mishna states that, for windows, wherever they may be placed, a space of four ells is needed; to which a Boraitha adds: "If a window is placed at the top, the wall in question must reach such a height that when the owner stands upon it and stoops, he should be unable to see anything by looking in at the window. And if a window is placed at the bottom—to such a height that he could not see when standing upon it. And if the window be opposite the wall, he must leave such a space as would not darken the window." We see, then, that the reason of the

* This explanation of Rabha does not very well justify his own opposition, and it is, indeed, objected to by Tothpath, without any answer following it.

regulation concerning a parallel wall is the darkening, but not the treading mentioned above? The Boraitha speaks of a side-wall. How much space, however, must one leave, in order that the window will not be darkened? Said R. Jyobha, the father-in-law of Ashian b. Nadbach, in the name of Rabh: As much as the width of the window. But from such a height one can still look in at the window? Said R. Zebid: He speaks of a wall with a gable-top. But does not the Mishna state four ells? This presents no difficulty. The Boraitha speaks of one side-wall to which the space of the width of a window suffices; and our Mishna speaks of two side-walls; then four ells are needed, so that the window be not darkened. Come and hear: One must leave a space of four ells near the drains of his neighbor's roof, so that the latter may be able to place a ladder there. (It speaks, in case the owner of the house is allowed to direct his drains to the neighbor's yard; and, while he allows him this, he must also allow him a space for a ladder.) We see again that the purpose of leaving the space is for placing a ladder, and not for treading upon the earth? It speaks of a slanting roof overhanging the neighbor's yard, with the drains placed at the edge, which does not prevent the treading in the yard under it; and, therefore, there could be no reason but the latter.

MISHNA *V.*: One must remove the ladder in his yard from his neighbor's pigeon-coop to the distance of four ells, that a weasel should be unable to jump from it to the latter; and also his wall from his neighbor's roof-drains to a distance of four ells, to enable his neighbor to place a ladder there.

GEMARA: Shall we assume that our Mishna is not in accordance with R. Jose, who says farther on that everybody may do on his property what he pleases? This Mishna can also be in accordance with him, as R. Ashi said: When I was at the house of R. Kahana, he said that R. Jose admitted that one is responsible for any damage done to his neighbor by his arrows (*e.g.*, if he places a ladder so that it would be easy for a weasel to jump from it to the pigeon-coop). But, after all, this is not direct damage, but *germon*? (See First Gate, p. 125.) Said R. Tubi b. Mathna: We infer, then, from this, that to cause damage by *germon* is forbidden (*i.e.*, indirect damage).

R. Joseph had in his yard small date-trees, under which barbers used to perform venesection; and ravens, while coming to consume the blood, caused harm to the dates; and R. Joseph commanded: "Remove the *cur-cur* from my property!" (*i.e.*,

that the barbers should not be allowed any more to do their work there, and then the ravens would not come for the blood). And to Abayi's question: Are not the barbers a *germon*? he answered with the declaration of R. Tubi b. Mathna just quoted. But had not the barbers already made there a *hasakah*? To this R. Na'hman in the name of Rabba b. Abuhu said: There is no *hasakah* concerning damages. But was it not taught that, regarding this, R. Mari said: "As, for instance, smoke, which injures the eyes," and R. Zebid said: "As, for instance a toilet, which is disgusting to the sight"? Said R. Joseph: To me, who am tender-hearted, the blood is as disgusting as the things just mentioned.

MISHNA VI.: A pigeon-coop must not be placed within fifty ells of the town: nor has one a right to make a pigeon-coop on his own property, unless his property extends to fifty ells on each side. R. Jehudah said: "He must have four k^urs on each side—the space which a dove can cover at one flight without resting." If, however, one has bought one, he is in his right even when there is only a quarter of a k^ur of space.

GEMARA: Are fifty ells sufficient for this? Have we not learned in a Boraitha that a net for doves must not be spread unless the locality be thirty *riss* distant (four miles) from an inhabited place? Said Abayi: "As far as flying goes, it is to a great distance; but with fifty ells it usually gets enough of food" (after which it flies thirty *riss*; hence beyond the fifty ells it does no harm to the gardens or vineyards). But does not a Boraitha state that in an inhabited place even within a hundred miles one must not spread a net? Said R. Joseph: This speaks of the case when there are vineyards, so that they fly from one vineyard to another, and so they can fly through a much greater distance. And Rabha said that it speaks of a case where there are many pigeon-coops. If it is so, why does the Boraitha state that one hundred miles from a city one must not do so, because he can catch doves from another pigeon-coop, even not in the city? It may be said that the pigeon-coops in question were his own, or they were ownerless.

"*He is in his right*," etc. Said R. Papa, and according to others R. Zebid: From this it is to be inferred that the court has to open the mouth of a buyer or of an heir to claim *hasakah*. (*I.e.*, if the plaintiff claims that the estate is his and brings evidence that such estate is his or his parents', and the defendant says, "I inherited it from my parents," or 'I bought it from so

and so, who has occupied it for so many years," and brings witnesses to his statement, but the witnesses cannot testify that he who occupied it before bought it or inherited it from some one, then the court must consider the defendant's claim; and by the expression "open the mouth," it is meant that the court may say to the defendant: Look for evidence that the one from whom you bought it or inherited it had it in his occupancy for so many years.) What news do they come to teach us? Does not a Boraitha state farther on that if the defendant claims inheritance it is not necessary for him to say when the bequeather bought it? It was necessary for them to teach that the same is the case when the defendant claims "I bought it." But this is also stated farther on [Chapter III., Mishna 10]? Their statement was nevertheless necessary, for the following reason: From the case in the quoted Mishna one might say that, because it speaks of a yard which was near the public thoroughfare, the claim is to be considered a right one; for if it were not as he says, the public would prevent him; or, at his request, the public have relinquished their right to that yard. But here, in a private case, it is different; and if this case only were stated, one might say that it is to be taken into consideration, as a private party usually settles the difference, or else he relinquishes his right; but there, in the case of the public, with whom can he settle, or who can relinquish? Therefore both cases were necessary to be stated.

Again—"he is in his right" (*hasakah*). But did not R. Na'hman in the name of Rabba b. Abuhu say that there is no *hasakah* in regard to damages? Said R. Mari in the name of Rabh: This is said only concerning smoke, as mentioned above.

MISHNA VII.: A little dove that is found within fifty ells of a pigeon-coop belongs to the owner of the latter; if outside of fifty ells, it belongs to the finder. If it is found between two pigeon-coops, it belongs to the nearer one; but if in the exact middle, it is to be divided.

GEMARA: Said R. Hanina: In a case which we should judge by a majority, it would be so; and if, according to proximity, it would be different, the decision by a majority must be taken into consideration; and although both majority and proximity are biblical, nevertheless majority has the preference.

R. Zera objected: It is written [Deut. xxi. 3]: "The city which is the nearest," etc. Does it not mean even if there are other cities which are more populous than the nearest one?

Nay; it means if they are not. But even then, why should not the majority of the *world* be considered? It means, if the city in question is situated among the mountains, where it is not usual for robbers to come from a distant place. But does not our Mishna state that a dove within fifty ells of the pigeon-coop belongs to it, even when there are others outside of the fifty ells which have more doves than the nearest one? Nay; it means when there are not. If it is so, how is the latter part, which states, "if outside of fifty ells, it belongs to the finder," to be understood? If there are no other pigeon-coops, it can only be from that one? It speaks of a pigeon which can hop only; and R. Uqba B. Hama said that a pigeon which hops cannot do so more than fifty ells. R. Jeremiah then questioned in the college: How is the law if one foot was within the fifty ells and the other without? And for this question he was driven out of the college.

Come and hear another objection from our Mishna, which states that if it is found between two pigeon-coops, it belongs to the nearer one. Does it not mean even when the farther one has more doves? Nay; it means when both have an equal number. But why, then, should the majority of the world not be considered? It speaks of a case when vineyards occupy the whole distance between the two pigeon-coops, and the pigeon is found on a walk within the vineyard; and then it cannot be supposed that it came from anywhere else, as it is known that a hopping dove does not go out of sight of her pigeon-coop. Hence she must be from one of these two in question; as, if she were from another one, she could not see it on account of the trees and partitions.

It was taught: A barrel of wine floating on a river, if found opposite a city of which the majority of the inhabitants are Jews, it may be used; if opposite a city of a majority of Gentiles, it must not be used. So said Rabh. Samuel, however, maintains that even when the majority are Jews it is also prohibited, lest perhaps it came from Dagra (a country near the river Euphrates, where there were no Jews). Shall we assume that their point of difference is the above statement of R. Hanina—that one is in accordance with him and the other is not? Nay; both agree with R. Hanina, and the point of their differing is thus: One maintains that if this were from Dagra, it would have sunk while floating in the bays formed by the projecting rocks along the coast from Tyre to Accho, and in the shallow waters

caused by melting snow; and the other maintains that because the stream in the river is strong, it could reach here.

A pitcher of wine was found in a vineyard of *arla* (the third year after planting); and Rabbina allowed to use it. Shall we assume that he did so because he holds with R. Hanina's theory? Nay; his reason was because if it were stolen from this vineyard they would not have hidden it in the same. This is only concerning wine (because the thief would not leave the wine lest the presser of the grapes should find it); as for grapes, however, they would not fear to leave them where they were stolen and take them away afterwards. There were some leather bags of wine which were found among the vines of a vineyard belonging to a Jew; and Rabha permitted their use. Shall we assume that he did so because he does not hold with R. Hanina's theory (as the majority of men are Gentiles, and not Jews)? Nay; his reason is that all the pressers and those that pour the wine into barrels are Jews. This law, however, applies only to large leather bags, but not to small ones, for fear that they were dropped by travellers, the majority of whom are Gentiles; and even if there were large ones with them, the law nevertheless applies, for fear that they were dropped by a traveller upon an ass, who had hung them on both sides of the ass.*

MISHNA VIII.: In planting a tree, a space of twenty-five ells must be left outside of the town; for a carob or a sycamore, fifty ells are needed. Aba Shaul said: "For a wild tree, fifty ells." If the city was built first, the tree might be cut down without paying for it; but if the tree was planted first, it is to be cut down and paid for; if doubtful as to which was there first, it is to be cut down without paying for it.

GEMARA: What is the reason of all this? Said Ulla: "Because of the beauty of the city." But why not because it is not allowed to make a field of the open space around the town, and *vice versa*? It means to say that even according to R. Elazar, who holds that this is allowed, here it is not to be tolerated, because it spoils the beauty of the city. And also according to the rabbis, who allow to plant trees in an open space belonging to the city, but not seeds; here, concerning a single tree they would not allow it, as it spoils the beauty of the city. And whence do you know that the rabbis make a difference between

* The term in the text is *abruri*, and Schönhack maintains that it originates from the Greek ἀβαρής, which means *without weight*, the first Hebrew *r* being interpolated.

seeds and trees in this respect? From a Boraitha [Erubhin, p. 57]: "If a wood-shed of more than two saahs . . . was used to sow grain . . . things must not be moved therein . . . If, however, trees were planted in the greater part of it, things may be carried therein." The Mishna states that if the tree was planted first, it must be cut down and paid for; but why should the owner of the tree not claim that it should be paid for, and then cut down? Said R. Kahana: Because a pot belonging to partners is neither warm nor cold (it means that one relies upon the other to warm it or to cool it, and it remains as it was); and here also, if he should wait until he got the money, each of the inhabitants would refer him for payment to the next one, and so the trees would remain indefinitely; therefore it is to be cut down, and the money should be collected through the court.

"*If there is a doubt,*" etc. Why is this case different from that of a tree and a well, concerning which, if there is a doubt as to which was there first, the tree must not be cut down? Because there, if it is certain that the tree was there first, it must not be cut down, the same being the case when there is a doubt; while in our case, even when it is certain that the tree was planted first, it must be cut down, the same being the case when there is a doubt. And concerning the payment for it the city may say: Bring evidence that your tree was planted first, and then you will get the money.

MISHNA IX.: A barn must not be placed within fifty ells of the town; the same is the case if one wishes to make a barn on his own property—he may do so, provided he has fifty ells of space on each side of it. One must also remove a barn from the plants and from the newly ploughed field of his neighbor (which must wait a year before sowing), to a distance sufficiently great to prevent any harm to the plants or the field.

GEMARA: Why, in the first part, is a space of fifty ells required, and in the second part a space only large enough to prevent harm. Said Abayi: The latter part of the Mishna speaks of a temporary barn, and not of a permanent one. What is called a temporary barn? Said R. Jose b. Hanina: If one does not winnow with the shovel. R. Ashi, however, maintains that there are no two parts in the Mishna at all, only the latter part is an explanation of the first, thus: Why must a permanent barn be removed from the city fifty ells? For the purpose that it shall not do any harm to the city. An objection was raised from the following: "A permanent barn must be removed fifty

ells from the town, and the same distance must be allowed to one's cucumbers, plants, and a ploughed field, to prevent damage." Now this is correct only according to R. Ashi's explanation; but it contradicts Abayi. The difficulty remains.

However, it is correct only concerning cucumbers, etc., as the dust of the barn settles upon their hearts and spoils them; but what harm can this do to a ploughed field? Said R. Aba b. Zabda, according to others b. Zutra: Because the dust of the barn increases the amount of manure in the field (and spoils the seeds).

MISHNA X.: Carcasses, cemeteries, and tanneries must be removed to a distance of fifty ells. A tannery must not be established except on the east side of the city; R. Aqiba, however, maintains that it may be established on every side except the west, and a space of fifty ells is to be left. One must also remove his pond for steeping flax from a neighbor's herbs; garlic from onions; and mustard from bees. But R. Jose allows mustard.

GEMARA: The schoolmen propounded a question: What does R. Aqiba mean? On each side he may establish without the space of fifty ells, excepting the west side, where the fifty ells are necessary; or does he mean that on each side he may establish, provided he leaves the space of fifty ells, except the west side, where he must not do so at all? Come and hear the following Boraitha: "R. Aqiba said: On each side one may establish a tannery, if he leaves a space of fifty ells, excepting the west side, where he must not do so at all because of its frequency." Said Rabha to R. Na'hman: "What does the expression frequency mean—does it mean frequent winds? Did not R. Hanan b. Aba say in the name of Rabh, that four winds are blowing every day and the *north* wind blows with them? Therefore the expression frequency means that the Shekhinah rests there frequently." As R. Joshua b. Levi said: "We must be grateful to our forefathers for having informed us of the place where we are to pray; as it is written [Neh. ix. 6]: 'And the host of the heavens bow down before thee.'" R. Aha b. Jacob opposed: "Perhaps it means, on the contrary, that they are praying at the east side, and then they step backwards, as a slave does usually before his master; and when they come to the west side, they bow." Hence the Shekhinah is in the east side. The objection remains.

R. Jose, however, holds that the Shekhinah occupies every

place, as he said: It is written [ibid., ibid.]: "Thou indeed art the Eternal One alone: it is thou that hast made the heavens," etc. Thy messengers are not as the messengers of human beings, who usually return from the place to which they were sent, to that whence they were sent, announcing that they have fulfilled their duty. Thy messengers, however, are doing the same in the very place to which they were sent; as it is written [Job, xxxviii. 35]: "Canst thou send out lightnings, that they may go, and say unto thee, 'Here are we'?" It does not read that they *come* and say "Here are we," but that they *go* and say it in the place to which they were sent: hence the Shekhinah occupies every place. And R. Ishmael also holds the same, inferring it from [Zech. ii. 7]: "And, behold, the angel that spoke with me went out, and another angel came out to meet him." It does not read *after* him (*achro*), but *against* him (*likron*): from which it is to be inferred that the Shekhinah is everywhere. And R. Shesheth also holds so, as he (who was blind) said to his servant: Raise and turn me for praying to any side of the world excepting the east; not because the Shekhinah is not resting there, but because the *minim* have decided that one must pray only towards the east side. R. Abuhu, however, maintains that the Shekhinah is resting in the west, as he said: Why is the west side called *Oriah*? Because it is filled with the air of God.*

R. Jehudah said: It is written [Deut. xxxii. 2]: "My doctrine shall drop as the rain"; which means the west wind, which comes from the neck of the world; † "my speech shall distil as the dew," which means the north wind, which makes gold cheap (because it brings hunger, and that renders gold cheap), as it is written [Is. xlvi. 6]; ‡ "as heavy rains upon the grass," means an east wind that makes storms in the world; § "and as showers upon herbs," means a south wind, which brings beneficent rain and causes growth of grasses.

There is a Boraitha: R. Elazar said: The world is like a balcony without the fourth wall; and when the sun arrives in the

* Rashi says he has heard that in the Persian language *Oriah* means west; he himself, however, maintains that, on the contrary, *Oriah* (orient) means east. And it is so called because the Shekhinah rests on the west side, facing east. Hence the east side is His air; *avir*, which contains the first four letters of *Oriah*, in Hebrew means *air*.

† The word in Hebrew is *yaarof*; and *okraf* means *neck*.

‡ The term in Hebrew is *sol* in both passages—literally, *cheap*. The translation certainly differs in both, according to the sense.

§ The term is *sair*, which means also *storm*.

evening at the northwest corner, it is diverted by this wind and ascends above the sky. And R. Joshua said: The world is like a tent which is fenced on all sides, and when the sun arrives in the evening at the northwest corner, it turns around and returns beyond the sky; as it is written [Eccl. i. 6]: "Going toward the south, and turning round toward the north, the wind moveth round about continually; and around its circles doth the wind return again." "Going toward the south"—during the day; "and turning round toward the north"—during the night; "moveth round about"—means facing east and west, so that sometimes, when the days are long, it goes through them, and when the days are short, it goes around them. R. Elazar used to say [Job, xxxvii. 9]: "Out of his chamber cometh the whirlwind," which means the south wind; "and out of the north, the cold," which means the north wind. "From the breathing of God ice is given"—means the west wind; "and the broad waters become solid"—means the east wind.—But did not the master say that the south wind brings beneficent rain, etc.? This presents no difficulty: If the rain comes slowly, it makes the grass grow; but if it comes down in torrents, it does harm.

R. Hisda said: It is written [ibid., ibid. 22]: "The golden light that cometh out of the north"—it means the north wind, which makes gold cheap, as it is written in Isaiah, verse cited above.

Raphram b. Papa in the name of R. Hisda said: "Since the Temple was destroyed, the south wind has never brought rain, as it is written [Is. ix. 9]: 'And he snatcheth on the right hand,* and is yet hungry; and he eateth on the left hand, and is not yet satisfied; they shall eat every man the flesh of his own arm.' It is written also [Ps. lxxxix. 13]: 'The north and the south—these hast thou created,' etc." The same said again in the name of the same authority: "Since the Temple was destroyed, the rains do not come from the good treasure; as it is written [Deut. xxviii. 12]: 'The Lord will open unto thee his good treasure, the heaven, to give the rain of thy land,' etc. From which it is to be seen that when Israel did the will of the Omnipotent, and Israel was in his own land, the rain came from the good treasure; and now that Israel is no more in his own land, the rain does not come from the good treasure."

R. Itz'hak said: He who desires to increase his wisdom shall

* The expression for *right hand* is *yomin*, and in the Psalms the expression for *south* is also *yomin*; hence the analogy.

recite his prayers towards the south; and he who desires to become rich shall do so towards the north; and as a mark in aid to remembering this direction, may be taken the fact that in the tabernacle the golden table was placed on the north, and the candelabrum, which gives light (wisdom)—on the south. And R. Joshua b. Levi said: One shall always recite his prayers towards the south, as when his wisdom shall increase, he shall also become richer; as it is written [Prov. iii. 16]: "Length of days is in her right hand: in her left are riches and honor." But did not R. Joshua b. Levi say that the Shekhinah is in the west? He does not mean that he should stand in the south exactly, but that he should stand in the west (southwest corner) and incline himself towards the south.

Said R. Hanina to R. Ashi: Ye who are located on the north side of Palestine must recite your prayers towards the south (so that you shall face Jerusalem). And whence do we know that Babylon was situated north of Palestine? From [Jer. i. 14]: "Out of the north shall the evil break forth," etc.

"*A pond for steeping flax*," etc. There is a Boraitha: "R. Jose allows mustard; as the owner of it may claim: 'Instead of telling me that I should remove my mustard from your bees, it is for you to remove your bees from my mustard, for they come and consume its blossoms.'"

MISHNA XI.: From a well a distance of twenty-five ells must be left when planting a tree; and fifty ells when planting sycamores or carobs. It makes no difference whether it be above or alongside. If the well has been there first, the tree must be cut down and paid for; but if the tree has been there first, it may remain. The same is the case when there is a doubt. R. Jose, however, maintains that even when the well was there before the tree there is no necessity for cutting down the latter, as one digs on his property while another plants on his own.

GEMARA: There is a Boraitha: "It makes no difference whether the well be below the tree or *vice versa*?" This would be correct when the tree is above the well, as its roots injure it; but if the well be above the tree, what harm can be done? Said R. Haga in the name of R. Jose: Because the roots render the earth friable, and thus harm the bottom of the well.

"*R. Jose, however, maintains*," etc. Said R. Jehudah in the name of Samuel: The Halakha prevails in accordance with R. Jose. And R. Ashi said: When I was with R. Kahana, we came to the conclusion that R. Jose admits that when one's arrows do

damage, etc. (see above, p. 68). Papi di Unaha, who was poor and afterwards became rich, built a palace. In the neighborhood were established poppy presses; and when they were in operation the palace used to shake. He came to complain before R. Ashi, who told him what R. Kahana said to him. But how much should the palace shake to make the presses responsible? When a pitcher is on the roof of the palace and its cover shakes.

The disciples of Bar Marian b. Rabbin used to card flax, and the dust of it harmed the men that passed by; and they came to complain before Rabhina, who said to them: That which was said, that R. Jose admits that one should be made responsible for the damage caused by his arrows, was said only when they come from him directly; here, however, as the dust does not come directly, but is blown by the wind, there is no responsibility. Mar b. R. Ashi opposed: Why should it be different in the case of winnowing, when the wind assists one, concerning which it is said, in the First Gate, that he is responsible? When this was said before Miramar he decided that Mar was right in his supposition, and Marian's disciples were responsible. But to Rabhina: Why should this case be different from that of a spark that proceeds from under the hammer and does damage, in which case he is responsible? "There one is pleased that the sparks should escape outside and not inside—where they may cause harm; but in our case they are not pleased at all that the dust should escape where men pass."

MISHNA *XII*: One must not plant a tree near to his neighbor's field, unless it be at a distance of four ells; and it makes no difference whether it be vines or other trees. If, however, there is a fence between the two estates, each of them may plant on his side of the fence. If the roots spread to the estate of one's neighbor, the latter may replace them three spans deeper, so that they shall not hinder in ploughing. If he has to dig a pit or a cave, he may cut off the roots which prevent him from doing so, and the fuel is his.

GEMARA: There is a Boraitha: "The four ells in question are for the purpose that the owner of the vineyard should be able to work it up." Said Samuel: "This is said only concerning Palestine, where they have long ploughs; but in Babylon, where the ploughs are short, two ells suffice." And the same is stated in the following Boraitha: "One must not plant a tree near his neighbor's field, unless he leaves a space of two ells."

And as this contradicts our Mishna, which states four ells, it must be explained that the Boraitha speaks of Babylon, and is in accordance with Samuel's theory. Infer from this that so it is.

Rabha b. R. Hanon had trees at the boundary of R. Joseph's vineyard; and birds which used to rest on the trees descended into the vineyard and did harm. And R. Joseph told him to cut down his trees. And to his claim that the trees were placed at the prescribed distance, R. Joseph said: "This is prescribed only for trees, but for vines more space is required." But does not our Mishna state that there is no difference between vines and trees? R. Joseph rejoined that it means a tree from a tree, and vines from vines; but from a tree to vines more space is required. Said Rabha: "I shall not cut it down; as Rabh said that a tree which bears fruit to the measure of a kab is forbidden to be cut down; and also R. Hanina said: 'Shakkhath, my son, would not have died if he had not cut down a fig-tree before the time; but you, masters, may cut it down if you like.'"

R. Papa had trees at the boundary of R. Huna b. R. Joshua's estate. At one time he found him digging and cutting off its roots; and to the question why he did so, R. Huna answered: In accordance with our Mishna, which states that one may replace the roots to the depth of three spans, in order not to prevent ploughing. Said R. Papa to him: But the master digs deeper. And he answered: I am digging an excavation, and our Mishna allows to do this. Said R. Papa: I tried to repeat for him many supports to the statement that he was not doing right, but he did not listen to me; until I reminded him about the decision of R. Jehudah, that a path that is used by the majority was forbidden to be spoiled. After R. Papa went out, R. Joshua said to himself: Why did I not oppose also this claim of his, with that this was said only within sixteen ells from a tree; but in my case it was outside sixteen ells, and the cutting off of the root could do no harm to the tree.

"*And the fuel is his*," etc. Jacob of Daiba questioned R. Hisda: Who is meant by 'his'? And he answered: This we have learned in the following: "From roots of a tree belonging to a private man, which spread into the estate of the sanctuary, must not be derived any benefit; but if one has so derived, he is not liable for a sin-offering. This can be correct only when it is said that the roots go with the tree; therefore one is not liable for a sin-offering. But if it should be said that they go with the estate wherein they spread, why should one not be liable? But if

the theory that the roots go with the tree remains, how is the latter part of the Mishna to be understood : If the tree is from the sanctuary, and its roots spread into a private estate, the same is the case? Now, if the roots go with the tree, why is one not liable when he derives benefit from it? This objection cannot hold good, as it speaks of a root that grew after the tree had already been sanctified ; and there is a Tana who holds that upon the growth which takes place after sanctification no transgression is considered. Rabhina, however, says that there is no contradiction in that Boraitha, as the first part speaks of the roots which were within sixteen ells of the tree, and the latter part of those which were outside of the sixteen ells. Hence the Mishna, which states "his," means the owner of the tree.

Ulla said : A tree which is within sixteen ells of the boundary of another's estate is considered robbery, as it derives its nourishment from another's estate, and its fruit must not be used for the firstfruit offering. Whence did Ulla deduce this? Shall we assume from the Mishna [Sh'byith, I. 7]: "Ten plants which are scattered within a field which a saah of grain can be sown in, the entire piece of land may be ploughed for the sake of the trees until the new Sabbath year comes (as the trees derive nourishment from the entire field in which they are scattered, which is not allowed in a field for sowing seeds)." How many ells are there altogether in a piece of land which is fifty ells square (this is the extent of ground in which a saah of grain can be sown), if divided into strips of one ell? Two thousand five hundred. Then each tree needs for its nourishment two hundred and fifty ; and this would not correspond with Ulla's theory, as he requires sixteen ells on each side, which means thirty-two ells square. And if it should be divided into strips of one ell, it would be 1,024 ells. And shall we say from the Mishna (ibid., ibid. 5): A field with three large trees (which are scattered in the above space), belonging to three different persons, according to the Sabbatic law it counts as a tree field, so that it may also be ploughed until the new Sabbatic year? Then, of the two thousand five hundred ells each tree derives its nourishment from $833\frac{1}{3}$ ells ; but even then the quantity prescribed by Ulla differs by still more. Ulla was not particular. But non-particularity may be applied when the matter is taken rigorously ; but when taken leniently (as, *e.g.*, in Ulla's case, in which the tree becomes free from the firstfruit offering), it must not be applied. Ulla meant to say, not sixteen ells square, but sixteen ells in a circle, and as

a square measures more than a circle by one-fourth, it makes only 768 ells for nourishment; and, according to the cited Mishna, each tree would need $16\frac{2}{3}$ ells for nourishment, hence he was not particular in the two-thirds, and this makes it more rigorous—to which non-particularity applies.*

But why only sixteen ells—does not our Mishna state that a space of twenty-five ells must be left from the tree to the well? Said Abayi: "The roots spread much farther, but to a distance of sixteen ells they nourish and render the earth poor; while beyond that distance they do not." When Rabbin came from Palestine, he said in the name of R. Johanan that from a tree near the boundary, as well as from a tree whose branches are inclined towards another estate, the firstfruit offering might be brought; and there might be read in this connection the passages from the Scriptures referring hereto, as with this stipulation did Joshua bequeath the land to Israel.

MISHNA *XIII*: If the branches of a tree are inclined towards another field, the owner of the field may cut them off to a sufficient extent, so as not to hinder a team of oxen from passing with the plough. In the case of a carob or a sycamore, however, it must be measured with a plummet (cutting off all the branches as far as they hang over the border line); and if the field is of dry land, the branches from any tree, which overhang it, may be cut off. Aba Shaul said that the same is the case with every wild tree.

GEMARA: The schoolmen propounded a question: Does Aba Shaul mean to oppose with his decision the first part of the Mishna, saying that even if it be not dry land the branches of a wild tree must be cut off; or the second part, which states that the branches from any tree must be cut off—he opposes, saying only of a wild tree, but not of a fruit-tree? Come and hear the following Boraitha: "Aba Shaul said: Every tree of which the branches overhang a dry field must be measured with a plummet, because the shade harms a dry field." Hence his opposition was to the first part. Said R. Ashi: "Even if the Boraitha did not state it so plainly, this could be understood from R. Shaul's expression in our Mishna, as it states every wild tree; and if he opposed only the second part, he would have specified a wild tree. Hence his opposition is to the first part."

* There are many commentaries on this calculation, which would be too complicated for translation, and we leave it to the mathematicians. To omit this, however, would be against our method.

MISHNA XIV.: The branches of a tree which overhang public ground may be cut off, so that a camel with its rider may pass freely. R. Jehudah says: A camel loaded with flax or with bundles of branches. R. Simeon says: Every tree of that kind must be measured with a plummet, because of the law of defilement.

GEMARA: Who is the Tana who holds that concerning damages we have to consider only the present time, and not the future? (As the Mishna states, it must be cut off only for a camel; and does not consider that the branches grow up again.) Said Resh Lakish: Tanaim differ in this case; and our Mishna is in accordance with R. Eliezer, who allows in a Mishna farther on to dig caves and excavations under a public ground, of a size sufficient for a wagon loaded with stones to pass. R. Johanan, however, maintains that our Mishna may be also in accordance with the rabbis of that Mishna who prohibit this, as there it is to be feared that it may fall suddenly; but here, each branch that grows up can be cut off.

"*R. Simeon says,*" etc. A Boraitha adds to this "for the purpose that it may not form a tent of defilement." Is this not to be understood from the Mishna itself? (As what other law of defilement can it mean?) If from it one may say that it meant, for fear a raven should bring something unclean and deposit it on the tree; and then it would be sufficient to cut off some branches, so that the branches should not hold anything, it comes to teach us that it means it shall not form a tent, and then it must be measured with a plummet.

CHAPTER III.

RULES AND REGULATIONS CONCERNING OCCUPANCY (HAZAKAH)—AT WHAT TIME AND IN WHAT RESPECT IT GIVES TITLE. REPLEVINS BY COURT. PROPERTIES OCCUPIED BY A DEFENDANT WHO IS MIGHTIER THAN THE PLAINTIFF BUT EQUAL IN EVIDENCE. A PROTEST AGAINST OCCUPANCY IN ONE'S PRESENCE OR ABSENCE BY ONE'S OPPONENT. THE WRITING OF BILLS OF SALE AND DEEDS OF GIFT. OCCUPANCIES WHICH CAME FROM INHERITANCE. THE OCCUPANCIES OF SPECIALISTS, PARTNERS, GARDENERS, AND GUARDIANS. OBTAINING PROPERTIES FROM THE CONTRACTING COLLECTORS OF DUTIES AND TAXES. BAILMENTS—OF WHOM THEY MAY BE ACCEPTED. PERSONAL PROPERTIES TO WHICH THE LAW OF OCCUPANCY DOES AND DOES NOT APPLY. OPENING OF WINDOWS AND DOORS TO NEIGHBORS' OR PARTNERS' PROPERTIES, AND BUILDING OF CAVES, PITS, ETC., UNDER PUBLIC GROUND.

MISHNA I. : The law of hazakah (occupancy) is, if one has occupied any property for three years from date to date (without any protest from another party), and this applies to houses, pits, excavations, caves, pigeon-coops, bath-houses, press-houses, dry land, slaves, and the same is with all other articles which bring fruit frequently. However, to a field not artificially watered, the three years of hazakah must not be counted from date to date. Thus, according to R. Ishmael : If one had occupied it eighteen months—viz., three months in the first year, the following whole year, and three months of the third, it is considered three years, and constitutes a hazakah. R. Aqiba, however, said : “ Fourteen months—viz., one month of the first, one month of the third, and the whole second year suffices to constitute a hazakah.” Said R. Ishmael : This is said of a grain field of which the products are harvested at one time ; but if an orchard were within, bearing olives and figs, then, if one has harvested the grain, pressed the olives, and dried the figs, it is considered three years.

GEMARA : R. Johanan said : I have heard that the Sanhedrin of Usha used to say : Whence do we know that to constitute a

hazakah three years are needed? From the law of a goring ox; as an ox, when it gores thrice, comes out of the category "not vicious" and is placed under the category of "vicious." So, also, if one has occupied a property three years (without protest), it comes out from the control of the seller and is placed under the control of the buyer.

But if this is so, it can be said that as a vicious ox is not guilty unless he gores the fourth time, so also should it be with the hazakah, that it shall not be considered until the fourth year. Nay, that is no comparison. An ox which gores three times becomes vicious; but even then, if he has not gored oftener, what shall he pay? But here, when one has occupied any property for three years, it becomes his. But according to this, let an occupancy for which no reason can be given by the occupant be considered; and this is not permissible, since a Mishna further teaches that such is not to be considered? The reason that three years are considered a hazakah is because it approves the claim of the occupant—*e.g.*, if the plaintiff claims, "You have stolen it," and the defendant says, "I have bought it," the occupancy of three years approves the fact that the defendant tells the truth. But if to the question, "What are you doing on my property?" he has no answer, what shall the hazakah approve? Shall the court make for him such a claim as he himself does not? R. Avira opposed: If hazakah is inferred from a vicious ox, then a protest not made in the presence of an occupant should not be considered, as concerning a vicious ox the maiming must be in his presence [Ex. xxi. 29]? Nay; in this respect, there is no comparison, as there the Scripture directs that the warning shall be in the presence of the owner. But here the protest is only to show that he had not relinquished his ownership, and if he has protested for other people it suffices, as he (who has heard the protest) has a colleague, and his colleague has another, etc.; and if it is said in public, it will certainly reach the ear of the occupant. According to this, if he has occupied it three months and consumed the fruit which grew each month—*e.g.*, a *pastio*—let it be considered a hazakah? Was not R. Ishmael* of the Sanhedrin of Usha? And according to him this law holds good; as it is stated in our Mishna that if he has harvested his grain, etc., it is considered three years, according to R. Ishmael. But what is the reason of the decision of the rabbis? Said Rabha: Because for the first

* Rashbam says it is unknown to him wherefrom the Gemara took it that R. Ishmael was among the Sanhedrin in question.

three years one usually takes care of his deed ; but not for more than this. Said Abayi to him : According to your theory, let a protest which is not in his presence not be considered ; as the occupant might claim, " If you gave the protest to me, I would take care of the bill of sale," this claim cannot be considered for the reason stated above, " that your colleague has a colleague," etc.

R. Huna said : " The three years in question must be uninterrupted." What does he come to teach us? Is it not stated in our Mishna, three years from date to date? Lest one say that it means to exclude the case which is told in the Mishna, of a field which is not artificially watered, but if one has occupied it three years on an average it is considered a hazakah even if it was with interruption, he comes to teach us that it is not so. Said R. Hama : R. Huna admits that in places where it is usual to let the fields rest one year, the three years are considered hazakah, although there is interruption. Is this not self-evident? The case was when he had his field in a *pagus*, where some let it rest while others did not : lest one say that the plaintiff might claim, " If it were yours, you would not make any interruption," he comes to teach us that the defendant might claim, " It was more agreeable for me this way, because after it rests a year it brings more produce." But does not our Mishna apply hazakah to houses to which testimony could be given for occupying in the day-time, but not in the night-time? (Hence a hazakah is considered even when there is no testimony that it was not interrupted.) Said Abayi : Who testifies as to the occupancy of houses? Neighbors. And neighbors are aware of the nights as well as of the days. Rabha said : The Mishna means when two witnesses came and testified : " We have rented the house from the defendant, and lived in it three years, day and night." Said R. Jimir to R. Ashi : Are the witnesses not interested in it ; for if they would not so testify, they would be told to pay their rent to the plaintiff? Answered he : " Ignorant judges would give such a decision. May it not be the case that the witnesses hold the rent of the house, asking, To whom shall we pay?" Said Mar Zutra : Nevertheless, if the plaintiff requires that the defendants should bring two witnesses who should testify that they lived in the house three years, day and night, the court must listen to him. And Mar Zutra admits, if the plaintiff was a traveller who had travelled in large cities with his stock, that although he does not require the testimony for day and night, the court may claim it for him. And R. Huna admits,

that in stores like those of Mehusa, which are usually occupied in the daytime only, three years is considered a hazakah.

Rami and R. Uqba, the sons of Hamma, bought a female slave jointly: one kept her the first, third, and fifth years, and the other the second, fourth, and sixth. And thereafter a claim was made concerning this slave. And they came before Rabha. Said he to them: Why did you do so—to the end that neither of you should be able to claim hazakah? As it is not a hazakah for each of you, so it is not considered a hazakah for the whole world. This, however, applies because there was no written agreement between you that she should serve you in such a manner. But if such had been written, it might be regarded the same as if it were made public, and no claim is to be considered. Rabha said: If one has used a whole field the years of hazakah, except a quarter of a saah, he acquires title to the whole field except to that which he has not used. Said R. Huna to R. Joshua: It is so if this piece was also fit for sowing. If, however, it was not fit for that, title is acquired to it also, with the field. R. Bibi b. Abayi opposed: According to your theory, how should one make a hazakah on rocky ground, if not by putting cattle or drying fruit there? The same ought to be done with that which was not fit for sowing; and because he has not done so, title is not acquired.

There was one who said to his neighbor: "What are you doing in this house?" to which he answered: "I bought it from you and have occupied it the years of hazakah." Said the plaintiff: "I used to live in the front rooms, passing through yours, and therefore I did not care to protest." And when the case came before R. Na'hman, he said to the defendant: Go and bring evidence that you have occupied the whole house alone. Said Rabha to him: Does not the law dictate that it is for the plaintiff to bring evidence?

The following case, however, contradicts both R. Na'hman and Rabha. It once happened that one said to his neighbor: "I sell you all the properties which formerly belonged to Bar Sisin." There was, however, another estate which also bore the name of Bar Sisin estate, and the buyer wanted to take possession of it; but the seller claimed that this had never belonged to Bar Sisin, and that it was only so called. And when the case came before R. Na'hman, he decided that it belonged to the buyer; and Rabha said to him: Does not the law dictate that it is for the plaintiff to bring evidence? Hence the decision of this case contradicts

the former entirely? Nay; in the former case the plaintiff was the owner of the house, and in the latter case the buyer was the plaintiff. Hence Rabha did not change his decision. And concerning R. Na'hman, he also did not contradict himself; but merely because it was named Bar Sisin, he held that it was formerly owned by Bar Sisin, and it was for the claimant, who said it was not so, to bring evidence. And this case is similar to a case where one wants to deny hazakah with a note. Would it not be said to him: Bring evidence that the note is a right one, and then only you can have this?

There was one who asked his neighbor, "What are you doing in this house?" and he said, "I bought it from you, and I have occupied it the years of hazakah." But the owner claimed that he was always out of the city and was not aware that he had been occupying this house, and therefore no protest was made. The defendant, however, stated he had witnesses to the fact that thirty days each year the owner used to be in the city, to which the plaintiff again answered: "These thirty days I was always busy in the market, and I never thought about my house." When the case came before Rabha, he decided that the owner of the house was to be trusted.

There was another who asked his neighbor, "What are you doing on my estate?" to which he answered, "I bought it from so and so, who told me that he bought it from you." Then he said: "You admit, however, that the estate was mine and that you have not bought it from me. Then go (and see the man you bought it from). I, however, have nothing to do with you." And Rabha decided that the plaintiff's claim was in accordance with the law.

There was another who answered to the same question as above: "I bought it from so and so, and occupied it the years of hazakah." But the owner answered: "That man is known as a robber." The defendant, however, claimed that he had witnesses that at the time he bought it he took the owner's advice. To which the plaintiff answered: "It is true I advised you to buy it, because it would be easier for me to take it away from you than from the robber." Upon which, Rabha decided that the plaintiff's claim was in accordance with the law. Is this in accordance with Admon of the following Mishna: "If one claims that this estate belongs to him notwithstanding the fact that he was a witness on the bill of sale to this field, it may be considered, because he may claim that from this man it is easier for

me to take it away than from the first. So is the decree of Admon. The sages, however, maintained that when he was qualified as a witness he lost his right." It may be even in accordance with the rabbis, as in the case of the cited Mishna he was a witness in writing; but here he only gave his advice in words and had not lost his right.

There was another case where one questioned and answered the same as above. Said the defendant: "I have witnesses that you called upon me on that evening and requested me that I should sell it to you, without your mentioning that it belonged to you." And the plaintiff replied: "I thought I would buy my estate for a small amount, instead of taking the matter into court." And Rabha, before whom the case came, decided that such a claim might be considered.

There was another case in which the defendant claimed that he bought it from so and so, and had occupied it the years of hazakah, to which the plaintiff opposed: "Here is a bill of sale, showing that I bought it four years ago from the same man you claim you bought it from." To which the defendant answered: "Do you think by the expression 'the years of hazakah,' I meant three years? I meant many years—so that I had occupied it three years before you bought it." And Rabha decided that people call many years the years of hazakah. But this can hold good only when he has occupied it seven years, so that the years of hazakah have preceded the bill of sale; but if he has occupied only six years, then the claim of hazakah cannot be considered, because the bill of sale is the greatest protest.

If two persons come before the court, one claiming, "This estate was my parents'," and the other claiming, "It was my parents'," and one of them brings witnesses that it was his parents', and the other witnesses that he had occupied it the years of hazakah? Said Rabha: The one who brings evidence that he occupied it the years of hazakah is to be trusted, since, if he wished to tell a lie, he could claim, "I bought it from you and have occupied it the years of hazakah." Said Abayi to him: "The supposition if he cared to tell a lie cannot be applied in a case where there are witnesses." If thereafter, however, the plaintiff claims: "It is true it was your parents' estate, but I bought it from you. And by what I said before, 'It was that of my parents,' I meant that this estate was so long in my possession that I looked upon it as if it were bequeathed to me by my parents"—may one change his claim before the court, or not?

According to Ula he may do so by giving a good reason ; but according to the sages of Nahardea, he may not. Ula, however, admits that if the first claim was, "It was my parents', and not yours," it cannot be changed in any circumstances. The same is also the case if, before the court, he claimed so, and afterwards, as he was going out, he claimed otherwise, since it is to be supposed that to such claims he was advised by some one else, and they must not be considered. The Nahardeans, however, admit also that if this man claims, "When I said my parents' estate, I meant that my parents bought it from yours," such a claim is to be considered ; and also that if one, in discussing a case outside of the court, did not mention anything of that which he is now claiming before the court, he cannot be accused of not having said so before, as it may be supposed that one does not like to tell his right claim to people in absence of the court. Said Amemar : "I am a Nahardean, and nevertheless hold that if there is a good reason one may change his former claim." And so the Halakha prevails.

If one claims, "It was from my parents," and the other claims the same, and one brings evidence that it was his parents' and that he occupied it the years of hazakah, and the other also brings evidence that he has occupied it the years of hazakah? Said R. Na'hman : Disregard the claims of hazakah which contradict each other, and decide it under the evidence that it was from the parents, which was not denied. Said Rabha to him : But do not the witnesses contradict each other, and in such a case not one of them ought to be taken into consideration? And he answered : They contradict each other as to the years of hazakah, but do they contradict themselves with regard to the parents?

Shall we assume that Rabha and R. Na'hman differ in the same way as R. Huna and R. Hisda differ? As it was taught : If two parties of witnesses contradict each other, they may be listened to in another case where there is no contradiction. R. Hisda, however, maintains that, it being manifest they are perjurers, nothing must be trusted to them.

Shall we then assume that R. Na'hman is in accordance with R. Huna, and Rabha with R. Hisda? Nay ; if the decision were in accordance with R. Hisda, Rabha and R. Na'hman would not differ (as, according to R. Hisda, such witnesses cannot be used again in any case). Therefore we must say that both are in accordance with R. Huna ; and nevertheless they differ, as Rabha maintains that even according to R. Huna the witnesses are fit

for another case, but in this case they must not be listened to in any circumstances. The man who previously brought evidence that he had occupied it the years of hazakah, found thereafter witnesses that the estate was his parents'. Said R. Na'hman: We dispossessed the defendant of that estate (for a good reason), and now that the circumstances have changed we may bring him in again, without fear that this would be a humiliation to the court. Rabba, or, according to others, R. Zera, objected from a Mishna in Tract Kethuboth, which states, concerning marriage, that after the court has decided no change is to be made, even in the event of new evidence being introduced. Said R. Na'hman to him: I was about to practise according to my theory. Now, as you object, and R. Hamnuna of Suria does the same, I shall not do so. However, thereafter R. Na'hman acted according to his theory. One who had seen him doing so thought it was an error on his part. In reality, however, it was not, as he did so on the basis that many other great men had decided that the humiliation of the court must not be taken into consideration.

There was one who said to his neighbor, "What are you doing on this estate?" to which he answered, "I bought it from you, and here is the deed," to which the defendant opposed that the deed was false: The plaintiff bent and whispered to Rabba: Concerning this note, his claim is right. However, I possessed, but lost, the true one; and this is a correct copy. Said Rabba: He may be trusted, since if he wished to tell a lie he would claim that the document was genuine. Said R. Joseph to him. "But, after all, what is the basis of the plaintiff's evidence? Is it not the deed in question in reality nothing else but a broken piece of clay, as he has himself admitted that it was made by him?"

There was another case similar concerning a hundred zuz in cash, in which the plaintiff admitted that the note in his hand was a false one, made instead of the genuine, lost; and Rabba took it into consideration for his reason stated above, and R. Joseph opposed him as above. And R. Iddi b. Abbin said: The Halakha prevails in accordance with Rabba if the case dealt with real estate, because we leave the estate in the possessor's hands. And the Halakha prevails in accordance with R. Joseph if the case concerned ready-money, for the same reason that we have to leave the money in the hands of the possessor (*i.e.*, according to the rule that it is for the plaintiff to bring evidence).

There was a surety who claimed that he had paid to the

lender for the borrower one hundred zuz, by showing the note. Said the borrower: "Did not I pay you?" And he answered: "But did you not take it again from me." When the case came before R. Iddi b. Abbin, he turned it over to Abayi, and Abayi sent a message to R. Iddi: Why are you doubtful in this case? Was it not you who said that the Halakha prevails with R. Joseph in case of ready-money—that is, that we leave the money with its possessor? This law, however, holds good when the surety claims he lent it again, without giving any reason; but if he claims, "I returned the money because it was not circulating," this claim must be considered, and the note is in force.

It was murmured among people that Rabha b. Sharshum had appropriated land belonging to orphans; and Abayi sent for him and asked him to tell him about the case. And he told him thus: This estate was pledged to me by the father of the orphans. I, however, had other money with him without any pledge; and after I had collected the first debt from the product of the pledge I knew, if I turned over the estate to the orphans and claimed that I had other money with their father, I should have to take an oath in accordance with the decision of the rabbis (stated above, p. 10). Therefore I kept the pledge, with the deed, until I should collect from the products what was due me, and then I would return it. And the court must take my claim into consideration in accordance with the theory of "because"—that is, because I could claim that I had bought the estate from the deceased, and I would be trusted after I had occupied it the years of hazakah, therefore my claim that I had money with the deceased must be regarded. Said Abayi to him: You could not claim you had bought it, as people are still murmuring that the estate belongs to the orphans. Therefore you must return the estate to the orphans, and when they shall be of age, you can sue them.

A relative of R. Iddi b. Abbin died, and left a tree, and another relative took possession of it. But R. Iddi claimed that he was a nearer relative, and that it belonged to him, while the other claimed that he was a nearer relative. Finally the other party admitted that R. Iddi was a nearer relative, and R. Hisda transferred the tree to R. Iddi. Said R. Iddi to R. Hisda: This man must return to me all the product of this tree which he has consumed since the death of the owner. Said R. Hisda to him: Are you the man about whom it is said that he is a great man? Your claim relies upon his admission that you are a nearer relative,

after you gave evidence; but until that time he felt sure that he was a nearer relative. Consequently he has consumed the fruit rightly, and his admission now is to be considered as if he made you a present. Both Abayi and Rabha disagreed with R. Hisda, as his admission now must be taken into consideration, even concerning the previous product.

There was one who questioned his neighbor as to what he was doing on his estate, and he answered: "I bought it from you, and occupied it the years of hazakah." However, he found witnesses for the occupancy of two years only; and R. Na'hman decided he should return the estate, and also the value of the fruit he had consumed in two years. Said R. Zebid: If he were to claim: "I did not intend to keep the estate, but had the right to consume the fruit thereof, because I rented it," he is to be trusted; for did not R. Jehudah say: If one holds a scythe and a basket, saying, "I am going to gather the dates of such and such a tree, which I bought," he is to be trusted, because one would not dare to take possession of a tree which does not belong to him? And the same is the case here, for no one would dare to consume fruit which did not belong to him. If so, why should this law not apply to an estate also? For land a deed is demanded (as nobody would buy an estate without a deed); but in hiring products, a deed is unusual, and therefore it cannot be demanded.

There was another man who questioned his neighbor as to what he was doing on his estate, and he answered, "I bought it from you and occupied it the years of hazakah," to which he brought one witness. The rabbis who were in the presence of Abayi, before whom the case was brought, were about to say that this was similar to the following case: One snatched a piece of silver from his neighbor, and the case was brought before R. Ami, in the presence of R. Abba, and the plaintiff brought one witness that he snatched. And the defendant answered: "Yes, I took it; but I did so because it was mine." And R. Ami was deliberating, "How decide this case?" Shall he repay it? There are no two witnesses. Shall we free him? There is one witness. Shall we give him an oath? The plaintiff claims that he snatched it, which is robbery, and a robber is not to be trusted with an oath. Said R. Abba to him: Consequently this man is obliged to take an oath, for which he is not to be trusted. And the law is, that he who is obliged to take an oath and cannot swear, must pay. Said Abayi to them: What comparison is this? A case

similar to R. Abba's would be if the *plaintiff* had brought one witness that he had consumed the product two years; then he would have to pay, because he would not be trusted with an oath, as concerning the consumed fruit he would be considered a robber.* But here, the *defendant* has brought a witness to support himself; and if he had another, we would leave the whole estate in his hand. Hence he cannot be considered a robber who is not to be trusted to take an oath, and therefore we cannot make him pay.

There was a boat about which two parties quarrelled, each claiming that it was his, and one came to request the court that it should take charge of the boat until he should be able to get witnesses that it was his. Should his request be granted, or not? According to R. Huna, it should; and according to R. Jehudah, it should not. But in case the request was granted and the court took charge of it, and the other party, seeing that his opponent could not find evidence, requested that the court should resign its charge and leave it to the parties, so that he who could, should take possession of it—should this request be granted, or not? According to R. Jehudah, it should not; but according to R. Papa, it might. The Halakha, however, prevails that in such a case the court should not take charge of it; but, if it was already done, it should not be released before the question was decided.

If each of the parties claim: "This estate belonged to my parents"—said R. Na'hman: "In such a case, the law of the stronger is to be applied." But why should this case be different from a case where two notes are given out on the very same date to two different persons, and the property of the debtor is sufficient for the payment of one note only, in which Rabh's decision was that the property should be divided between both creditors equally; and Samuel's, that it must be left to the consideration of the judges, so that they might give the preference to him who had more right according to their opinion? It is because there is no hope that one of them would bring evidence that he has the preference (since the notes were written on one and the same day, and even if one should bring witnesses that his note was written before the other, there is a rule that there is no priority in a

* The text contains only a few words, but very complicated; the commentators try to explain it at length, but they differ as to the meaning, and their interpretation is no less complicated. We have done the best we could, that the reader should have an idea of it.

matter of hours); but in one case there is hope that one of them may bring evidence. But why should this case not be equal to the one in Mishna 4, p. 261, Middle Gate, about the doubt when the young ass was born, and it was decided that it should be divided? There each of the parties, claiming it was born while under his control, has an equal chance; but here each of them claims the whole article to be his own, and the court cannot decide that it should be divided, since, if the claim of the one be true, the other has never had any right to it. Said the Nahardeans: If a third party from the market came and took possession of it, the court has no right to take it away from him, because there is no plaintiff. As R. Hyya taught: If one steals an article belonging to many persons, he cannot be considered a thief whom the court can compel to return it, as there is no plaintiff. Said R. Ashi: R. Hyya meant to say that he cannot be considered a thief who atones by returning the article, for he does not know whom he robbed; but the court may compel him to place the article under its charge.

"Three years from date to date," etc. Said R. Aba: If there are witnesses who testify that the plaintiff has loaded a basket of fruit from this field on the shoulders of the defendant, the hazakah is effected immediately. Said R. Zebid: If, however, the plaintiff claims, "I have let him this field for the products only," he is to be trusted, provided this claim was made during the three years of hazakah, but not afterwards. Said R. Ashi to R. Kahana: Why should not his claim be regarded even after three years, as, if he sold (for three years) him the fruit, what should he do before the time had elapsed? Answered R. Kahana: He should have protested before the time the hazakah elapsed, so that it should be known that the estate belonged to him. If this were not the case, the pledges of Sura, in the documents of which are written: "After the time of these pledges elapses, this estate shall be returned without any payment," how is it if the possessor of the estate should hide the pledged deed after three years, and claim, "I have bought it"—should he be trusted? Would, then, the rabbis enact such a thing as could do harm to the pledger? We must then say that the pledger, before the lapse of the time, must proclaim his protest, so that it shall be known that the estate belongs to him. The same is the law in our case.

R. Jehudah in the name of Rabh said: An Israelite who has bought a field of a Gentile, who has occupied it the

years of hazakah, claiming to have bought it from another Israelite, but had not shown any deed, the law of hazakah does not apply to the last buyer, even if he has occupied it three years or more, because he relies upon the Gentile, and the law of hazakah does not apply to Gentiles (who are mightier); and it may happen that he has occupied the estate without any right, because the Israelite was afraid to claim it (unless he shows a deed). Said Rabha: If the last buyer claims, "I was told by the Gentile that he bought it from you," he is to be trusted, because he could claim, "I myself bought it from you, and occupied it the years of hazakah." But is such a thing possible, that if the Gentile should claim the property in his own name he would not be relied upon because the law of hazakah does not apply to him, and when the Israelite claims in the Gentile's name he is to be trusted? Therefore Rabha's statement was thus: If the last buyer claims, "In my presence the Gentile bought it from you, and then he sold it to me," he is to be trusted, because he could claim, "I bought it directly from you." R. Jehudah said again: If one holds a scythe and a basket, saying, "I am going to cut off the dates from the tree which I bought of its owner," he is to be trusted, as one would not dare to go publicly to cut off products which do not belong to him. The same said again: If one has occupied a piece of land which was outside the fence of one's field (which they usually sowed for the wild beasts to feed on), he cannot claim hazakah, as the owner may say, "I did not protest because I could not have made use of it anyhow, for the wild beasts would have consumed the produce." If one of the years of hazakah happened to be a year of *arlah*, it is not to be considered. And so, also, we have learned in the following Boraitha: If one of the years was a Sabbatic or an *arlah* year, or one has sown it with Kilaim, it must not be considered. R. Joseph said: If in the hazakah years he harvested the stalks while yet unripe, it is not to be considered (because he has not occupied it as usual). Said Rabha: But if this was around the city of Mehusa it is to be considered, because all the farmers, on account of their cattle, are in the habit of doing so. R. Na'hman said: To land which is full of pits and cannot be worked up properly the law of hazakah does not apply, because the owner may claim, "As it was of no use to me, I did not protest." The same is the case with such fields as return no more than was sown in them. And also in the case of exilarchs, to an estate which is bought from them, or which they buy, the law of hazakah does not apply, because they

are mighty, and no one would dare to protest against them ; and, also, they themselves do not care to protest.

" *Slaves.*" Does the law of hazakah apply to slaves? Did not Resh Lakish say : To every living creature the law of hazakah does not apply? Said Rabha : He means to say it does not apply before three years (*i.e.*, one cannot claim that he bought it as he may do with other personal property for which no evidence is needed when found in his possession), but after three years it does. And Rabha said again : If this slave was an infant lying in his cradle, the law of hazakah applies immediately. Is this not self-evident? He means even in case it has a mother ; and lest one say that it is to be feared that its mother left it there, it comes to teach us that this is not to be feared, because usually a mother does not forget her child.

There were goats that consumed peeled barley in the city of Nahardea, and the owner of the barley caught them and would not return them until the value of the barley was paid. And his claim was of considerable amount, and the father of Samuel decided that he might claim the value of all the goats, as if he were to claim that he bought them he ought to be trusted, seeing that they were found in his possession. But did not Resh Lakish say that the law of hazakah does not apply to living creatures? Why did the father of Samuel decide (Middle Gate, pp. 306 *seq.*) that he could collect the whole value of the goats? (See there.) With goats it is different, as they are usually transferred to the shepherd. But do not goats go in the morning and evening without the shepherd? In the city of Nahardea thieves were frequently found, and the shepherds used to deliver the cattle into the hands of their owners.

" *Three months in the first year,*" etc. Shall we assume that the point of difference between R. Ishmael and R. Aqiba is that one holds ploughing is a hazakah (*i.e.*, if one ploughs a field and the owner does not protest, it is supposed that he bought it from him). And one holds that it is? But how can you bear in mind that R. Aqiba holds ploughing to be a hazakah, when he means a whole month in two hazakah years? Is one day not sufficient for ploughing? Therefore we must say that, according to all, ploughing is not considered a hazakah, and the point of their difference is ripe and unripe fruits. According to R. Ishmael, the hazakah applies only to ripe fruits, and according to R. Aqiba also to unripe ones.

The rabbis taught : Ploughing is not a hazakah. According

to others, it is. Who are the others? Said R. Hisda : It is R. Aha of the following Boraitha. If one has ploughed it one year and sown it two, or *vice versa*, it is not a hazakah. R. Aha, however, says it is. Said R. Ashi : I have questioned all the great men of this generation, and they have told me that ploughing is a hazakah. Said R. Bibi to R. Na'hman : The reason of him who holds that ploughing is a hazakah is because that usually one would not keep silent if a stranger came and ploughed his land. And the reason of him who holds that ploughing is not a hazakah, is because the owner might think : "I can derive benefit from every furrow he makes with the plough on my land, so I will protest afterwards."

The inhabitants of the city of Pumnahara sent a message to R. Na'hman b. R. Hisda thus : Let the master teach us if ploughing is a hazakah or not. And he answered : R. Aha and all the great men of this generation have decided that ploughing is a hazakah. Said R. Na'hman b. Itz'hak : It was too much of him to assert, "All the great men." Are not Rabh and Samuel in Babylon, and R. Ishmael and R. Aqiba in Palestine, who hold that ploughing is not a hazakah? R. Ishmael and R. Aqiba we hear saying so in our Mishna, but where did Rabh and Samuel say so?

As R. Jehudah said in the name of Rabh : R. Ishmael and R. Aqiba were a minority of the sages, but the majority of the sages held that a hazakah is three years from date to date. And this was certainly to exclude ploughing. And concerning Samuel, said also R. Jehudah in his name : This was the opinion of R. Ishmael and R. Aqiba only ; but all the other sages held that the hazakah does not apply unless one has harvested, gathered the vintage, and pressed olives, each of them three times. What is the difference between Rabh and Samuel—as, according to both, three years are needed? Said Abayi : A young tree which bears fruit on the average three times in less than three years, according to Samuel it is a hazakah, and according to Rabh it must be from date to date.

"Said R. Ishmael . . . a field for grain," etc. Said Abayi : From R. Ishmael's decision, that three harvestings suffice to constitute hazakah, we can understand the opinion of the rabbis opposing him : If the field contains thirty trees, each ten of which take up a space where a saah of grain can be sown, and the defendant has used ten the first year, ten the second, and ten the third, it is a hazakah, although three years have not yet elapsed

(as he has consumed in each year what was ripe). And this is to be inferred from R. Ishmael's statement that each performance of the three articles is counted as if it were done thrice, to constitute a hazakah. The same is the case with the thirty trees: the consuming of each ten is counted with the consuming of the others, and therefore it constitutes a hazakah. But this is only the case when but ten of them were ripe each year; but if more were ripe, and he only consumed ten, it is not. And the same is the case if the ten trees were ripe in one place only the first year, ten in another place the second, and ten in a third place the last year; for in order to constitute a hazakah, the trees must be scattered throughout the whole field, three or four of them growing in the space of a saah each year.

If one has made a hazakah on the trees and another upon the ground, each of them acquires title to what he holds. So said R. Zebid: R. Papa opposed; for, according to this theory, the one who has made a hazakah on the trees has nothing in the ground. So let the owner of the field say to the owner of the trees, "Cut down your trees and go." "Therefore," said he, "in such a case one has acquired title to the trees and half of the ground, and the other to the other half of the ground."

It is certain if one has sold his ground and left the trees, the ground required by the trees must be left for them; for even according to R. Aqiba, who said elsewhere that usually when one sold a thing he did so with a good eye (*i.e.*, with the intention of benefiting the buyer), this is only in case he sold him a well. We must say the stone-walls to the well on his property are also sold to him. But in this case, where he retains the trees, which make the ground poor, and also their roots may hinder the plough, it is certainly his intention that the ground needed for the trees shall remain his, as otherwise the buyer will have a right to demand from him that he shall cut down his trees. But if he has sold the trees and retained the ground, in this case the rabbis and R. Aqiba differ. According to R. Aqiba, who holds that usually the seller sells with a good eye, the buyer has a right to the growing of the trees. But according to the rabbis, who do not hold so, the buyer has no such right. And even according to R. Zebid, who said above, in the case of hazakah, that each of them has nothing in that which the other has occupied, it is only as to buyers that the one who has occupied the ground can say to him who possesses the trees, "As I have nothing in your trees, so you have nothing in my ground."

But in case of selling, according to the rule that a seller sells with a good eye, this claim cannot apply even in accordance with the opinion of the rabbis. And even R. Papa, who said above that the owner of the trees has a share in the ground, it is only in the above case where there were two buyers—the one who buys the trees and the buyer of the ground—that each of them can claim, “As the owner sold to you with a good eye, so did he to me.” But in this case, according to the rabbis, who hold that a man usually sells with a bad eye (*i.e.*, with the intention of benefiting merely himself), R. Papa may also agree that, according to the rabbis’ theory, the buyer of the trees has no claim to the ground. The Nahardeans said that if, of the above-mentioned thirty trees, fifteen of them were planted in the space of a saah, although he had consumed the product of all of them three years successively, it is not considered a hazakah, because he has not done as people do (*i.e.*, fifteen trees in the space of a saah cannot bear good products, and the one who possesses such usually cuts out many of them to make room for the others; and as he did not do so, it seems that he does not consider this to be his property). Rabha opposed this. For, according to this theory, one could never acquire title to a bed of a *pastio*, which is usually sown three times a year, and the overcrowding is thinned out to make space for the remainder (and when the occupant has only consumed them, and not thinned out, he does not acquire title). “Therefore,” said he, “in such a case he acquires title to the trees, and not to the ground.” Said R. Zera: In this case the Tanaim of the following Mishna differ: A vineyard which was planted in less than four ells’ space, R. Simeon said: Concerning Kilaim, it is not considered a vineyard at all. The sages, however, maintained that it is so considered, and the middle ones are to be considered as if they did not exist (*i.e.*, the law of a vineyard, which should interfere with other kinds of seeds, is that it must be planted so that between each row of the vines four ells of space must be left; and if not, it is not called a vineyard. But according to the rabbis, the middle one is not considered; consequently there is more than four ells’ space between them, and it does interfere—hence, according to this theory, of the trees in question which were overcrowded, fifteen in the space of a saah, the middle ones are not to be considered, according to the rabbis; but they are considered, according to R. Simeon).

The Nahardeans said again: If one has sold a tree to his neighbor, the buyer acquires title to it from beneath it unto the

deep. Rabha opposed. Why should it be said that the whole ground unto the deep shall be sold to him? The seller may claim: I sold it to you as people used to sell a saffron tree, of which the buyer derives the benefit as long as the tree yields fruit, but after it became withered, the buyer had to remove it and leave the ground to the seller. Therefore said Rabha: This applies only to him who claims that he bought it with the stipulation that if the tree dies he may plant another one in its place, and after he possessed it the years of hazakah. Said Mar the Elder, the son of R. Hisda, to R. Ashi: Even if it was a saffron tree, and in such a case the buyer usually cares for the valuable saffron, and not the ground beneath, what should the seller do if, after the three years, the buyer claims he has also bought the ground (so that he can plant another one)? And he answered: The seller should protest before the years of hazakah elapse, as is said above.

MISHNA II.: There are three lands concerning the law of hazakah: The land of Judea, the land on the other side of the Jordan, and of Galilee. If the owner of the estate was in Judea, and one has made a hazakah in Galilee, or *vice versa*, it is not considered a hazakah unless the owner of the estate should be with the occupant in one and the same country. Said R. Jehudah: The law of three years is made only for the purpose that if the owner, for instance, was in Spain, and his estate was in Judea, which is a year's journey from there, if one has occupied his estate while on the road, a year's time is given for him to be notified, and another year for his return (*i.e.*, no matter where he is, three years suffice for hazakah).

GEMARA: Let us see! What does the first Tana of the Mishna hold? If a protest in the absence of the occupant is considered, then, even when one was in Judea and the other in Galilee, he could protest; and if it is not considered, then even if both were in one country, when they are not in one city, the hazakah should not apply, as he could not protest. Said R. Abba b. Mamal in the name of Rabh: He holds that a protest not in his presence is to be considered. But our Mishna treats of a case of war, during which this protest would be of no use (because there would be no one to notify him). And why does he mention Judea and Galilee? To teach that these two countries are always considered as if there might be a war between them, as caravans going from one country to the other are very rare.

R. Jehudah in the name of Rabh said : If one runs away from a city because of crime, etc., and one occupies his estate, the law of hazakah applies. And R. Jehudah continued : After Rabh's death I said this Halakha in his name before Samuel, and he said to me : Is this not self-evident ? Must, then, a protest be in one's presence ? (Says the Gemara :) And, indeed, what news did Rabh teach with this statement, unless that a protest not in one's presence is considered ? He already said so elsewhere. With this statement he teaches us that, even when the protest was before two witnesses who were not able to notify the occupant, it is nevertheless considered a protest. As R. Anan said : Mar Samuel has explained to me his opinion that only when one protested in the presence of two witnesses who are able to notify the occupant, it is considered ; but not otherwise. Rabh, however, is of the opinion : "Thy colleague has another colleague," etc. ; and so, when protested before two, it will become known. Said Rabha : The Halakha prevails that the law of hazakah does not apply to the property of one who runs away, and also that a protest which is not in one's presence is considered. Are not the two Halakhas contradictory of each other ? This presents no difficulty. If one runs away because of money matters, he is not afraid to protest, as he does not care whether his residence is made known ; but if one runs away on account of a crime, then he cannot protest, as this would make known his hiding-place.

How should one protest ? Said R. Zebid : If the protest was, so and so is a robber ; it does not suffice, but he must protest : "He is a robber who has robbed me of my estate, and as soon as it is possible I shall summon him." But how is the law if he added to this protest, "Do not notify him of my protest" ? Said R. Zebid : How can this be considered, when he plainly says : Do not notify him. R. Papa, however, is of the opinion that it means : Do not notify *him*, but tell it to other people, so that he will become aware of it afterwards. How is the law if the witnesses told him : We will not notify him ? According to R. Zebid, such a protest is not to be considered, and according to R. Papa, it is, because although they should not notify him, they will nevertheless tell it to other people. But how is it if the protestor said : Do not mention it to any one ? According to R. Zebid, it is certainly not to be considered. But how is it when they said : We will not mention this to any one ? According to R. Papa, it is not to be considered. R. Huna b. R. Jehoshua, however, maintains that, even then, it is a protest, as a thing which does not

belong to a man, he will talk about it some time, and it will become known.

Rabha said in the name of R. Na'hman: A protest not in one's presence is to be considered; and he opposed him from the statement of R. Jehudah in our Mishna, who said that a year is allowed for notifying him and a year for returning. And if a protest not in one's presence should suffice, why must he come back? And he answered: R. Jehudah's statement is only an advice for one that he had better come himself, so that he should be able to take possession of the estates and products. (Says the Gemara :) From that which Rabha objected, it must be said that he himself does not hold with him concerning a protest in the absence of the occupant; and above it was said that Rabha himself had so decided? After he had heard it from R. Na'hman, he accepted it.

R. Jose b. Hanina happened to meet the disciples of R. Johanan and questioned them as to whether R. Johanan had said before how many people a protest must be made. R. Hyya b. Abba said in the name of R. Johanan: In the presence of two. And R. Abuhu said in his name: Three are needed.

Shall we assume that the point of their differing is the saying of Rabba b. R. Huna: "Everything which is said in the presence of three persons cannot be considered slander"? Now he who holds that two persons are sufficient does not agree with Rabba, and he who holds that three are needed does so, because he holds with him? Nay, all agree with Rabba, and the point of their differing is—a protest not in one's presence: he who says that two are sufficient, because such is not to be considered (and therefore he needs two, so that they shall testify that the occupant was present at the protest).^{*} And he who holds that three are needed does so because a protest not in one's presence is considered, and therefore three are needed in order to make the protest public. If you wish, it may be said that all agree that such a protest is to be considered, and the point of their differing is that one holds that for this purpose *witnesses* are needed, and the other one holds that it is only necessary to make it public.

Giddle b. Minjumi had to make a protest against some one,

^{*} This is according to Rashbam. R. Gershom, however, maintains that the two who witnessed the protest would notify the occupant, as only for this purpose were they appointed. From the text, however, it is impossible to decide which of the commentators is right, as there are only a few words. The one who holds that "two" suffice is of the opinion that "a protest in absence" is not considered.

and happened to meet R. Huna, Hyya b. Rabh, and R. Hilkiah b. Tubi, who were sitting together, and he made his protest before them. The next year he came again to protest. Said Hyya b. Rabh to him : The protest from last year is sufficient. Said Resh Lakish in the name of B. Kapara : It is, however, necessary for one to repeat his protest after the lapse of every three years. R. Johanan, however, doubted concerning this decision, saying : Does the law of hazakah apply to a robber? A robber! Is it, then, certain that he is a robber? (Does he not claim that he had a deed, that it was lost?) He means to say that, as after the first protest he has done nothing to find the deed or to bring any other evidence, he is so considered, and the law of hazakah should not apply to him. Said Rabha : The Halakha prevails that one has to repeat his protest after each three years.

Bar Kapara taught : If one has protested once, twice, and three times, if the second and third times he has claimed the same that he claimed the first time, the occupant has no hazakah ; but if he comes with other claims, the hazakah prevails with the occupant.

Rabha said in the name of R. Na'hman : When a protest is made before two persons, there is no necessity to ask that it be written down. The same is the case with an announcement. (There is a law that if one is compelled to sell his property, or to do any other thing against his will, he may announce it before two persons, and afterwards he can sue the buyer.) For an admission, however (that he owes something to one), he must ask the two witnesses to write it down. The ceremony of a *sudarium* must be done before two persons without writing. The approval of an oath, however, must be done by three persons. Said Rabha : I could not understand why the *sudarium* should be made before two. If it is considered an act of Beth Din, then three are needed ; and if it is not considered such, why should it not be written down? After deliberating, however, he said : This act is not considered as an act of Beth Din, and writing down is not needed, because this act is as good as if it were written. (This is the final conclusion of the act, and cannot be denied.)

Rabha and R. Joseph both said : We do not write down an announcement unless in a case where the defendant does not listen to the court. Both Abayi and Rabha, however, said that even for such people as we are, it may be written down. The Nahardeans said : An announcement in which it is not written :

"We witnesses testify that it was known to us that this man was compelled," etc., is not to be considered. What kind of an announcement do they mean? If concerning a divorce or a gift, it is sufficient when it is made public only. And if for a sale, did not Rabha say elsewhere: We do not write announcements about things sold? It means of a sale, and Rabha admits that when one was compelled to sell against his will, as, for instance, in the case of certain vineyards (Middle Gate, p. 176), we do write such announcements.

R. Jehudah said: A hidden deed of gift is not sufficient for collection. What does this mean? Said R. Joseph: If one said to the witnesses, "Go to a place which is invisible, and write him a deed of gift." According to others, R. Joseph said: If the giver did not say to the witness, "Go to the market, and in the presence of the people you shall write him this deed." And the difference between these two sayings is when he said to them: "Go and write," without any addition. Said Rabha: Such a deed is sufficient to be an announcement in case one has to render the same to another.

Said R. Papa: This statement attributed to Rabha was not plainly said by him, but it was inferred from his decision of the following act. There was a man who wanted to marry a certain woman, and she said to him: "If you will transfer all your property to me, I will be yours, and not otherwise." And he did so. Then came his older son, and said to him: "What then becomes of me?" And the father told two witnesses they should hide themselves in a certain place and write a deed that the property belonged to his son. And when the case came before Rabha, he decided that none of them had acquired title to the property (the son, because it was written in a hidden place; and the woman, because the first deed was an announcement against the latter deed). This, however, was only a supposition by those who heard this decision. In reality, however, Rabha did so because any one could see that the deed to the woman was written only under compulsion. But in the above case of a hidden deed, it could not serve as an announcement, because the latter was made in public. And it is to be assumed that he did so because such was his will, and the former was done unwillingly; and therefore he told the witnesses to write it in a secret place.

The schoolmen propounded a question: How is it when he told them to write a deed of gift without any explanation? (The question is concerning the two sayings of R. Joseph mentioned

above.) According to Rabhina, it is considered proper; and according to R. Ashi, it is not proper (unless he told them to make this publicly). And so the Halakha prevails.

MISHNA III. : A hazakah to which there is no claim is not to be considered. How so? "What are you doing on my property?" And if he answered: "Because there was no claim against it," it is not to be considered. But if he says: Because you have sold it; or, You had presented it to me; or, Because your father did so, this is to be considered. A property, however, which one possesses by inheritance does not need any explanation (which means that the claim, "I have inherited," is sufficient).

GEMARA : Is not the first statement in the Mishna self-evident? Lest one say: As the man has occupied the estate, it must be supposed that he has bought it, but has lost the deed; and the reason why he does not claim "bought," is because he feared that the plaintiff would ask to see the deed, therefore it is for the court to ask him: "Perhaps you had a deed, which was lost?" as it is written [Prov. xxxi. 8]: "Open thy mouth for the dumb," etc.; it comes to teach us that it is not so.

It happened that an overflow took away the fence of R. Anan's field, and he built a new one in the space belonging to his neighbor. And his neighbor complained before R. Na'hman, who decided that he must remove it. Said R. Anan to him: But I have made a hazakah on it. And he answered: You desire that I shall decide in accordance with R. Jehudah and R. Ishmael, who said that if it was done in the presence of the plaintiff, it is immediately considered a hazakah. The Halakha does not prevail according to them. Said R. Anan: But this man has relinquished his right to me, as he himself assisted me in making the fence. And he answered: Such a relinquishment was only an error, and cannot be considered; as you yourself, if you were aware that you were building the fence on a space which did not belong to you, would not do it. And so was it with your neighbor: he, also, was not aware that the space belonged to him.

The same happened to R. Kahana, and his neighbor came to complain before R. Jehudah, bringing two witnesses. One testified that R. Kahana had occupied two rows of his neighbor's estate, and the other testified three. And R. Jehudah decided he should pay him for two of the three rows. Said R. Kahana to him: Is not your decision in accordance with R. Simeon b. Elazar, who said elsewhere that the school of Hillel agrees that

the smaller amount is included in the larger one (*i.e.*, as there is no contradiction to the two rows, it is considered as two witnesses for two rows which must be paid for)? But I can bring you a letter from Palestine that the Halakha does not prevail with R. Simeon b. Elazar. And he answered: If you will bring me this letter, we shall see.

It happened in the city of Kashta that one had lived in an attic four years, and then the owner of the house came to ask him what he was doing in the house. To which he answered: I bought it from so and so, who bought it from you. And the case came before R. Hyya, who said to the defendant: If you will bring witnesses that the man from whom you bought it lived in this attic even one day, I will leave the attic in your possession, but not otherwise. Said Rabh: I used to sit then before my uncle, and I said to him: Can it not happen that one should sell out his property in the night-time, and leave it immediately? And I understood from my uncle's appearance that if the defendant should claim: "I was present when my seller bought it from you," he would trust him, because, if he wished to tell a lie, he could claim: I bought it from you directly. Said Rabha: It seems to me that R. Hyya was correct in his decision, as our Mishna states that if the defendant claimed inheritance, no other explanation is needed, which means an explanation is not needed, but nevertheless evidence that he inherited it is needed. (Said the Gemara:) This support does not hold good, as it may be said that the expression, "no explanation is needed," means also no evidence. Furthermore, the claim "bought" should have more chance than an heir; for if it were not known to him that the seller had a right to sell it, he would not throw away his money.

The schoolmen propounded a question: If the seller was seen on this property, not as a tenant, but as the owner, to measure it, would this be sufficient, according to R. Hyya? Said Abayi: "Aye." Rabha, however, maintains that it may happen that one shall measure his property without any intention of selling. If there were three buyers to one estate (*i.e.*, A sold it to B, who occupied it a year, and thereafter sold it to C, who also after a year's occupancy sold it to D, with a bill of sale: then came A and claimed that the estate was his—he never sold it—and B does not possess any bill of sale, shall we say that, as between B, C, and D three years of hazakah have elapsed, and as A has not protested, D is entitled to it? or, as each of them has not occu-

pied it the years of hazakah, A's claim is to be considered), the years of occupancy count. Said Rabh: This is only when both C and D possessed their deeds, but not otherwise.

Shall we assume that Rabh holds that only a deed is considered to be known by the people, but not witnesses; and the reason why he said elsewhere that he who sells his field in the presence of witnesses, and thereafter it was taken away from the buyer, the buyer has a right to collect his money from encumbered estates, is because the people who bought their estates afterwards from the seller had to investigate whether he had not sold his estates previously with security, but not because witnesses are considered known to the people? But how could Rabh say so? Is there not a Mishna farther on which states that if by witnesses only, he may collect from unencumbered estates only? And lest one say Rabh is a Tana who has a right to differ with a Mishna, did not Rabh and Samuel both declare that a loan which was made orally is not collectible either from heirs or from buyers? You contradict a case of a loan with a case of selling. They are entirely different, as he who makes a loan does it privately, as he would not like people should know he needed money, and the value of his estate would decrease. But he who sells an estate does it publicly, as he is searching for a buyer who will give him a better price.

The rabbis taught: If the father has consumed one year and his son two, or *vice versa*, or each of them one year, and the buyer from them one year, it is considered a hazakah. Shall we assume that it is a hazakah because a sale is considered known to the people, and therefore the owner ought to protest? Does not the following contradict: If one has occupied or consumed in the face of the father one year, and in the face of his son two, or *vice versa*, or in the face of each one year, and in the face of the buyer who bought it from the son one year, it is considered a hazakah for the occupant? Now, if you would bear in mind that selling and buying are considered known to the people, why is the selling itself not considered the greatest protest? Said R. Papa: This may not contradict, as the cited Boraitha may treat of one who sold the field among his other fields. (And so the sale of this particular field was probably not known to the people, and therefore it cannot be considered a protest.)

MISHNA IV.: The law of hazakah does not apply to the following: specialists, farmers, partners, gardeners, and guardians. There is also no hazakah to a husband on the estate of his wife,

and *vice versa*; and no hazakah to a father on the estate of his son, and *vice versa*. All this is said concerning hazakah, but concerning a gift or an inheritance of brothers, or one who takes possession of the estate of an heirless proselyte, if he has done any work whatever (*e.g.*, if he has locked it, or made any partition, or torn down the old one), it is considered a hazakah.

GEMARA : Both the father of Samuel and Levi taught : There is no hazakah to a partner, and so much the less to a specialist. Samuel, however, taught : There is no hazakah to a specialist, but to a partner there is. And Samuel is in accordance with his theory elsewhere, that concerning partners the law of hazakah applies. They also may be witnesses for each other, and they are also considered bailees for hire to each other. R. Abba raised the following contradiction to R. Jehudah : "At the cave of R. Zakkai." How can you say that Samuel holds that hazakah applies to partners? Did not he say that when one works on his partner's estate, it is to be considered as if he had done this with the permission of his partner. Is this not to be understood to mean that a partner has no right of hazakah? This presents no difficulty. One of Samuel's decisions speaks of when the partner has consumed the products of the whole estate which belongs to both, and the other decision treats of when he took possession of a half share, claiming that they had divided their estates long before and that he had made a hazakah on the part he now holds. To which his partner objects, saying : Our stipulation was such that you should keep it three years, and then I should keep it three years.

In explaining this, two parties differ. One maintains that Samuel's decision that a partner has a right of hazakah is in case he has consumed all the products of the estate belonging to both. For a partner usually consumes the products of half of the estate, taking them from one half one year and from the other half the following, in order to equalize matters. And as we see that one has taken possession of the entire estate for three years in succession, it is to be supposed that he bought the same. And the other decision of Samuel speaks of when they do as is customary, consuming the products of the same half three years in succession : no hazakah applies, because his partner may claim that such was the stipulation, as stated above.

And the other maintains to the contrary. If he consumes the whole, there is no hazakah, because it may be that that was their arrangement ; namely, that one should use the products the

first three years and his partner the three years succeeding. But if one utilizes exactly half for three years in succession, it may be said that he bought it, and therefore hazakah applies. Rabhina, however, says that both of Samuel's decisions may apply to the case that one has consumed the whole estate; but the decision that he has a hazakah speaks of a field which contains the prescribed quantity for division. Consequently, if one consumes the whole field (without any protest from his partner), it is to be supposed that he bought it. And the decision that there is no hazakah speaks of a field which has not the prescribed quantity. And it is to be supposed that their arrangement was that each should use it for three years, as said above.

The text says: "Samuel holds that when one works on his partner's estate," etc. What did Samuel mean to teach, that in partnership the law of hazakah does not apply? Let him then say so plainly. Said R. Na'hman in the name of Rabba b. Abuhu: He means to say that when one takes his partner's field, which is fit for sowing only, and plants trees in it, he is not liable for damages, as it is considered to be done with his partner's permission, and, moreover, his partner can claim half of any profits which may accrue after the expense of planting has been deducted. Farther on Samuel says: "They may bear witness for each other," etc. Why? Are they not interested in each other's affairs? He means to say, in case one of them gave a deed to the other, saying he had nothing further to do with the field. But even then, what is it? Have we not learned in the following Boraitha: If one says to his partner: "I have no claim on this field," "I have nothing to do with it," or, "I keep my hands off it," he says nothing (*i.e.*, unless he distinctly says, "It is yours, and I shall have nothing further to do with it," it is not to be considered, because it may be that he said it in a manner indicating that he wished he would have nothing to do with it, etc.)? It means that this was done with the ceremony of a *sudarium* (and then certainly he has nothing to do with it). But, after all, he is still interested in this case, for if the plaintiff should win the case, and the estate were taken away from the defendant, it might be appraised insufficient to cover the debt made while he was still a partner, and then it would devolve upon him. And he may also be interested in seeing that this estate shall remain with his partner, as it may happen afterwards that some one should claim that his partner had borrowed some money while they were still partners, and when his partner should have no estate, the

debt be turned over to him? This means that when he transferred his property to him he at the same time in writing took upon himself the responsibility. The responsibility of what? If the responsibility of this estate, in case it were taken away by some one, should devolve on him, then he is certainly interested in this case; and if it means he takes the responsibility of claims which may be upon the estate for his own debts, then he has nothing to do with any other claims: he is disinterested in so far as he has nothing to do with the estate itself—only the making good of his own debts. But has he a right to cut himself off from all other liabilities? Have we not learned in a Boraitha that if Holy Scrolls were stolen from a city the thieves must not be tried by the judges of that city, and also no witnesses from that city should be brought as evidence?

Now, if one should have a right to say: "I have cut myself off from this estate entirely," it would be possible, in the above case, for two judges to say, "We have relinquished our shares in the Holy Scrolls," and witnesses the same way, and then the judges could decide the case and the evidence of the witnesses be used. With Holy Scrolls it is different, as they are made for reading, and one cannot help hearing them. Come and hear! If one say: Give a manna to the poor of that city—if there is a trial about this, the case must not come before the judges of that city, and no evidence of witnesses of the same city should be admitted. Now, how can you maintain, because the poor of the city take the charity, that the judges of the city should not be eligible to decide the case? You must say, then, that the judges must not be of the poor who take charity, nor witnesses who have benefit therefrom. And why let the judges or the witnesses relinquish their share in this charity and be used? The Boraitha speaks also when the manna in question was given for Holy Scrolls, and the expression "poor" is because concerning the Holy Scrolls all are considered poor; and if you wish, it may be said, the expression "poor" is to be taken literally, and it speaks of the poor whom the judges or witnesses are obliged to assist. And therefore the trial could not come before them, because they are interested in it (*i.e.*, if the poor should win the case, their share of assistance would be less than before). And even if the judges or witnesses were taxed to assist the poor of that city with a certain sum per annum, they are still considered interested in that case, for they are pleased at the poor receiving more support.

Samuel says further: "They are also considered bailees for

hire," etc. Why so? Is this not a guard in the presence of its owner, and it is said above that in such a case he is not responsible? Said R. Papa: He means to say, if one said to his partner: Guard for me to-day and I will guard for you to-morrow.

The rabbis taught: If one sells another a house or a field, he is not allowed to be a witness, because he is always responsible for it, if there should be a claim against it. But if he has sold him a cow or a garment, he may be a witness, because he has nothing more to do with them. What is the difference between the former and the latter facts? Is the seller not responsible in case it should be found that the cow or garment in question was stolen by him? Said R. Shesheth: The first part speaks of the following case: If A has robbed B of a field and has sold it to C, then D comes with a claim, B then has no right to be a witness for C, because he is interested in having it returned to A, so that he can establish his claim. But if B should be a witness that C is right, how can he claim afterwards that the field is his? He can only testify that D's claim is wrong. But could not B exercise his right, even if it were D's? He may think that C, who is not so mighty, might settle with him, while with D it would not be so easy. And if you wish, it may be said that it speaks of a case as follows: B has witnesses that this property belongs to him, and D has witnesses who contradict B's witnesses. And in such a case, usually the judges decide that the property shall remain with its present owner. And therefore B is interested in it, and must not be trusted as a witness. But why was it necessary for R. Shesheth to illustrate this Boraitha in case the robber had sold the field to another? Could he not illustrate this by saying that C had announced his claim while the field was still in the hands of the robber A—then B cannot be a witness? Because it has to teach in the last part that if he has sold movable property to some one, which means the one who robbed the property in question and sold it, the one who has been robbed may be a witness, and this can only hold good in case of movable property which was passing into another's hands and of the renouncing of the hope to regain it by the owner. As the law dictates that these two things give title to the possessor, consequently the robbed one, who has nothing more to do with these articles, may be a witness. But if the article were still in the hand of the robber, the robbed one would not renounce his hope of regaining it, and it would still be considered his property, and consequently he cannot be a witness. Therefore he illustrated the first part

also in the same manner. But, after all, although the robbed one renounced his hope of regaining the article, did he do the same about the value of it? He speaks when the robber no longer exists—when he has no further hope even for the value, as we have learned in a Mishna that if one robbed movable property and bequeathed it to his children, they are free from paying for it. But why does not R. Shesheth explain this Boraitha as speaking of an heir (it means if the robber dies and leaves it for his heirs)? This objection would not hold good, in accordance with him who holds that the control of an heir is not equal to the control of a buyer. But to him who holds that they are equal, what can be said? Furthermore, there was a difficulty to Abayi: Why does the Boraitha use the expressions “responsible” and “not responsible”—as, according to R. Shesheth’s explanation, it ought to be said, because this is “returning” and “not returning”? Therefore the Boraitha must be explained in accordance with Rabbin b. Samuel, who said in the name of Mar Samuel as follows: If one sold a field to his neighbor without security, he has no right to qualify as a witness concerning it, because in case of a creditor he can show this as a source of collection. But this can only be in case of a house or other real estate, and not of movable property; and not only when it was sold without any stipulation that collection is not to be made on movable property for the claim of a creditor, but even in case it was written, “You shall collect your money from the garment which is on my shoulders,” he can do it only when the movable property is still in his possession, but not otherwise. As even then the property in question has been made a hypothec, he can only collect when it is yet under the borrower’s control; but when it is not under his control, he cannot. As Rabba said (First Gate, p. 19): If one has made his slave a hypothec, and thereafter he sold it, a collection can be made; but if the hypothec was an ox or an ass, and he has sold it, the creditor cannot collect. Why so? Because real estate, when it is sold, people talk about it, which is not the case with movable property. But let it be feared that the owner of the movable property has mortgaged it together with the real estate. As Rabba said elsewhere: Such an agreement holds good to collect also from the personal property. And R. Hisda added to it that this law holds good only when the borrower mentioned in his agreement that this should not be considered an *asmachtah*, or a copied agreement? It speaks of a case in which the movable property was bought and sold immediately.

Let it still, however, be feared that he wrote in the mortgage of the real estate : "All the personal property which I possess and which I shall possess hereafter." Shall we assume that because such is not feared, a similar agreement is not to be considered? And if in spite of such agreement he has sold out or bequeathed his movable property, the sale is valid? Nay; it may be said that the above case treats of when there are witnesses who testify that this man never possessed any real estate. But did not R. Papa say that although the rabbis had enacted that if one sold out real estate without security, and a creditor took it away from the buyer, the latter could not claim the money from the seller? If, however, the investigation shows that the seller has never possessed this estate, he must pay?

It speaks that the buyer was aware that the ass in question was born from his cattle. R. Zebid, however, maintained that if sold without security, even if it was found afterwards that he never possessed it, the buyer could claim his money, because the seller might claim that on this account it was sold without security.

It is said above, in the name of Samuel, that he who has sold a field without security cannot be a witness concerning this estate, as he is interested in it; in case his creditor came, he can show him this field for collection. Let us see how the case was. Does the seller possess other real estate? Then certainly the creditor will make his claim against that estate first, as there is a rule that no collection should be made from encumbered estate when there are unencumbered estates of the defendant. And if he does not possess any others, then what can the creditor take from him, even if it remains with the buyer? It may be said that he does not possess other estates. Nevertheless, he may say: "I do not want to be wicked," that the verse in Ps. xxxvii. 21, "The wicked borrowed and repayeth not," should apply to me. But would not the same verse apply to him concerning the buyer? Nay; as he may say: I plainly told him that I would not secure this field to him. Consequently he was willing to buy it, even though it might be taken away from him afterwards.

Rabha, according to others R. Papa, announced: It shall be known to them who are ascending to Palestine or descending to Babylon, that if one Israelite sold to another an ass, and a Gentile came and took it away, claiming that it was stolen from him, it is but right that the seller shall settle with the buyer, so that he shall not suffer the whole damage. This, however, is said

when the buyer was not aware that this ass was born among his animals. But if the buyer was aware of it, he cannot expect any settlement (as such was his fate). And even in case he was not aware, he may do so when the Gentile takes away the ass only, but when he takes away the saddle and also the man, since he takes not only what belongs to him, but all that the buyer possessed, then again it is his fate.

"*Specialists*," etc. Said Rabba: "This is said when the owner has transferred to the specialist in the presence of witnesses; but otherwise, because he may claim that he never took it from him, he is to be trusted if he says that he bought it from him. Said Abayi to him: According to your theory, even if it was in the presence of witnesses, he should also be trusted, because he could claim that he has returned it already. Answered Rabba: Do you mean to say that if one deposits an article with his neighbor in the presence of witnesses the depositary should return it to him without witnesses, and that it should not be born in mind (that he used witnesses when presenting)? The latter must do the same when returning; for, if not, he will not be trusted when he claims to have returned it. Abayi objected from the following: If one has seen his slave learning a trade at a specialist's, or his garment at a cleaner's, and to the question, "What does it concern you?" he answers, "You sold it, or made it a present to me," he said nothing. But if he claims: "I was present when you told so and so to sell it, or give it for a present," he may be trusted. And to the explanation of the difference in the law between the first part and the latter, said Rabba: The latter part means to say: If the article in question came to the present possessor from a third hand, and the latter said to the plaintiff: In my presence you told so and so that he might sell it, or give it as a present. And the reason is because, if he wished to tell a lie, he could claim: I myself bought it from you. Now we see that the first part states, "If one has seen." And what does it mean? If there were witnesses, why the expression "seen"? He should bring his witnesses and take it away. We must say, then, that there were no witnesses; yet, as soon as he has seen it, he may take it away (hence this contradicts your statement that if there were no witnesses he is to be trusted, claiming, "I bought it from you"). Says Rabba: Nay; it means that there were witnesses (when he presented it to him), and even then only when he saw it in his possession. (Said Abayi:) But did you not declare that he who has deposited an article in the presence of

witnesses, the returning must also be done in the presence of the same? And he answered: I retract that statement. Rabba, however, objected to Abayi, and brought the following as a support to Rabba: If one has given his garment to a specialist, the latter claiming, "The stipulation was that you should give me two zuz," and the owner claims the stipulation was for one zuz, so long as the article is in the hand of the specialist, it is for the owner to bring evidence. If, however, the specialist has already returned it to the owner, if he announced his claim in time (*i.e.*, before sunset, at which time a laborer has to get his payment), then he takes an oath and gets the full payment. But if it was after that time, he is the plaintiff, and it is for him to bring witnesses. Now let us see how was the case. If there were witnesses, then it must be done as the witnesses testify. It must be said, therefore, that there are no witnesses, nevertheless the specialist is trusted. Is this not because he could claim, "I bought it," so that he would be trusted? So is it when he claims his payment? Nay; it treats of when there were no witnesses, and also when the owner of the article did not see it in the hands of the specialist (so that the specialist could claim that he had returned it).

R. Na'hman b. Itz'hak objected from our Mishna, which states that a specialist has no hazakah, from which it is to be inferred that only a specialist has not, but a common man has. And this is certainly the case if there were no witnesses; for if there were, why should he? Hence we see that a specialist has no hazakah even when there were witnesses. And this contradicts Rabba's above statement, and this objection remains.

The rabbis taught: If one has exchanged his utensils for another's in the house of a specialist, he may use them until the owner shall come and recognize his. If the same was done at the house of a mourner or at a house of a wedding, he must not use them before they shall be recognized. And what is the reason for the difference in the two cases? Said Rabh: I used to sit before my uncle, and he explained it to me that it might happen that the owner of an article might say to a specialist, "Sell this article for me" (hence the article might be given to him, not by an error but intentionally by the specialist, who has a right to sell it), which cannot be the case in the house of a mourner or of a wedding. Said R. Hyya b. R. Na'hman: Then it may be used only when the specialist himself has exchanged it; but if this was presented to him by his wife or children, he must not use it.

And even when it was presented by the specialist himself, the law holds good if he said to him: "Here is *this* article"; but if he said to him: "Here is *your* article," then he must not use it, as we see that the specialist has erred in giving it to him. Said Abayi to Rabha: Come and I will tell you what the swindlers of Pumbeditha are doing. If one claims: "Give me up my mantle which I have given to you for repairing," the other answers that this never occurred. And if he claims: "I have witnesses who saw it at your place," he claims it was another's. "But bring it forth and let us see it." He answers: "No, indeed! I have no right to show you the goods of others." Answered Rabha: Although he is a swindler, nevertheless he does it in accordance with the law, as the Boraitha states plainly, when he sees it with his eyes. Said R. Ashi: If the claimant is a clever man, he can make the specialist show him the article in question, saying: I understand that you keep it because you are afraid I shall deny the debt which I owe you. I admit to you in the presence of witnesses that I owe you, and will pay you when you shall bring forth this garment and it shall be appraised. Then you will take yours, and I shall take mine. Said R. Aha b. R. Ivya to R. Ashi: The swindler may answer: I do not need your appraisal, as it was appraised long ago by more competent men than you are.

"Gardeners," etc. Why so? Until now he took only the half, and now we see he has consumed the whole of it for three years, why has he no hazakah? Said R. Johanan: It speaks of family gardeners (*i.e.*, the same gardeners used to guard and work up the fields as gardens of that family since it was in its possession, and as this was a kind of inheritance, the owners could not discharge them by substituting others, and with such gardeners it might happen that they consumed the fruit for three years in succession and thereafter the owners consumed the fruit for the same period, and therefore no hazakah applies to them. But to ordinary gardeners, if they consume the fruit for three years, hazakah does apply. R. Na'hman said: A gardener who has hired other gardeners to substitute him for the years of hazakah (even if he was of the kind mentioned by R. Johanan), hazakah may be considered, because in such a case the owners would protest. R. Johanan said again: To a gardener of the above sort, who has divided the work which is needed for the gardens, to hired gardeners, hazakah does not apply, as it may be supposed that he does so with the permission of the owner (as he himself could not do the whole work).

R. Na'hman b. R. Hisda sent a message to R. Na'hman b. Jacob: Let the master teach us. May a gardener be taken as a witness in case of a claim, or not? R. Joseph was sitting before the latter when the message came, and said to him: "So said Samuel: A gardener may be a witness." But is there not a Boraitha which states that they must not? This presents no difficulty. If there are products still on the estate, the gardener may not qualify as a witness; but if there were none, then he may.

The rabbis taught: A surety may be a witness for the borrower in case the latter has other property besides that to which the claim refers. And the same is the case with a lender. The first buyer may be a witness to the second (*e.g.*, if A sold one field to B and another to C, and D claims that the field sold to C belongs to him as A has robbed him of it, B may be a witness in that case in behalf of C in case A has other property), so that if there should be another claim he should be able to pay from the remainder.

A receiver (*i.e.*, one who receives the money from the lender and forwards it to the borrower, as to which the law dictates that the lender has a right to collect from whomsoever he chooses—either from the receiver or from the borrower)—according to some he may, and according to others he may not be a witness. He who permits this maintains that the receiver is considered an ordinary surety whom the law permits to be a witness, and he who forbids it maintains that the receiver is always pleased when the borrower has more estates, so that in case a creditor should appear he will be able to pay him from his middle estate.

R. Johanan said again: A specialist has no hazakah, but his son has; and the same is the case with a gardener. A robber, however, neither he nor his son has hazakah, but his grandson has. Let us see how was the case? If all mentioned above claimed that the estate was their fathers', then they also should not have any hazakah; and if they claim for themselves, it means that they themselves bought it. Why should this law not apply to the son of the robber also? He speaks of a case where there are witnesses who testify that the owners have admitted to their fathers in their presence that they sold it; and then the sons of a gardener or a specialist are to be trusted if they claim to have inherited from their fathers; but the son of a robber is not to be trusted even in such a case. As R. Kahana said: It may be feared that the owner has admitted to the robber only for fear

lest he make him more trouble. Said Rabha: It may happen that even the grandson of a robber shall not have any hazakah. It is when the basis of his claim is his grandfather. Who is to be considered a robber, so that the law of hazakah should not apply? Said R. Johanan: When he has occupied a field which does not belong to him (and as he was an influential man, the owner was afraid to sue him). R. Hisda, however, maintains that it means only people like a certain family of N, who used to kill men when they opposed them in money matters.

The rabbis taught: A specialist has no hazakah so long as he keeps up his profession, but otherwise when he has ceased. And the same is the case with a gardener when he has given up his gardening. The same is the case with a son who has separated himself from his father, and with a woman who was divorced from her husband—all of them are considered, in a case of hazakah, with men in general. It is correct to teach about a son who has separated himself, lest one say that usually a father relinquishes his right to a son; but was it also necessary to teach about a divorced woman? Is not this self-evident? It means that the divorce was made by such a document as is doubtful in legality, and in such a case she is considered divorced and not divorced; and it is in accordance with R. Zera, who said in the name of Jeremiah b. Abba, quoting Samuel, that in a case where the sages say, "She is divorced and not divorced," her husband is obliged to support her.

R. Na'hman said: Huna told me that all the persons mentioned above who have not the right of hazakah, if they bring evidence, it is to be considered, and the court may leave the property in their possession; except a robber, for even if he brought evidence, it must not be considered, and the court replevins the estate. But what news comes he to teach us? Have we not learned this already elsewhere, that if one has bought estates from a *sicarius* (a man who took away the estate by threatening murder if it was not given to him), and afterwards he got a bill of sale from the owner (without giving him any money), the bill of sale is not considered and he has no title (hence it is already taught that a robber and all those who base their claims upon his actions, even if they bring evidence, are not to be considered)? This teaching was necessary to deny Rabh's theory, who said that the cited Mishna speaks only of a case in which the owner told the buyer: "Go make a hazakah on the estate and acquire title," but has not furnished him with any deed.

But if he gave him a deed, title is acquired. R. Huna comes to teach us that the Halakha prevails in accordance with Samuel, who said that in such a case, even if he gave him a deed, title is not acquired unless he take the responsibility for the future. And R. Bibi has added to the above statement of Huna in the name of R. Na'hman, that the estate does not remain in his possession, but the claim for his money, in case he paid afterwards to the robbed one, is to be considered, provided witnesses testify that he gave him the money in their presence. But if they testify that in their presence the robbed one has admitted to the robber that he was paid for it, it is not to be considered. As R. Kahana said elsewhere: Such an admission may have been made only because of fear that he would be killed. R. Huna said: If one sold his estate by duress, the sale is valid. Why so? For if one sells every estate which belongs to him, he usually does so because he is compelled to do so by circumstances, and nevertheless the sale is valid.

But perhaps there is a difference between the pressure of his private circumstances and duress, which is a pressure by others? This is to be explained as we have learned in the following Boraitha: It is written [Lev. i. 3]: "Shall he bring it," which means that he may be compelled to bring it—that it may be *Lirzuno* (literally, according to his will). And what does this mean—that he shall be *compelled* until he shall say: "I am *willing* to do so." But still it may be that there is a difference, because one likes to atone (and consequently he does it, finally, with good will). Therefore we may infer the same from the latter part of the cited Mishna: And the same is the case with divorced women—he may be compelled until he says: "I am willing to do so." But still it may be that this is to be done because it is a meritorious act to listen to the law (which is not the case with R. Huna's theory). Therefore we must say that R. Huna's decision was from a common-sense standpoint, that when a man is in such circumstances he resolves to give title to the buyer. R. Jehudah objected from the following: A divorce which was compelled by the court of Israelites is valid. By Gentiles, it is not, unless they beat him, saying: "Do as the Israelite court dictates to you." Now, if you say because of the circumstances he resolves to give title, why should the divorce be invalid, even at a court of Gentiles? It may also be supposed that because of circumstances it was resolved to give the divorce legally. The answer is: Was it not taught in addition to this that R. Mesharshiah said: Biblically

the divorce is valid, even when it was obtained in a court of Gentiles. And why did the rabbis enact that such should be invalid—that every woman who did not like her husband should not go to the Gentile court to be divorced from her husband? R. Hamnuna objected from the above-cited Mishna: If he bought of a *sicarius*, etc. Why, then, should it not be said in that case also, that because of the circumstances he resolved to give title? Of this, also, it was taught that Rabh said that this holds good only when there was no deed (as said above). But still there would be an objection to Samuel, who said above that even with a deed the same is invalid?

Samuel himself agrees that such a sale is valid in case the buyer has paid the owner in cash. But would not R. Bibi's above statement in the name of R. Na'hman contradict R. Huna? Bibi's statement is not a Boraitha and not a Mishna, but only a saying, to which R. Huna need not pay any attention. Said Rabha: The Halakha prevails that if one sells his goods under duress the sale is valid, provided he was compelled to sell one of his estates, and he himself has made the selection. But if he was compelled to sell this field, the sale is not valid, provided he did not count the money given him for it (as this shows that he does it unwillingly); but if he has counted the money the sale is valid. And all this is said in case he has no opportunity to extricate himself; but if he had, and did not take advantage of it, the sales are valid. (Says the Gemara:.) In reality, the Halakha prevails that in all these cases the sale is valid, even if he was compelled to sell *this* field, as a woman is similar to *this* field; and Amemar said that if a woman is compelled to betroth herself under duress the betrothal is valid. Mar b. R. Ashi, however, said that in case of a woman the betrothal is null and void. Because he has acted unlawfully, he must also be treated unlawfully, and the rabbis deny his betrothal and consider it void.

Tabba hung Pappi on a tree called khidra, to compel him to sell him his field, and he did so. And Rabha b. b. Hana signed his name on both—on the protest of Pappi made before being compelled, and on the bill of sale made under duress. Said R. Huna: He who has signed his name to the protest, and also he who has signed his name on the bill of sale, did well. How is this to be understood? If there was a protest, the bill of sale cannot hold good, and *vice versa*? He meant to say that if there were no protest, he who signed his name on the bill of sale did well, for according to his theory a sale under duress is valid. But why

should the protest annul the bill of sale, when the same witnesses who signed the protest signed the bill of sale also? Did not R. Na'hman say: Witnesses who testify that they signed their names to a note whose amount was not yet paid, but which was prepared by the borrower in case he should find some one who would make him the loan, are not to be trusted? And the same is the case if some one has sold a bill of sale, and the witnesses whose signatures were on the same testified that the one who made the bill of sale made also a protest previously "before us, that he was compelled to make *this* bill of sale, and we have acknowledged the truth of his protest."

Why, then, said R. Huna that if not for the protest the sale would be valid? Let him say it is valid, notwithstanding this protest, in accordance with R. Na'hman's decision just stated? R. Na'hman's statement was when the protest was oral, as such cannot harm a written document. In our case, however, the protest was a written one, and therefore it annuls the bill of sale.

Mar b. R. Ashi, however, maintains that if witnesses testify, "We signed our names before the money was given" (as explained above), they are not to be trusted; but if they testify that this bill of sale was previously "protested before us and acknowledged by us," they may be trusted. Why so? Because in the first case, after the witnesses signed their names to the fact that so and so had borrowed money from so and so, they could not sign another document that the borrower had not received the money as yet, as it would contradict their first statement, and it would seem that they had made themselves liars; and, therefore, if they testify so, they are not to be trusted, as there is a rule that one cannot make himself wicked; *i.e.*, if one comes before the court, and says, "I am a liar," or "wicked," for the purpose that another shall have benefit from this confession, he is not to be trusted. But in the other case, however, both documents may be written by the very same men; *i.e.*, if they see a man in trouble, they may listen to his protest, write it down, and sign it, and thereafter also sign the bill of sale to which he was compelled. And therefore, even if the protest was not written by them, they may be trusted if they testify that they have heard the protest and acknowledged to the truth of it.

"*No hazakah to a husband*," etc. Is this not self-evident? As he has a right to use the fruit of her estate, how can it be considered a hazakah? It speaks of even when he gave her a document that he has no interest in her estate. But even then,

what is it? Have we not learned in a Boraitha above (p. 109), that if one says: "I have nothing to do with this field," "I have no claim to it," and, "I keep my hands off it," he says nothing? Said the disciples of R. Yanai: Our Mishna treats of when he gave her such a document when she was still betrothed. And this is in accordance with R. Kahana, who says of an estate which one expected to take possession of in the future, he has a right to make a stipulation that he should not inherit it. And it is also in accordance with Rabha, who said: If one declares: "I do not care to have the privilege of the enactment by the sages in a thing similar to the above," he may be listened to. What does this mean? That which R. Huna said in the name of Rabh: A woman has a right to say to her husband: "I do not wish to be supported by you and also would not wish to do any work for you."

Now the Mishna states that the consuming of fruit does not make a hazakah; but if he brings evidence that she sold her estate to him, it would be a hazakah. Why? Let her claim that she had done so only to please her husband. Have we not learned in a Mishna: If one bought an estate from another whose properties were encumbered by the marriage contract of his wife, and afterwards he also took a deed from his wife, the sale is invalid? Is it not because she may say: I did so only with the intention of pleasing my husband, but not with the intention of selling it? Was it not taught in addition to this Mishna that Rabha b. R. Huna explained it that the Mishna treats of certain three fields—namely, one, of one he had set apart in the marriage contract before marriage; and another, of one of which he had made a *hypothec* in the marriage contract after marriage; and the third, of one which she brought him as a gift from her father, which was appraised at a certain amount of money, for which the husband became responsible in the marriage contract? What does he mean to exclude? Shall we assume to exclude all other estates which were also encumbered to her? Then, certainly, it would create so much the more animosity between her husband and herself, because he would say: You did not want to sign this because you are expecting my death or to be divorced. Hence the claim that "I have done so to please my husband" would be right. And shall we say that he means to exclude the usage of fruit? Did not Amemar say that if the husband and his wife have sold the usage of fruit from her estate, it is not to be considered (because of the same claim, "I have done it only to

please my husband")? He means to exclude the use of fruit; and Amemar's statement was only in case he had sold out and died, that she might, after his death, make use of that claim, or in case of her death, he had a right to make use of such a claim, according to the enactment of the rabbis. And it is as R. Jose b. Hanina said (First Gate, p. 197). But when they are both alive and have sold out, and even when the husband only has sold out, the sale is valid. And if you wish, it can be said that Amemar's statement is based upon R. Eliezer's elsewhere, that an article which does not bear the name of its owner—as, for instance, the fruit of the wife's estate, which cannot be said to belong to her or to belong to him—cannot be sold by either of them. And Rabha said that R. Eliezer based his statement on [Ex. xxi. 21], "for he is *his* money," which means the money which belongs to him alone.

"On his wife's estate." But did not Rabh say that a married woman must protest (in case one has occupied her estate). Who is the one who has occupied her estate? Shall we assume any one? Did not Rabh say: "There is no occupancy in the estates of a married woman"? We must therefore say, he means even when her husband has occupied her estate? Said Rabha: He means the husband, and in case he has dug in her estate excavations, pits, and caves, then she must protest, as he has the right to her estate only for usage of fruit; and if she did not, he has a hazakah, as, if he had not bought it, he would not dare to dig in it. But did not R. Na'hman say in the name of Rabba b. Abuhu that there is no hazakah concerning damages (hence if the husband has damaged her estate, she has not had to protest). Was it not taught in addition to this (above, p. 69), R. Mari said: Concerning smoke, etc.? R. Joseph, however, said: Rabh means a stranger, and he speaks in case he has occupied it at a certain time while her husband was still alive and three years after his death; and because the occupant could claim, "I bought it from you" (as three years have already elapsed since her husband's decease), he is to be trusted if he claims, "You sold out your estate to your husband, and I bought it from him." The text states: Rabh says: There is no occupancy in the estate of a married woman. The judges of the Exile, however, maintain that there is. And Rabh himself, when he was told of this, said: The Halakah prevails in accordance with the judges of the Exile. (Samuel and Karna were called the judges of the Exile.) And to the question of R. Kahana and R. Assi: Has the master

receded from his statement? he answered: I meant to say, as it was illustrated above by R. Joseph.*

"And *vice versa*." Is this not self-evident? Has she not to be supported from the estate of her husband? It treats in case he has set aside another estate for her support. But how is it if she brings evidence that she has paid him for it? Has she the right? Let him claim: I intended only to discover the money which she had hidden from me, and therefore I told her I would sell it, never intending, however, actually to transfer it to her. And because it was not stated, let it be inferred from this that if a husband sold his estate to his wife, the above claim should not be taken into consideration? Nay; it may be said that the Mishna means evidence in the form of a transfer as a gift.

R. Na'hman said to R. Huna: "The master was not with us yesterday, in our college, and there were taught many good things." "And what were they?" "That when a husband sells his estate to his wife, she acquires title, and the claim, 'I did it only to discover her money,' etc., is not to be considered." And Huna answered: This is self-evident, as if you take away the fact that she has given him money, the bill of sale gives her title. For have we not learned in a Mishna that real estate may be bought with money or a document, or with *hazakah*? Rejoined R. Na'hman: But was it not taught, in addition to it, that Samuel said that it speaks only of a bill of a gift, but a bill of sale gives no title unless he paid the money for it? Said Huna: But was this not objected to by R. Hamnuna, from the following: With a document—how so? If he wrote on a piece of paper [or on a piece of broken clay, although it has no value whatever], "My field is sold to you," or, "My field is bought from you," it is sold and transferred to the buyer? And R. Na'hman answered to this: Did not R. Hamnuna himself answer his objection that it speaks of one who sells his estate because of its barrenness? R. Ashi, however, answered (the objection of Hamnuna): The cited Boraitha speaks of a gift which was written in the manner of a bill of sale, to strengthen its power (*i.e.*, the seller has to make good all claims to it). An objection was raised from the following: If one borrowed from his bondsman, and encumbered his estate for him by a document, and afterwards he freed him, or from his wife and thereafter he divorced her, they have nothing

* R. Joseph was two generations after Rabh. But it is the custom of the Gemara to write as if Rabh would have said: "I illustrate this as R. Joseph has done it."

to claim. Must we not assume that the reason is because we suppose that he only intended to discover the money which was hidden from him? That case is different, as one would not like to make himself a slave to the lender ([Prov. xxii. 7]: "The borrower is servant to the lender").

R. Huna b. Abbin sent a message to the college relating that if one sold out his field to his wife, she acquires title, but he has still a right to use the products. However, R. Abba b. Abuhu, and all the great men of the generation, said that such a bill of sale is to be considered a deed of gift, but it was written in the manner of a bill of sale for the purpose of strengthening its power. This message was objected to by the college, from the Boraitha just cited, and was answered with the same reply.

Rabh said: If one sold his field to his wife, she acquires title, and the husband uses the products. If, however, he has presented it to her as a gift, she acquires title, and he must not use the fruit. R. Elazar, however, maintains that in both cases title is acquired, and the husband has no right to use the fruit. R. Hisda acted in accordance with R. Elazar. Said Rabban Uqba and Rabban Nehemiah, sons of Rabh's daughter, to R. Hisda: "Does the master put aside the great men and act like the small ones?" (R. Elazar was only a disciple of R. Johanan.) And he answered: I have also acted according to the theory of the great men, as when Rabbin came from Palestine, he said in the name of R. Johanan that in both cases she acquires title, and the husband has no right to use the products. Said Rabha: The Halakha prevails that if one sells his field to his wife she does not acquire title, and the husband may use the fruit; and if a gift, she acquires title, and he may not use the products. Does not Rabha contradict himself? (He says she does not acquire title, and it is self-evident that he may use the fruit; and when he says he may use the fruit, it means although she has acquired title.) This presents no difficulty. If she bought with the money which was hidden from her husband, she does not acquire title at all; but if with money which was not hidden from him, she acquires title; but he may, nevertheless, use the fruit. So was it said in the name of R. Jehudah.

The rabbis taught: One must not accept bailments from women, from slaves, or from children: If, however, one has accepted from a woman, he must return it to her; and in case she dies, he must return it to her husband. From a slave, he must return to him; and in case he dies, then to his master. If from

a minor, he should invest it in such a thing as will bear good fruit until he shall be of age, and in case of death return it to his heirs. All of them, however, if they said, while dying, "This belongs to so and so," he must act accordingly (even when the depositor was a minor); and if they have declared nothing, he may do in accordance with his conscience—(*i.e.*, he shall return it to him whom he thinks to be the proper heir. The wife of Rabba b. b. Hana while dying said: These earrings belong to Martha, and to the sons of his daughter. And Rabba came to question Rabh what he should do. And he answered: If these people whom she mentioned are worthy, so that they can afford to keep bailments with her, then do as she declared; and if not, then you may explain her declaration as you please. "From a minor, he should invest," etc. R. Hisda maintains in Holy Scrolls; and Rabha b. Huna said: A tree which bears dates.

"*A father on the estate of his son,*" etc. Said R. Joseph: Even if they have separated themselves. Rabha, however, maintains that in case of separation the law is different. Said R. Jeremiah of Diphti: R. Pappi has acted in accordance with Rabha's statement. Said R. Na'hman b. Itz'hak: I was told by R. Hyya of Hurmiz Ardshir that he was told by R. Aha b. Jacob, quoting R. Na'hman b. Jacob, that when they have separated themselves each of them has a right of hazakah. And so the Halakha prevails.

It was taught: If one of brothers who was the business man of the house, and the bills of sale and notes were in his name, claims: "All this is my own, inherited from my mother's father," according to Rabh, the burden of proof lies upon him; and according to Samuel, it lies upon his brothers. Said Samuel: Abba admits that in case he dies the burden of proof is thrown upon his brothers. R. Papa opposed: Should we make for orphans such a claim as their father while alive had not any right to (*i.e.*, when this brother was alive, it was for him to bring evidence, and if he could not, the goods belong to all the brothers, and because he is dead, shall we say that the brothers have to bring evidence, and if they cannot it belongs to his orphans)? Did not Rabha levy upon a pair of shoes and a book of Hagadah from orphans without any evidence that they were things which are usually hired and borrowed? And he did so in accordance with the message of R. Huna b. Abbin, that of things which are usually borrowed and hired one is not trusted to say, "They were bought by me." This difficulty remains.

Said R. Hisda: The decision of Rabh concerning the brother who manages the business of the house, holds good only when all the brothers are not separated in the household—even in the dough of bread which they take for the house. But if they are, he may claim that he has spared from his householding the amount which he has in his hand, and the brothers have nothing to do with it. The evidence mentioned in Rabh's decision—what should it be? According to Rabba, the evidence should be with witnesses that he has saved the money or it came from other sources; and according to R. Shesheth, it is sufficient when the court has approved the bill of sale or other notes which bear his name (as it is to be supposed that the court would not approve if it were not sure it belonged to him only). Said Rabha to R. Na'hman: There are Rabh and Samuel, with Rabba and R. Shesheth, who discuss this matter, and I would like to know the opinion of you, master—with whom you agree. And he answered: I am aware of the following Boraitha: One of brothers who was the business man of the house, and there were bills of sale and other notes bearing his name only, and he claims: "They are my own, inherited from my mother's father," the burden of evidence rests with him. And the same is the case with a woman who was managing the business in a house and there were documents bearing her name only, and she claims that they are her own property which came from her grandfather on the father's or mother's side—it is upon her to bring evidence. (Says the Gamara:) It was necessary for the Boraitha to declare the same law in the case of a woman, lest one say that because it is an honor for a woman to be trusted with the management of a house, she would surely take care not to rob the orphans, and therefore she ought to be trusted without evidence, it comes to teach that it is not so.

"*Concerning a gift or an inheritance of brothers,*" etc. How is this to be understood? Does not the law of hazakah apply to the persons mentioned farther on in the Mishna? The Mishna is not complete, and should read thus: All this is said of a hazakah to which there is a claim; as, for instance, the seller says, "I did not sell," and the buyer says, "I have bought." But a hazakah to which there is no claim, as, for instance, who presents a gift or an inheritance of brothers, or who takes possession of the property of a proselyte, to which the law prescribes that he needs to acquire title by doing something—if he has locked it or made any partition, etc.—it is a hazakah. R. Houshia taught: In a

Tosephta of Tract Kidushin, written by the school of Levi, "If he locked it," etc., in the face of the other party—it is a hazakah. Is this to be understood, only to his face, but not in his absence? Said Rabha: He meant to say: If this was in the face of the other party, it is not necessary for the latter to tell him: "Go make a hazakah, and acquire title." But if not to his face, it is not considered a hazakah unless he distinctly said to him the words just mentioned. Questioned Rabh: How is the law concerning a gift, according to the Boraitha just mentioned (must the giver also tell the receiver, "Go and make a hazakah," or not)? Said Samuel: Why was Abba doubtful? When, concerning a sale for which the seller gets money, it is not a hazakah unless he tells him, "Go and make a hazakah," so much the less it must be so with a gift, for which he has received nothing. Rabh, however, maintains that he who makes a gift usually makes it with a good eye, and no explanation is needed.

The Mishna states: "Any work whatever." What does this mean? As Samuel said: If he has completed the partition which was there already to the size of ten spans, or he has broken a hole in the partition through which he can go in or out, it is considered a hazakah. Let us see how was the partition! If it was placed in such a position that one could not climb over it to the estate, and after its completion by the occupant it is also the same, what, then, has he done that shall be considered a hazakah? And if in its previous condition one could climb over it, and after its completion one cannot, then he has done much that does not correspond with the expression "whatever"? It means that in the previous condition one could easily climb over it, and after it was completed it is not so easy for one to do so; and the same is the case with a hole in a partition, by which, in the previous condition, it was not easy to enter, and one broke it to such an extent that it is easy to enter. R. Assi in the name of R. Johanan said: If the occupant of the property of a proselyte put a little piece of wood too near the hole which was in the partition and with this he has improved it, or he took out a piece of wood and with this he has improved it, it is considered a hazakah. What does he mean by the expression, "he put . . . or he took out"? Shall we assume that with this piece of wood he closed the hole so that it prevents the water from going in, or he took out a piece of wood, and with this he has made place for the water gathered in to come out? Why should it be considered a hazakah? Is it not the duty of every Israelite to save the prop-

erty of his neighbor from damage when seeing danger is near? Therefore it must be supposed that he means he has put in a piece of wood with the purpose that the water which is useful to the estate shall remain, or he took out a piece of wood so that he opened a channel permitting water to reach the estate. The same said again in the name of the same authority: If there were two estates left by a proselyte and there was a boundary between them, and one has made a hazakah in one of them with the purpose of acquiring title to it, it is acquired. If for the purpose of acquiring title to both, title is acquired only to that on which he has made a hazakah, but not to that which was on the other side of the boundary; and if for the purpose of acquiring title to the latter, even to that in which he has made a hazakah, title is not acquired.

R. Zera questioned: If one has made a hazakah for the purpose of acquiring title to it, to the boundary, and to the estate which is beyond it, how is the law? Shall we assume that because all are connected title is acquired, or because the boundary intervenes between them it is considered as if they were separated and title is not acquired? This question remains undecided.

R. Elazar questioned: How is it if this man has made a hazakah on the boundary itself with the purpose of acquiring title to both? Should the boundary be considered a breadth of the earth which joins the two fields, and therefore title is acquired, or the fields are nevertheless considered separated and title is not acquired? This question also remains undecided.

R. Na'hman said in the name of Rabba b. Abuhu: If there were two houses, one inside of the other, and one has made a hazakah on the outer one for the purpose of acquiring title to it, title is acquired. If for the purpose of acquiring title on the inner one also, the outer one is acquired, but not the inner. For the purpose of acquiring the inner one only, even the outer one is not acquired. The same is said again in the name of the same authority: If one has built a palace on the property belonging to the proselyte in question, and another comes and puts doors to the palace, the latter has acquired title to the whole of it. Why so? Because the work of the first is considered as if he had only turned bricks without using them, as the doors to it are the main thing.

R. Dimi b. Joseph in the name of R. Elazar said: If on the estate of the proselyte in question there was a palace and one has coated one of the walls with lime, or painted one of the pictures

therein, title is acquired. How much of the wall must he coat or how large must he paint the picture? Said R. Joseph: One ell. And R. Hisda added that this ell must be opposite the door (but at another place he must coat or paint more than this).

R. Amram said: The following was told to us by R. She-sheth, who to enlighten our eyes explained a Boraitha. He said: If one has prepared his bed in the estate of the proselyte in question and slept there, he acquires title to the whole estate. And he enlightened our eyes to the Boraitha as follows: How can one acquire title to a bondsman with hazakah? If the slave has put on the shoes of the master or taken off his shoes, or has carried his garments after him to the bath-house and undressed him and washed him, anointed, rubbed, dressed him, put on his shoes, or even lifted him up, title is acquired.

Said R. Simeon: There cannot be a better hazakah than lifting up, as this act gives title to one in everything. How is this to be understood? The Boraitha says that if the slave has lifted up his master it gives title to the master; but if *vice versa*, it does not. And to this answered R. Simeon: There is no better hazakah than lifting up, which means that this gives title even if the slave was lifted up by the master. R. Jeremiah of Bira in the name of R. Jehudah said: If the estate of the proselyte in question was already ploughed and one put radishes in the furrows, it is not considered a hazakah, because at the time he put the radishes in, without covering, there was no improvement at all; and even if in a few days afterwards these begin to grow, it is not considered as if done by him, but from itself.

Samuel said: If one peels off the bark of a tree, if he has done it for the improvement of the tree, title is acquired; and if for food for his cattle, it is not. [And how can we know this? If he peels off the tree from both sides, it is supposed that he does it for the improvement of the tree; but if from one side, it is for his cattle.] He said again: If one cleans off the estate in question, if he has done this for the improvement of the earth, title is given; but if he has done so with the idea of using it for fuel, it does not. [And how shall this be proved? If he takes off all there is, it is supposed that he does it for the improvement; but if he chooses the larger pieces and leaves the smaller ones, it is to be assumed that he does it for the purpose of using it for fuel.]

And the same said again: If one engaged himself to level ground for the sake of the earth itself, it gives him title; and if

with the intention of placing a temporary barn there, it does not. [And how shall this be proved? If, for instance, he takes off the superfluous earth from the hills and puts it in the hollows (and so he has done with all of them), it is to be supposed that he does it for the improvement of the ground; but if he only made the hills lower, and only at the edges of the hollows he filled these in, then it is to be supposed that he does so with the intention of putting up a temporary barn.] He also said: If he opens a stream of water to this ground, if he does so for the improvement of the earth, title is given to him; but if with the idea of catching fish, it does not. [And how shall this be proved? If he opens both sides of the estate, one for the purpose of letting the water enter and the other side for letting it out, it is supposed that he does so with the intention of catching fish; and if he open only one side, so that the water may enter, it is assumed that he does so for the improvement of the earth.] There was a woman who peeled off on one side trees of the estate of the proselyte in question for thirteen years. Another man came who dug a little under the tree; and the case came before Levi, according to others before Mar Uqba, and he left it in the possession of the latter. And this woman came and protested, and he said to her: What can I do for you, in that you have not made the hazakah as it ought to be?

There was a woman who had made a partition to that which was already there in the estate of a proselyte. Another man, however, came and digged in the estate; and when the case came before R. Na'hman, he left the estate with the latter. And this woman came and caused a disturbance, and R. Na'hman answered: What can I do for you, as you have not made a hazakah as people ought to do? *

Rabh said: If one paints in the estate in question a likeness of an animal or a bird, title is acquired. So Rabh himself made such a hazakah at a garden which was near his college, left by a proselyte who died without children.

It was taught: A field which was marked out by boundaries on four sides, said R. Huna in the name of Rabh: As soon as one has dug one spadeful of earth he acquires title to the whole field. Samuel, however, maintains that he acquires only the place he has dug. And what is the law concerning a field not marked off by boundaries? Said R. Papa: If he digs in it as much as a team of oxen in one furrow and the return.

* This paragraph is transferred from Erubhin, 25a, as this is the proper place.

R. Jehudah said in the name of Samuel : The estate of idolaters, if sold to an Israelite and the latter has not made a hazakah on it, it is like a desert ; and the first who makes a hazakah on it acquires title. Why so ? Because the idolater, as soon as he gets the money, cuts himself off from it ; and as the Israelite has not as yet acquired title to it until he gets the bill of sale, it is therefore like a desert, and every one may try to take possession of it (returning the money to the buyer). (The commentator Rasbham, however, maintains that from the expression, "It is like a desert," it is to be understood that the occupant has to pay nothing, and the buyer has to sue the seller if he can do so.) Said Abayi to R. Joseph : Is it possible that Samuel should say so ? Did he not declare elsewhere that the law of the government must be respected as the law of the Torah, and the government dictates that title is acquired only by a deed, and not otherwise ? Hence the other one who has made a hazakah is also without the deed needed. And he answered : I know it only from experience. As it happened in the village Dura of the shepherds, an Israelite bought an estate of idolaters, and the Israelite came and dug a little on this estate, and when the case came before R. Jehudah, he left it in the hand of the latter. And Abayi rejoined : Do you want to compare any other cases to the case of the village Dura ? There was a *pagus* with estates hidden from the government, and the possessors of those estates did not pay taxes for it. And the government dictates that he who pays the taxes owns the land.

R. Huna bought an estate from an idolater and another Israelite digged in it ; and the case came before R. Na'hman, and he left it in the hands of the latter. Said Huna to him : The basis of your decision is what Samuel said, that the estates which are sold by an idolater are like a desert, and who takes possession thereof acquires title. Why should the master not decide in accordance with the other saying of Samuel, that the digger acquires title only at the place where he dug ? And he answered : In this respect I hold in accordance with Rabh, in whose name R. Huna said : As soon as one has digged one spadeful he acquires title to the whole of it.

R. Huna b. Abbin sent a message : If an Israelite buys a field from a Gentile, and another Israelite comes and takes possession of it (before the bill of sale reaches the buyer), the court has no right to take it away from the latter. And to this, R. Abbin, R. Elaa, and all our masters at that time agree.

Rabba said : I was told by the Exilarch Uqban b. Nehemiah, in the name of Samuel, the following three things : (a) That the law of the government should be respected as the law of the Torah. (b) The hazakah of the Persians is no less than forty years. (c) And the rich farmers who buy land from the officers of the government for the taxes which were not paid by the previous owners, the sales are valid. But this is only when the owners owe to the government taxes. But if the land was taken for poll taxes, the sale is not valid. Why so ? Because the poll taxes rest upon their heads, not upon their land. R. Huna b. Jehoshua, however, maintains that even the barley in the pitcher is mortgaged to the poll taxes (*i.e.*, when the land was taken away for poll taxes, they have a right to sell it). Said R. Ashi : Huna b. Nathan told me that Amemar objected to the decision of R. Huna, saying : According to this theory, the rule prescribed by the Scripture, that a first-born shall take two parts in the inheritance, should be abolished, as if the whole estate is encumbered to the government for poll taxes, the bequeathed estate will be fit only in the future for inheritance, but not as yet. And there is a rule that the first-born has a right to take a share only in that which is already fit. And he answered : Why this objection to poll taxes ? The same can be raised concerning land taxes also. But to this it can be answered that he speaks of when one dies after he paid the land taxes, and the same can be said with poll.

R. Ashi said : Huna b. Nathan told me : I asked the scribe of Rabha, and he told me that the Halakha prevails in accordance with R. Huna b. R. Jehoshua. (Says the Gemara :) In reality it is not so, as the scribe of Rabha says this only to approve his acts. R. Ashi said again that an *απραχτος* (a man who goes idle) must bear the taxes of the city. But this is said only when he was freed by some of his friends in that city who told the chief that he owned nothing from which to pay and he let him go ; but if the chief himself or the officers who were appointed by the government do not like to collect from him because he is idle (although they collect his share from the other townsmen), it is to be considered as a divine help to him and he must not be troubled again. R. Ashi said in the name of R. Johanan : A boundary or a tree which is found between two estates of a proselyte is considered an intervention concerning hazakah, but not concerning corner tithe and concerning defilement. When Rabbin came from Palestine, he said in the name of R. Johanan : It is considered an intervention concerning the two last-mentioned as well.

But how is the law if there was no boundary and no tree, and nevertheless they were separated? R. Mrinus in the name of R. Johanan explained that he acquires title to the whole field which is called after his name. What does this mean? Said R. Papa: If people call it the field which the proselyte used to water from his valley. R. Aha b. Ivya was sitting before R. Assi, and said in the name of R. Assi b. Hanina that a hazuba makes an intervention in the estate of a proselyte. What is a hazuba? Said R. Jehudah in the name of Rabh: This was a mark by which Joshua marked the land which he divided among the tribes of Israel. He says again in the name of the same authority: Joshua did not count but the cities which were placed on the boundaries (*i.e.*, the cities which are enumerated in the Book of Joshua). He said again in the name of Samuel: All that the Holy One, blessed be He, had shown to Moses from the land of Israel was subject to tithes. (It means that from the products growing in those places tithes must be separated biblically.) What does it mean to exclude? The land of the Kenites, Kenizzites, and Kadmonites [Gen. xv. 19].

MISHNA IV.: If there are two witnesses that the occupant has consumed the products of a field three years, and after investigation it is found that they were collusive, the witnesses have to pay the whole value of the products from the last three years to the plaintiff. If, however, two have testified for the first year and two others for the second year, and still two others for the third year (and all of them had witnessed falsely), the payment mentioned above must be divided among them, of which each of the parties has to pay a third.

If there were three brothers witnessing, and one stranger testified the same as they had, they may be considered as three parties of witnesses—*i.e.*, one of the brothers said: I am aware that the defendant has occupied this property the first year; the second: I am aware that he has occupied it the second year; and the third testified for the third year. If the stranger, however, says: I testify that the defendant has occupied it all the three years, his testimony is counted to each of them, so that for each year there are two witnesses. If, however, the testimony was found to be collusive, they ought to be considered as one party of witnesses, and the brothers have to pay the whole claim.

GEMARA: Our Mishna is not in accordance with R. Aqiba of the following Boraitha: R. Jose said: When Abbah 'Halaftha went to study the Torah from R. Johanan b. Muri,

according to others the reverse was the case, he questioned him: How is it if one has occupied a property the first year in the presence of two witnesses, and the second in the presence of two others, and the third in the presence of still two others, should this be considered a hazakah, or not? And he answered: It is. Rejoined the former: I am of the same opinion; but R. Aqiba opposes, as he used to say: It is written [Deut. xix. 15]: "A case be established." A *case*, but not half a case (*i.e.*, as each party testifies only for one year, they are testifying to only half a case; but not the whole case).

R. Jehudah said: If one of the witnesses testifies that the occupant has occupied the estate all the three years with wheat, and the other testifies with barley, it constitutes a hazakah. R. Na'hman opposed: According to this theory, if one testifies that he has occupied it the first, third, and fifth years, and the other for the second, fourth, and sixth, should this also be considered a hazakah? Answered R. Jehudah: What comparison is this? In your case one testifies for this year, and the other for other years; but in my case both are testifying for the very same year. The difference is only concerning barley and wheat, about which people are not used to be too particular.

"*If there were three brothers,*" etc. There was a promissory note signed by two witnesses, of whom one died, and his brother with a stranger comes before the court to testify that the signature of the deceased is a right one. Rabhina was about to say that this case was familiar to our Mishna, which states that three brothers and one stranger are counted legal witnesses. Said R. Ashi to him: There is no similarity at all. In the case of the Mishna half the amount of the claim is collected, because of the testimony of the brothers, and the other half because of the testimony of the stranger. In this case, however, the brothers' testimony collects three-quarters of the whole amount (*i.e.*, the signature of the deceased witness gives the right to collect half the amount. Now when this brother came to testify concerning the signature, his testimony is for a quarter of the whole amount, and the testimony of the stranger who was with him for the other quarter. Hence three-quarters of the whole amount are to be collected by the testimony of the brothers, which is not legal.

MISHNA V.: There is a difference in usage of articles: In some cases the law of hazakah applies, and in some it does not. *E.g.*, if one used to keep his cattle in the yard of his neighbor, or a stove, oven, or handmill, or raised there hens, or he

kept there his manure, it is not considered a hazakah. However, if he has made a partition ten spans high for his cattle, or for the other articles mentioned above, or he has kept his hens in his neighbor's house, or has dug three spans in the ground of his neighbor for his manure, or he has made a heap of it three spans high on the same ground, it is a hazakah.

GEMARA : Why should the law differ in the latter part from the first part (is it not a fact that the owner of the yard would protest when a stranger kept his cattle therein without any right)? Said Ula : It is because of the following rule : Usage which does not give title to the property of a deceased childless proselyte, it also does not give it to the property of one's neighbor ; and usage which does give title in that case, gives also title in the latter case.

R. Shesheth opposed : Does this rule always hold good ? Is it not a fact that ploughing, which is not considered a hazakah concerning the estate of one's neighbor, gives title when it is done on the estate of a proselyte ? On the other hand, usage of fruit, which is considered concerning a neighbor's estate, does not give title to the estate of a proselyte. "Therefore," said R. Na'hman in the name of Rabba b. Abuhu, "the Mishna treats of a yard belonging to partners, who usually are not particular if one of them keeps his cattle there ; but they are, if one separates his cattle by a partition." Is that so ? Have we not learned in a Mishna : If partners have vowed not to derive any benefit from one another they must not enter in their yard, as by entering one derives benefit from the share of his neighbor. Therefore R. Na'hman's above saying was concerning a rear yard, in which usually one is not particular if his neighbor leaves there his cattle. But concerning a partition, they would be particular. R. Papa, however, maintains that both our Mishna and the cited one speak about a yard belonging to partners ; but some are particular concerning leaving cattle and some not. Therefore, in a case that may lead to an offence, as in the cited Mishna, it is decided rigorously ; and concerning money matters it is decided leniently. Rabhina, however, maintains that partners are never particular with one another. And concerning the case of deriving benefit, the Mishna which treats about vows is in accordance with R. Eliezer, who holds that even a little gift that is usually presented by the storekeepers to their customers is prohibited to him who has vowed not to derive any benefit from his storekeeper, which the rabbis allow.

R. Johanan in the name of R. Bnaha said: Everything (which is not in the agreement) may partners prevent each other from doing in the yard belonging to them except washing, because the daughters of Israel must not be left to disgrace themselves by washing at the bank of the river (as they must stand there with bare feet). And Hyya b. Aba said: It is written [Is. xxxiii. 15]: "And shutteth his eyes against looking on evil," meaning him who does not look upon women when they are occupied in washing. How is this to be understood? If there is another way to pass, and one passes by that way for the purpose of looking, then he is wicked; and if there is no other way, what can he do, as he is compelled to pass them? It means even in the latter case, and nevertheless one must manage not to look upon them.

R. Johanan questioned R. Bnaha*: What is meant by a shirt of a scholar? And the answer was: It covers the whole body, so that no part of it may be seen. And what is meant by a garment of a scholar? If it covers the shirt so that a fragment of it not more than a span should be seen. What is meant by a table of a scholar? That the table-cloth covers two parts of the table, and the third part is uncovered to place there plates and herbs, and the ring of the table (they used to have a ring in order to keep together the table-cloth, to hang it up after the meal), and the ring should be outside. [But have we not learned in a Boraitha that the ring must be inside? This presents no difficulty, as one Boraitha speaks of when there is a child sitting by the table—then it must be inside; or it speaks of the night meal, when it is better it should be inside, so that the servant should not touch it while it is dim; and another Boraitha speaks of a day meal, without a child.] And that of a common man looks like a *tam*, as the dishes are placed around and the bread is in the middle. What is meant by a bed of a scholar? If under it nothing is to be found but sandals in summer-time and shoes in the rainy season; and the bed of a commoner looks like a treasure of *vilis* wherein you may find everything?

R. Bnaha used to mark caves of the dead (for the purpose of defilement). When he came to the cave of Abraham (the Patriarch), he found Eliezer his servant standing outside, and to the question, What is Abraham doing now, he answered: He sleeps in the arms of Sarah, and she looks on his head. And Bnaha asked Eliezer to beg permission for him to enter. He said to

* This is placed here in text because all that was said and done by Bnaha should be together.

Abraham: Bnaha is waiting at the door. Said Abraham: Let him come in: it is known that the evil spirit does not remain in our world. Bnaha then entered, took the measure of the cave, and went out; when he arrived, however, at the cave of Adam the first, he heard a heavenly voice saying: Thou hast seen the image of Adam; but in the face of Adam himself, who is the work of (the Lord), thou hast no right to look. And to the protest: I need to mark the measure of the cave, he was answered: The measure of the outside of Abraham's cave equals the inside of Adam's.

Said R. Bnaha: I have seen the heels of Adam and they appeared to me as the circumference of the sun. Beside the face of Sarah, that of every one else looks like the face of an ape to that of a man. And Sarah's to that of Eve is also like the face of an ape to that of a man; and Eve's to that of Adam himself is also like the face of an ape to that of a man. The beauty of R. Kahana is similar to that of R. Abuhu, etc. (See Middle Gate, pp. 212, 213.)

There was a Magus who used to dig after the dead for the purpose of taking away their shrouds. When he arrived at the cave of R. Tubi b. Mathna, he grasped him by the beard, and Abayi came and requested him to leave him, and he did so. The next year the Magus came again to this cave, and Tubi again grasped him by the beard, and Abayi's request was refused, until scissors were brought and the beard was cut off.

There was a man who said while dying: I bequeath one barrel of earth to one son, a barrel of bones to another, and one barrel of down to the third. And they did not understand what he meant, and came with this question to R. Bnaha. And he asked them if they possessed estates. They said: Yea. Have you cattle? Yea. Have you also *vestes-stragula* (blankets, quilts, mattresses)? Yea. Then he said: If so, this is what your father has bequeathed to you (it means, one shall have the estate, one the cattle, etc.).

There was a man who heard his wife saying to her daughter: Why are you not careful in your unlawful acts? I have ten sons, and only one is from your father. When he was dying he said: I bequeath all my properties to one son (as he did not know which one was his). And as they did not know to which of the sons, the case came to R. Bnaha, who advised them to go and knock on the father's grave until he should come and explain whom he meant. Nine of the sons did so, but the one who was

his did not. Then R. Bnaha decided that all the estates should be given to this one. His brothers then denounced him to the government, saying: There is one man among the Jews who collects money without witnesses and without any evidence. And he was arrested. His wife then came complaining: I had a slave. People came and cut off his beard, removed his skin, consumed his flesh, filled the skin with water, which they gave to drink to their comrades, and they did not give me any of the money or some other equivalent for it. The officers did not understand her, and decided to question the wise of the Jews; perhaps he would understand what it meant. They did so, and he answered: She is complaining about a leather-bag (it means she had a buck: they stole it from her, killed it, consumed the meat, and from the skin they made a leather-bag for water to drink from. They said then: Because he is so wise, he shall sit at the court and judge. He saw, then, that it was written on the *αμβολαη*: A judge who is summoned cannot be named a judge. Said R. Bnaha to them: If so, then any one may come and summon the judge (though he had never any business with him). Should he be no longer qualified to be a judge it ought to be thus: A judge who is found liable in the court, so that money is to be collected from him, is no longer qualified as a judge. And they thus corrected this: However, the sage of Judea maintains that a judge from whom money is collected by a judgment is not considered a judge.

He saw again that there was written at the head of each dead, I, blood, am the cause; and at the head of each life, I, wine, am the cause. And he said to them: According to this, if one falls from the roof or a tree and dies, does also the blood kill him; and also, if you see one dying, give him wine and he will revive? It ought to be written thus: In the head of every sickness, I, blood, am the cause; and in the head of every medicine, I, wine, am the cause. And they corrected thus: In the head of all sickness, I, blood, am the cause; in the head of all medicines, I, wine, am the cause (*i.e.*, if the man would use wine in accordance to his health he would never come to sickness, and only in places where there is no wine is medicine needed—*i.e.*, because there is no wine, sickness is frequent). On the gates of the city of Kaputkaya was written: Anipak, Anbag, and Antell are all of equal measure (so that there is no claim that if one bought an Anpak and received an Anbag, etc.). These measures are equal to a quarter of a biblical lug (said the Gemara).

MISHNA *VI*.: The law of hazakah does not apply to movable pipes attached to the roof-gutters (drains), but does apply to the places of them and also to spouts. It does not apply to an Egyptian ladder or to an Egyptian window; but to both of Tyre it does apply. What is to be considered an Egyptian window? If a human head cannot enter in it. R. Jehudah, however, maintains: If it has a frame, although a human head cannot enter it, the law of hazakah applies.

GEMARA: How is it to be understood that the pipes have no hazakah, and the place has? Said R. Jehudah in the name of Samuel: It means thus: The movable pipes have no hazakah at one side (*i.e.*, if the pipes were fixed that water should come out; *e.g.*, on the north side of his neighbor's yard, so that if the owner of the yard needs this place he has a right to compel the owner of the house to remove them to the south side). However, he has no right, after long usage undisturbed, to insist that the gutters or pipes be entirely removed. R. Hanina, however, explained the Mishna thus: The law of hazakah does not apply to pipes in the respect that, if they are too long, the owner of the yard may insist that they be shortened; the place, however, has a hazakah, so that if the owner claim that they shall be removed, he is not to be listened to. And R. Jeremiah b. Abba said: It means if the owner of the yard wishes to build something beneath, he may; but he has no right to insist on their removal. An objection was raised from our Mishna, which states that the law of hazakah applies to a spout, which is correct in the two first explanations (as a spout, which is more stationary than a pipe, must not be removed or shortened); but in the third, that one may build beneath, to what purpose does the Mishna teach it? Why not? What harm can be done with this to the spout? The Mishna speaks of when the spout was surrounded by a stone building, so that the owner of it may claim that the new building would weaken the stone building surrounded by the spout.

R. Jehudah in the name of Samuel said: Drains which discharge water in the yard of one's neighbor, and the owner of the roof wants to stop it—the owner of the yard has a right to prevent him, claiming, As you have acquired title to my yard for discharging the water of your roof, so I have acquired title to that water of your roof.

It was taught: R. Oshyah said: He may prevent. And R. Hamma said: He may not. He then went and questioned R. Bissa (his father, who was also the grandfather of R. Oshyah)

and he decided that he might prevent. Rammi b. Hamma then applied to him the verse [Eccl. iv. 12]: "And a threefold cord cannot quickly be torn asunder," which means R. Oshyah, the son of R. Hamma, the son of R. Bissa.

"*To an Egyptian ladder.*" What is called an Egyptian ladder? Said the school of R. Yanai: Such as has not four steps.

"*An Egyptian window,*" etc. Why does the Mishna explain what an Egyptian window means, and did not so do concerning an Egyptian ladder? Because to the latter it had to state the opinion of R. Jehudah.

R. Zera said: The window in question has a hazakah when it is placed lower than four ells from the ground only; and one can prevent his neighbor from opening such in a building which adjoins his yard only when it exceeds four ells. R. Ailah, however, maintains that the same is the case even when it is higher than four ells. Shall we assume that the point of their difference is, if the court has to coerce one who acts after the manner of the Sodomites (*e.g.*, if one derives benefit from a thing which does not harm any one, the preventer is equalled to the Sodomites, and the question is, Must the court overrule such a preventer or must it be left to the conscience of this man, and the court has nothing to do with it?). Nay; all agree that in such a case the court shall overrule the preventer. Here, however, it is different, as the neighbor might say: It might happen that you would take a footstool, stand upon it to look in at my window, and then will be visible to you what is going on in my house.

There was one who wanted to open a window higher than four ells to his neighbor's yard, and the case came before R. Ami; and he referred it to R. Abba b. Mamal, who decided in accordance with R. Ailah. Said Samuel: To a window which is to be opened for light, whatever size it may be, the law of hazakah applies.

MISHNA VII.: To an enclosure the size of a span in width hazakah applies; and if one came to make it in his building which faces his neighbor's yard, the latter has a right to protest. To less than the above size hazakah does not apply, and also no protest can be made against it.

GEMARA: R. Assi, or R. Jacob in the name of R. Manni, said: If he has made a hazakah with the enclosure which was the width of one span, he has made it for four spans. How is this to be understood? Said Abayi: He means to say that if the enclosure one span wide has the length of four spans, he may

increase it to four spans square (as his neighbor does not disturb him from taking the space of four spans in the length, it would be the same as if it were square).

"*Less than that size no hazakah*," etc. Said R. Huna: This is said concerning the owner of the roof only, but the owner of the yard may prevent his neighbor from making an enclosure even less than a span. R. Jehudah, however, maintains that neither of them can prevent the other. Shall we assume that the point of their difference is, if harm done by looking is considered damage, or not? Nay; all agree that it is considered. But in this case such an enclosure not being fit for use, except to hang something in it, is different, as one may say: I can do it without looking into your property. The one, however, who forbids this, maintains that his neighbor may claim: It can happen that while hanging his things in this enclosure he will be frightened, and even unwillingly his face will be turned to my property, and will see what I should not like.

MISHNA VIII.: One must not open windows to the yard even when he is a partner in it (without the consent of the other partner). If he bought a house in another yard, he must not open a door to that yard in which he is a partner. If he built an attic upon his house, he must not make its entrance in the yard in question. He may, however, divide a chamber inside of his house, and build an upper chamber upon it, so that the entrance should be through his house.

GEMARA: Why does the Mishna treat about a yard of partners? Is it not the same with the yard of one's neighbor, without any partnership? It means to say not only to one's neighbor's yard is he not allowed, but even to that in which he is a partner. Lest one say: As his partner has to hide from him (such things as he would not like his partner to see) in the yard anyhow, it does not matter if he should open a window to that part which belongs to him; it comes to teach us that his partner may say: Until now I had to hide myself from you in the yard only; but by opening a window from which my house will be visible, I shall have to hide myself in my house also.

The rabbis taught: It happened with one who opened his windows to a partner's yard, and he came before R. Ishmael b. R. Jose, who said to him: My son, thy hazakah is valid, as thy partner has not protested. When this case came up again before R. Hyya, he said: You have troubled yourself to open it, trouble yourself to close it. Said R. Na'hman: If one of the partners

built a wall against the window which was opened to the yard in question and was not disturbed by the owner of it, it is considered a hazakah immediately; as one would not tolerate that his light should be shut off in his face and be silent.

"If he bought a house . . . he must not open a door to that yard," etc. Why so? Because he increases walkers through the yard (and this would be disagreeable for the inhabitants of it, as their work in the yard would be visible to people, which they would not like). But if so, why then, does the latter part allow to build an upper chamber inside of one's house? Does he also not increase walkers with this? Said R. Huna: It means that he may divide his chamber horizontally, so that it should serve for an attic; but not to enlarge the building.

MISHNA IX.: One must not open in a yard belonging to partners a door or window opposite his partner's door or window: If there is a small one, he must not enlarge it; and if there is one door, he must not make two of it. All this, however, may be done to the public street.

GEMARA: Whence do we deduce all this? Said R. Johanan: From [Num. xxiv. 2]: "When he saw Israel encamped according to their tribes." What did he see? That their doors were not exactly opposite each other. And then he said: They are worthy that the Shekhinah should rest upon them.

"He must not enlarge it." Rammi b. Hamma was about to say, *e.g.*, that if it was the size of four ells, he must not make it eight; because he takes four ells space from the yard. But if it was two ells, he might enlarge it to four. Said Rabha to him: His partner may claim: When you had a small door, I could hide myself from you, which is not the case with a large one.

"If there was one," etc. Rami b. Hamma was about to say, when the door was four ells wide, he must not divide it into two each; but if it was eight ells wide, he might divide it in two—each of four. Said Rabha to him: His partner may claim when he had one door: I could hide myself from you, which is not the case when you will have two.

"To the public street." Because one may say: It does not matter that my door is open just opposite yours, as you must anyhow hide from the passers-by.

MISHNA X.: One must not make a hole in public ground; viz., pits, excavations, or caves. R. Eliezer, however, permits this, if the surface of the ground remains strong enough to bear wagons loaded with stones.

One must not build enclosures or balconies on the space belonging to public ground; he may do so, however, on the space of his property which faces the public ground. If one bought a yard and there were enclosures or balconies upon public ground, it constitutes a hazakah and may remain so.

GEMARA: Why do not the rabbis permit the same as R. Eliezer illustrated? Because it may happen that it shall break suddenly and will cause damage.

"*Enclosures*," etc. There were enclosures from R. Ammi's property facing an alley, and there was also another man whose property was facing the public ground; and the public complained, and the case came before R. Ammi, who decided that the enclosure should be cut off. Said the defendant: Does not the master's enclosures face the alley? And he answered: My enclosures are facing an *alley*, the inhabitants of which have relinquished their right in my behalf; yours, however, are facing the *public* ground. Who can relinquish to you? R. Yanai had a tree bending over public ground, and another man had the same, of which the public complained (that a mounted camel could not pass). And defendant came before R. Yanai, who told him to leave him to-day and come to-morrow. On that night R. Yanai ordered the removal of his own tree. And when the defendant came in the morning, he told him to remove it. And to the question: Does not the master himself possess such? he answered: Go and see if mine is not removed; if not, yours can remain; but if it is, you must do the same. But why did not R. Yanai remove it before that case came before him? He previously thought that the passers-by were pleased to sit in its shadow; but when he saw that they were complaining, he ordered the removal. And why did he not order the defendant to remove the tree before removing his? Because of what was said by Resh Lakish (Middle Gate, p. 287): Correct first thyself, and then others.

"*In the space of his property*." The schoolmen propounded a question: If one left space for it, but has not yet made the enclosure, may he do it afterward, or not? According to R. Johanan he may; according to Resh Lakish he may not. Said R. Jacob to R. Jeremiah b. Thalipha: I am able to explain to you that there was no difference between the two rabbis just mentioned, concerning the enclosures in question, as both agree that they may be made even at any time. In what they do differ is, if one wants to replace the walls of his property in their former posi-

tion, and their decision was just the reverse. According to R. Johanan he may not; because of that which was said by R. Jehudah (above, p. 35): A path which is used by the majority must not be destroyed. And according to Resh Lakish he may; because even then there is still place for passing.

"If one bought a yard," etc. Said R. Huna: If the wall of the yard in question fall, he may rebuild it with the former enclosures. An objection from the following Tosephtha: One must not paint his house with whitewash or any other colored dye at this time to show that he is mourning for the destroyed Temple. However, if he bought such already painted, he may keep it as it is; but if it falls, he must not furnish the same painting to the ones rebuilt. (Hence the refurnishing is prohibited.) You cannot oppose mourning for the Temple to common money matters.

The rabbis taught: When the second Temple was destroyed, many of Israel separated themselves from eating meat and drinking wine. And R. Joshua approached them, saying: My children, why do you not eat meat and drink wine? They replied: Should we eat meat of which sacrifices were brought, or drink wine which was offered at the altar? Said R. Joshua to them: If so, let us not eat bread, as the meal-offering is also abolished? Then we can live on fruit? They replied: But was there not also the firstfruit offering? And was it not also the custom to put water on the altar, which no longer exists? Let us, then, cease the use of fruit, and of water also. And they were silent. Then said R. Joshua to them: My children, come and listen to me. It would be wrong not to mourn at all, because the evil decree is executed. But to mourn too much is also impossible, as there must not be decreed a prohibition for the congregation which they could not stand, as it is written [Mal. iii. 9*]. And therefore the sages said: When one paints his house, he shall leave part unpainted as a sign of mourning. [How much? Said Rab Joseph: An ell square. And Rab Hisda said: This must be opposite the door.] One may prepare all that he needs for his meal, leaving out some little things as a sign of mourning. And the same is the case with a woman: she may dress with all her ornaments, leaving out some of the unimportant for that purpose. As it is written [Ps. cxxxvii. 5]: "If I forget thee, O Jerusalem, may my right hand forget. May

* Leeser's translation does not correspond at. The commentators try to explain it, but do not succeed. We have, therefore, omitted the translation of the verse, leaving, however, the reference to it.

my tongue cleave to my palate if I do not remember thee; if I recall not Jerusalem at the head of my joy." What is meant by at the head of my joy? Said R. Itz'hak: It is the custom to put some ashes on the head of the groom on the day of marriage. And R. Papa said to Abayi: They used to place it on their foreheads at the place of phylacteries, as it is written [Is. lxi. 3]: "To grant unto the mourners of Zion—to give unto them ornament," etc. And every one who is mourning for Jerusalem will be rewarded by seeing her joy. As it is written [ibid. lxvi. 10]: "Be highly glad with her, all ye that mourn for her."

There is a Boraitha: R. Ishmael b. Elisha said: From that day when the Temple was destroyed it would be only right we should take upon ourselves not to eat meat and not to drink wine; but such a thing must not be decreed, which the majority of the congregation could not endure. And from the day that the Roman government put upon us evil decrees, prohibiting to us the Torah and its commandments, did not allow us to circumcise and redeem our children, it would be only right we should take upon ourselves not to marry and have children, so that the children of Abraham would be destroyed by themselves; but leave Israel, let them do as they please, as it is better they should sin unintentionally than intentionally (as if this should be ordered, they would certainly not observe it).

CHAPTER IV.

RULES AND REGULATIONS CONCERNING UNCONDITIONAL AND CONDITIONAL SALES OR GIFTS OF BUILDINGS, HOUSES, AND PALACES : WHAT IS AND WHAT IS NOT INCLUDED ; AND ALSO CONCERNING YARDS, BATH-HOUSES, AND PRESS-HOUSES FOR OIL AND WINE. SALES OF WHOLE CITIES, VALLEYS, FIELDS, WELLS, ETC.

MISHNA I. : If one sells a house unconditionally, the *yeziah* which is upon it is not included in the sale, even when it is open to the house, neither the chamber which is inside, nor the roof if it has a railing ten spans high. R. Jehudah, however, maintains that if it has the appearance of a door, although it is less than ten spans high, it is not included in the sale.

GEMARA : What does *yeziah* mean ? Here (in this college) it was explained as *æro*—gable.* R. Joseph, however, maintains that it is an upper floor with windows. According to the first explanation, the latter one, which is more valuable, it is self-evident is not included in the sale. But according to the latter explanation the first one is included. R. Joseph taught : We find two additional names to *yeziah*, mentioned in I Kings, vi. 5 : " And he built on the wall of the house a gallery (*yeziah*) round about." It is also named *Zelah* [Ezek. xli. 6] : " And the side chambers—*Zelah*," etc. And also *To* [ibid. xl. 7] : " And every cell (*To*)," etc. The last is also used in Midoth, IV. 6: Said Mar Zutra: All that is mentioned above applies only when it contains four ells. Said Rabhina to him: According to your theory, the succeeding Mishna, which states: " Not the well (it does not matter whether the well is merely dug in the ground or is surrounded by stone walls), although it was written in the bill of sale that he sold to him all that was in the height and depth, it is not included in the sale "—means also that if it does not contain four ells it is (and this is certainly not so) ? What comparison is this ? The use of a well is not

* The commentator Rashbam explains it as a shelter in the rear ; and R. Joseph's explanation means the same, but with windows. Our explanation, however, is in accordance with Schönhak's Dictionary, which seems to us to be the proper one.

the same as the use of a house, while the use of an upper floor is identical with the use of the house; if it contains four ells, it is of value and it is not included in the sale; but if less than this, it is not of value.

"Neither the inner chamber." Was it necessary to teach this? If the yezi'ah is not included, is it not self-evident that much less is the chamber? It speaks of a case in which in the bill of sale were noted some boundaries of the inner chamber, and lest one say that in such a case it is included, the Mishna comes to teach us that it is not so. And this is in accordance with R. Na'hman, who said in the name of Rabba b. Abuhu that if one sells a house depending on a palace, although in the bill of sale were noted the boundaries of the palace, the buyer cannot claim that he sold him the whole palace, as it is to be considered that the boundaries were noted only to make known where the palace was situated. (Says the Gemara:) Let us see how was the case. If people make a distinction in calling the one a house and the other a palace, and the bill of sale specifies a house, then certainly he sold him a house, not a palace. And if people call the whole building a house (not a palace), then he certainly sold him the house with all its contents? It speaks of a case in which the majority calls it a house, but the minority names it palace. One might say that he sold him the entire building. R. Na'hman comes to teach us that in such a case he ought to write in the bill of sale: "The entire building is sold to you, and I reserve nothing for myself." And because this was not mentioned, it is to be considered that he sold him only one house of this building and the remainder he left for himself. The same said again in the name of the same authority: If one sold a field situated in a valley, although in the bill of sale are specified the boundaries of the valley, he sold him only the field and not the entire valley, as the specifying is to be considered necessary in defining the situation of the valley only. Let us see how was the case? If people make a distinction in calling the one field and the other valley, and the bill of sale specifies a field, then certainly he sold him a field (etc., etc., as above). And the answer is also the same as above, that because it was not written in the bill of sale that he had reserved nothing for himself, he sold him only one field. And both cases were necessary for R. Na'hman to teach; since, if he had taught only of a house, one might say that there is a difference between using a palace and using a house. But in case of a valley of which the use of

every part is equal, the entire valley is sold. And if he would teach from a valley only, one might say that because there was no necessity for the seller to specify which field of the valley he sold him, as every part of it is used for one and the same purpose, therefore it is considered that he sold him only one field. But in case of a palace the chambers of which are for different uses, it ought to be specified in the bill of sale which house was sold; and as it was not, the entire building was sold: therefore both were necessary.

According to whom is the statement of R. Mari, the son of Samuel's daughter, in the name of Abayi, that if one sells to his neighbor a property, he must write in the bill of sale: "I reserve nothing of it for myself"? In accordance with R. Na'hman's statement in the name of Rabba b. Abuhu.

There was one who said to his buyer: I sell to you the ground of B. Hyya. And there were two pieces of ground that were called B. Hyya (and the buyer claimed that both were sold to him, while the seller insisted that only one was sold to him). When the case came before R. Ashi, he decided that only one was sold (as the seller said to him, "I sell you the ground"—singular, and not the "grounds"); and if even the seller had said the grounds, then it would signify two. And if such were three, the third would not be sold unless he should say: "I sell you all the ground I possess." And even then, if the seller possessed, besides this ground, orchards and vineyards, the latter would not be sold. And if the seller should say, "I sell you my *zihra*" (which means in the Persian language fields and plants), then the orchards and vineyards belong to the buyer, but not houses nor slaves, unless he said, "I sell to you all properties I possess."

If in a bill of sale for real estate there was specified a boundary of a length of one hundred ells on the west side, and of the length of fifty ells only on the east side? Said Rabh: Title is given to the buyer corresponding with the shorter boundary only (*i.e.*, that the specifying of the one hundred ells on the west side is to be considered only a mark to identify the beginning of his field).

Said both R. Kahana and R. Assi to Rabh: Let it be considered that he sold to him a triangle (*i.e.*, that it should be measured from the end of fifty on the east side to the one hundred of the west side, and the other estate should not belong to him). And Rabh did not answer. (Says the Gemara:) If the

adjoining fields on the west side belonged to A and B, and on the east side to C and D, and in the bill of sale was specified from the boundary of A and B to the boundary of D on the other side, then even Rabh admits that it is to be considered he sold him a triangle, as the boundary of C was not mentioned.

If E owns a field adjoining A's field from east to west, and B's from north to south, and he comes to sell it, he must write in the bill of sale: "I sell you the field adjoining A's field from both sides, and also B's from both sides." And it is not sufficient that he should write: "My field, which is between A's and B's fields," as then he could claim that he sold to him the half of it only (*i.e.*, a half on west side adjoining A's and a half on south side adjoining B's, and the remainder he reserved for himself). If in the bill of sale the three boundaries of the field were specified, but not the fourth, according to Rabh title is given to the buyer from all three boundaries, except a bed of the fourth, which was not specified in the bill of sale. Samuel, however, maintains that title is given to the whole, even to the fourth. But R. Assi maintains that title is given to the buyer for one bed all over this field only. And the reason of his theory is that he agrees with Rabh, that from the fact that the fourth boundary is omitted in the bill of sale, it is to be assumed that he reserved it for himself. And this being reserved for himself, so was his intention with the other boundaries, and the specifying of the three was meant to give him title to one bed all over the field.

Said Rabha: The Halakha prevails that the buyer acquires title to the whole field, even to the fourth boundary, provided it is contained in the three boundaries; but if it is not contained, title is not given. And even if it is, but it contains inoculated trees, or the fourth boundary was of a size in which nine kabs of grain could be sown, it is excluded.

Let us see! Rabha states that if there were inoculated trees, or it were nine kabs, title is not given, from which it is to be understood that if it is not contained properly, title is not given to the fourth boundary, although it does not contain the above. We may infer from this statement that although he has not written in the bill of sale that he reserved nothing for himself (as is said above that so it must be written in a bill of sale), it is supposed that he reserved nothing for himself, and also that the Halakha prevails that if it is contained title is given, provided there were not trees, and the size was less than nine kabs. But

if there were, title is not acquired. However, it was taught in the name of Rabba just the reverse; and therefore, if such a case came before a court, we must leave it to the consideration of the judges.

Rabba said: If A and B were partners in a field, and A sold his share to C, stating in the bill of sale, "I sell you the half I have of this ground," then all his share is sold, and he has reserved nothing for himself. If, however, it states, "Half of the ground I possess," then he sold him only a quarter of the whole field, which is half of his. And to the question of Abayi: "Why should we make a difference between the two statements (is it only because in the first statement the 'ground' was mentioned later, and in the other statement the expression 'ground' is mentioned first)?" Rabba kept silent. Said Abayi: I thought that because he was silent he receded from his statement, and accepted my opinion; but it was not so, as I have seen the bills of sale which were approved by the court of my master, and in reference to the expression, "I sell the half which I possess in the ground," the court has marked in its approval "that a half of the whole field is sold to so and so," and in reference to the bill of sale which was written, "A half of the ground I possess," the court's approval was: "A quarter of the whole field is sold to so and so." Rabba said again: If two partners have divided their estate, and one of them says to another, "I sell you my share in the ground," and he shows him the boundary, that it begins from the ground belonging to his partner after the division, then all his share is sold. But if the same shows him the boundary of his estate not from the place which belongs after the division to his former partner, but from the opposite side, then a field of nine kabs from his share is sold to him, but not his entire share.* And also here Abayi questioned him the reason of the different decisions, at which he again kept silent; and the schoolmen who heard this thought that he had receded from his statement, and in both cases his whole share was sold. In reality, however, it was not so. As R. Youmar b. Shlamjah said: Abayi explained to me that there is no difference whether he has shown him the boundary from which he has divided, or the opposite side. If he has added

* In the text are only a few words, their meaning being very obscure. The commentators Rashbam and Rabana Gershom differ in their explanation, and in the first saying of Rabba we have adopted Rashbam's interpretation, and in the second Gershom's, though both are very complicated and difficult.

to his statement, "and all of its boundaries," then his entire share is sold; but if he has added nothing, then a field of nine kabs only is sold.

It is certain that, if a sick man said in his last will, "So and so shall share my properties," he meant the exact half; but how is it if he said, "Give a share to so and so in my properties"? Said Rabbina b. Kisi: Come and hear the following Boraitha: If one said, "Give a share to so and so in my well"—said Symmachos: No less than a quarter is meant (as it is certain that he wanted to help him out in watering his fields, and the rabbis suppose that a quarter of the well suffices for this purpose). If, however, he said: "Give a share from my well in his barrels" (in which the above purpose cannot be supposed), not less than an eighth part is meant. (This Rashbam explains as implying that he wished to help him out in watering his cattle. R. Gershom maintains: So was then the custom—to fill their barrels with water, for the purpose of using it the whole year.) And if it was said: "Give him a share from my well for his pots," not less than a twelfth part is considered; and if it was said: "Give him for his small vessels," then a sixteenth part* of the well is meant.

Hence we see that, according to Symmachos, if he said, "Give him a share in my well," without any additional remarks, a quarter is meant; and the same is the case when he said, "Give him a share in my properties."

The rabbis taught: A Levite who sold a field to an Israelite with the stipulation that the tithes of the field (which the Israelite must separate) should belong to him, this stipulation is valid; and if the stipulation was, "to me and to my children," if the Levite dies, the tithe must be given to his children. But if he said, "So long as the field may be in your hands," then, if the Israelite should sell it and rebuy the same thereafter, the Levite has nothing more to do with it. But why should the tithe belong to him? Is there not a rule that one cannot grant a thing which is not as yet in existence, and as the products of the field have not as yet come forth, consequently the tithe is not in existence? The above stipulation is to be considered as

* The reason is, according to Rashbam, that all those quantities were known for said purposes. However, he himself was not satisfied with this exposition, and explained it in accordance with Symmachos's theory elsewhere, that all doubtful moneys or properties must be divided. But it is very complicated, and therefore we leave its interpretation to the reader.

if he should say: The space in which the first tithe shall grow I reserve for myself.

Said Resh Lakish: From this we may infer that if one sold a house with the stipulation, "The upper *diata* (chamber) shall remain for him," the stipulation is valid. To what purpose does he state so? Is it not said above that even without any stipulation, if it is not plainly stated in the bill of sale that this *diata* goes with the house, it remains the owner's? Said R. Zebid: Resh Lakish meant to teach that if there was such a stipulation, then the owner has a right to make enclosures in the attic, facing the yard of this house, and the buyer cannot prevent him, as the stipulation was for this purpose. And R. Papa maintains: If the seller wants to build another attic upon that one, he may do so.

(Says the Gemara:) According to R. Zebid's explanation, it is correct, what Resh Lakish said: "From *this* we may infer," as the above Boraitha teaches that his stipulation is to be considered as reserving space for himself. So also with the stipulation as to the attic—he reserves space for himself to make enclosures, etc. But according to R. Papa's explanation, how can this case be inferred from that Boraitha? This difficulty remains.

R. Dimi of Nahardea said: If one sells a house with the intention of giving title to all its contents, although the bill of sale states from the bottom to the top, title is not acquired in wells, etc. (if such there were), unless he writes: "You shall acquire title from the depth of the earth to the height of the sky." And it is not sufficient to state: "From the depth to the height of this house is sold to you"; and the reason is because the last expression gives title only to that which is beneath the house, like a cellar, basement, etc., and also to the roof and the attic, but it does not suffice for the well and its stone walls, which are not included in the same. However, the expression, "from the depth of the earth to the height of the sky," includes them also, and other caves which may be found beneath the house, and also above the roof, if there is an attic that measures more than ten spans in height and width.

The schoolmen* propounded a question: If one has sold or presented the house to one man and the *diata* to another, should it be considered a reservation, or, because he sold the *diata* to

* Transferred from 148b in this Tract.

some one else, he reserved nothing for himself, and it cannot be considered? And if you will say that such is not considered, how is it if the seller said: "The house is sold to you except the *dieta*" (but did not say, "I reserved it for myself")? Said Rabha in the name of R. Na'hman: If we conclude that the house to one and the *dieta* to another is not considered a reservation, the latter case, besides the *dieta*, is to be considered, and it will be in accordance with R. Zebid, who said above that if he likes to make enclosures, etc., he may do so. Hence we see that, as he left the *dieta* for himself so he did with the space of the enclosures.

MISHNA II.: Title is not given to a well, or to the stone wall thereof (if this was not plainly mentioned in the bill of sale of the house), although there is mentioned that he sold him the depth and the height; however, the seller must buy a way to the well from the new owner of the house. So is the decree of R. Aqiba. The sages, however, maintain that it is not necessary; and R. Aqiba admits that it is not necessary for the seller to buy a way if he said plainly that the well in question was not included in the sale. If, however, the house was sold to some one, and the well to some one else, it is not necessary for the latter to buy the way to it from the owner of the house, according to R. Aqiba; but according to the sages it is.

GEMARA: Rabhina was sitting and deliberating the difficulty of the expressions in the Mishna, *Bour* (well) and *Duth* (a well surrounded by a stone wall). Are they not for the same purpose? Why, then, was it needed to mention both? Said Rabha to him: Come and hear the following Boraitha: *Bour* and *Duth* both meant a well which is dug in the ground, but the first means solid ground without a wall for containing water, and the second means surrounded by a stone wall. (Hence if the Mishna should mention the first, one might say that because it is not surrounded by masonry it is not included in the sale; but the second, which is a kind of building, is included. And if the second were mentioned, one might say that because it is a separate building and of value, therefore it is not included; but the first, which is not of great value, is; therefore both are needed.) And so also explained Mar the Elder, the son of R. Hisda, to R. Ashi.

"*He must buy a way,*" etc. And the point of their differing is that R. Aqiba holds that usually the seller sells his goods with a good eye (explained above, p. 98), and the rabbis hold

the contrary. And wherever it is said: "R. Aqiba is in accordance with his theory that the seller sells his goods with a good eye," the argument is based upon this statement. [And lest one say that the point of their differing is something else, as, *e.g.*, the seller could not intend that one should fly to his well through the air, etc., therefore there is repeated in the latter part of the Mishna the same difference of opinion, to teach that only in the supposition of a good and bad eye is the point of their differing.]

It was taught: R. Huna in the name of Rabh said: The Halakha prevails in accordance with the sages; and R. Jeremiah b. Aba in the name of Samuel: The Halakha prevails in accordance with R. Aqiba. Said the latter to the former: Why, many times I said before Rabh that the Halakha prevailed in accordance with R. Aqiba, and he said nothing to me. And he rejoined: That was because you taught before him the reverse—that R. Aqiba was of the opinion that the seller sells with a bad eye.* Said Rabhina to R. Ashi: Shall we assume that both Rabh and Samuel decided in accordance with their theories elsewhere (Chap. I., p. 16), where they differ also concerning brothers who have divided their inheritance; and if it is so, why have they repeated this statement twice? (Answered R. Ashi:) It was necessary, as, if one of the two were cited, one might say that Rabh so decided concerning brothers, as one might claim: I like to dwell in the house wherein my parents dwelt." As it is written [Ps. xlv. 17]: "Instead of thy fathers shall be thy children." But in the other cases he would agree with Samuel. And if the other case were stated, one might say that only in this Samuel differs with Rabh, but concerning brothers Samuel agrees with him. Therefore both statements were needed.

Said R. Na'hman to R. Huna: Should the Halakha prevail as we declare, or in accordance with you? And he answered: The Halakha should be established in accordance with you, as you are nearer to the Exilarchs, whose judges are competent and can be relied upon.

It was taught:† Two houses, one beyond the other, so that one has to pass the other in going to the street or the yard, and both are sold, or presented as a gift, to two different persons—

* This explanation is the best we can offer, not to contradict Rashbam and R. Gershom (*q. v.*).

† This is a Boraitha with the unusual expression *Itemar*. See Explanatory Remarks (back of title page).

neither of them has the right to pass the other's house without his permission, and much less when the inner house is sold and the outer is presented as a gift. But how is the case if the outer house is sold, and the inner is presented as a gift? The schoolmen were about to say that the same is the case. However, they were opposed from the following Mishna, which states, in the last Mishna of this chapter, that "there is a difference with a gift," etc., from which we see that all agree that he who makes a gift does so with a good eye. The same is the case here, when the owner of the house has at one time sold the outer, and made a gift of the inner, as it was with a good eye, so that he shall have a right to pass.

MISHNA III.: If one sells a house, the door is sold, but not the key to it; the stationary mortar in the house, but not the movable—the *ετροβίλος* (every revolving body—here, however, is meant the lower stone of a handmill), but not the mill-funnel, nor an oven or a stove. If, however, he said to him, "The house with all its contents," all of these are sold.

GEMARA: This Mishna is not in accordance with R. Meir, who said: If one has sold a vineyard, he has sold all the vessels which are used for same.

The rabbis taught: If one has sold a house, he sold with it the door, the bolt, and lock, but not the key; the engraved mortar, but not that which is only attached; the lower stone, but not the mill-funnel, nor the oven or stove nor the handmill. R. Eliezer, however, maintains that all that is attached to the ground is to be considered as the ground proper. If, however, the seller said, "The house and all its contents," all of them are sold. But in any case, the well, the surrounding stones thereof, and the *yeziah* are not sold.

R. Nehemiah b. R. Joseph sent a message by a woman to Rabha b. R. Huna the minor* in the city of Nahardea: When this woman shall appear before you, you shall collect on her behalf the tenth of all the properties belonging to her father, for her support, even from the lower stones of the handmills. Said R. Ashi: When we were with R. Kahana we used to collect for such a purpose even from the rent of the houses (the law is, that for the support of a daughter a tenth of the real

* According to Halpern he was of the time of R. Huna the Exilarch, and was called "minor" to distinguish him from the former. Others, however, say that it must be Hamnunah.

estate is to be collected, and R. Ashi holds that the rent of real estate is to be considered the same for this purpose).

MISHNA IV. : If one sold a yard, the houses, wells, cellars, and caves are included, but not movable property. If, however, he said, "with all their contents," all is sold; in any case, if there were bath or press houses, they are not included. R. Eliezer, however, maintains: If one has sold the yard without any explanation, he has sold only the ground thereof, but nothing else. (Even if, according to the amount which was paid by the buyer, it seems that all its contents are sold, as the law of deceiving does not apply to real estate.—Rashbam.)

GEMARA: The rabbis taught: If one sells a yard, the outer houses, the inner ones, *Beth Hulsauth*,* and stores which are open inside are included in the sale, but not those which are open outside. If, however, they are open on both sides, they are included. R. Eliezer, however, maintains that if one sold the yard he sold only the *moles* (i.e., the great mass of the air). The text says if they are open from both sides they are sold with it; but has not R. Hyya taught that they are not? This presents no difficulty. Our Boraitha speaks of that of which the main use was inside, and R. Hyya speaks of that of which the main use was outside.

"*Eliezer said*," etc. Said Rabha: If the seller said: "I sell you this foreyard," all agree that the houses are included; but if he said: "I sell you the yard," they differ. According to the rabbis, the yard with all its contents is meant, as the yard of the tabernacle, which is written, "the length of the yard" [Ex. xxvii.], and all its contents is meant; and R. Eliezer holds that with the word "yard" is meant the air only.

Rabha in the name of R. Na'hman said: If one has made a hazakah on the *Chulsu*, title is acquired in the ground to a depth at which silver or gold, if found, belongs to him. Is this not self-evident? Has not Samuel said: If one sold ten fields in ten different countries, as soon as he has made a hazakah on one of them, title is acquired to all? Lest one say that there is a difference, as the surface of the earth is alike everywhere, and the fields are similarly adapted for planting, they are therefore considered as if they were joined each to the other; but in our case the use of the two things mentioned is different,

* A *Beth Hulsauth*, according to Rashbam, means sand of which glass is made; to Gershom, it means rock. Schönhak, however, maintains that it is a Greek word, meaning *bank*. The reader may choose.

and one might say that title is not given to the ground—therefore Rabha's statement.

MISHNA V.: If one sells a press-house, the sale includes the trough, the press-beam or press-stone, and the poles, but not the boards that are put on grapes while pressing; neither the wheel nor the treading rod. If, however, he told him, "This press-house, with all its contents," all is sold. R. Eliezer, however, maintains that the expression "press-house" means the treading-rod only.

GEMARA: The rabbis taught: If one sell a press-house, the sale includes the bronze plates that prevent the grapes from scattering, the trough, the press-beams, and lower stones of the handmill, but not the upper stones. If, however, he said, "With all its contents," all is sold. In any case, neither the boards which are put on the grapes while pressing, nor the sacks, nor the packing-bags are sold. R. Eliezer, however, maintains that he who sells a press-house sells the treading-rod also, as the expression "press-house" means chiefly the "treading-rod."

MISHNA VI.: If one sell a bath-house, the sale does not include the boards on the floor (the baths at that time were heated beneath the stone floors, and boards were placed on the floor for stepping upon), the basin, neither the curtains on the doors. If, however, he said, "With all its contents," all is sold; but in any case the sale does not include the channels with water, nor the wood piles prepared for the bath-house.

GEMARA: The rabbis taught: If one has sold a bath-house, the sale includes the separate houses for keeping the boards, the tubs, the basins, and the curtains; but not the boards proper, neither the tubs, nor the basins, nor the curtains. If, however, he said to him, "With all its contents," all is sold. In any case, however, the channels that contain water for the use of bathing in the summer and rainy seasons are not sold, nor the houses for storing the wood, unless he said: "The bath-house with all its implements," then the sale includes everything that may be used for bathing purposes.

There was a man who said: "I sell you the press-house with all its implements," and there were some stores outside of the press-house, in which poppy was spread out for drying purposes, and the buyer claimed that they were also included, while the seller claimed they were not. The case came before R. Joseph, who decided in accordance with the Boraitha just cited,

that in such a case everything that may be used for that purpose is sold. Said Abayi to him: But does not R. Hyya teach the contrary? Therefore said R. Ashi: It must be investigated how the sale was; if he said, "the press-house with all its implements and also its boundaries," then title is given to all of them, but not otherwise.

MISHNA VII.: If one sells a town, the sale includes houses, wells, caves, bath and press houses, pigeon-houses, and also Beth Hashal'hin, but not the movable property, unless he said, "the town with all its contents"; then, even if there were cattle or slaves, they are also included in the sale. R. Simeon b. Gamaliel said: He who sells a town sells also the *santer* (the meaning will be explained farther on).

GEMARA: Said R. A'ha b. R. Iyya to R. Ashi: From this Mishna is to be understood that slaves are considered movable property; as, if they were to be considered real estate, then they would be sold with the town without any stipulation. Answered he: Even according to your theory that they are considered movable property, why does the Mishna state that if he said, "*even* with all its contents," slaves are sold also, from which is to be understood that they are not movable property proper? And what could you answer to this—that there is a difference between movable property that must be carried and that which is self-moving? The same answer can apply also to the theory that slaves are considered real estate, as there is a difference between stationary real estate "and that which is self-moving."

"*Sold the santer.*" What does this word mean? Here in Balyon they explained it "guardsman," or "bailiff" (a slave). Simeon b. Abtulumus said: It means a *pagus* (land that surrounds the town). According to him who explains it as "guardsman," etc., so much the more is the *pagus* included in the sale; but according to him who explains it as a *pagus*, the guardsman is not included. An objection was raised from our Mishna, which states: "press-houses and Beth Hashal'hin," and the schoolmen explained the expression *shal'hin* (which everywhere means dry field) as meaning the gardens around the town, which also usually ought to be watered. And this is correct only for him who explains the word *santer* as a *pagus*, when the Mishna is to be explained thus: The first Tana holds that only the gardens around the town are included, but not anything else; and R. Simeon b. Gamaliel came to add the *pagus*; which, according

to his opinion, is also included. But according to him who explains *santer* as a "guardsman," if it be assumed that the first Tana speaks about gardens, should R. Simeon answer him with a "guardsman"? Nay! The explanation of the word *shal'hin* is not gardens, as you thought, but, as is everywhere explained, dry land, which means *pagus*. [And this explanation is correct, as it is written [Job, v. 10]: "And sendeth out waters," etc., which is the translation of *Veshilea'h*.] And R. Simeon b. Gamaliel came to say: Not only a *pagus*, but even the "guardsman," is also included.

Come and hear another objection! R. Jehudah said: The *santer* is not included, but the *anqlmus* (the scribe of the city, who was usually a slave to whom all the surrounding fields on which the taxes were to be collected was known). Hence as the scribe *anqlmus* means a man, so also must *santer* mean a man? Why? *Santer* may mean a *pagus*, and *anqlmus* a man. But this cannot be, because of the latter part of the said Boraitha, which states: It does not include, however, the *shirih*, neither the villages around the town, nor the forests which are near it, and also not the *vivarium* of wild beasts, fowl, or fish. And to the question, What means the word *shirih*? it was said by R. Aba: It means pieces of paguses (*i.e.*, dry land surrounding the town, broken by rocks). Now can you say that part of the *pagus* is not sold, while the whole *pagus* is? Reverse the names! R. Jehudah said: The *anqlmus* is not sold, but the *santer* is.

But how can you say that R. Jehudah is in accordance with R. Simeon? Does he not hold with the rabbis, who said: "The villages that surround the town are not sold," while R. Simeon b. Gamaliel said plainly in a Boraitha: The sale of the town includes the villages near by also? It does not matter. R. Jehudah may agree with him in one thing, and differ in another.

"' *Vivarium* ' of wild beasts," etc. There is a contradiction from the following Boraitha: If villages belong to the town, they are not sold with it; if the town contains one part of the sea, or it has a *vivarium* of wild beasts, fowl, or fish, they are sold therewith. This presents no difficulty! One Boraitha speaks of when the entrance to the *vivarium* was from the city, and the other speaks of when the entrance was from the field. But does not the first Boraitha state: Nor the forests which face the town (which means also the entrance from the town)? Read: The forests that are separated from it.

MISHNA VIII.: If one sells a field, the sale includes the stones which are needed for its use; and if it was a vineyard, the sticks which are used for keeping the vines in order. Also the stalks that are attached to the ground, the reed-bushes if they take a space less than that in which a quarter of a kab can be sown, the hut (where the watchman guards) if it is not smeared with clay, and a carob or a sycamore uninoculated; but not the stones, the sticks of a vineyard which are not for use at that time, neither the grain that is not attached to the ground. If, however, he says, "with all its contents," all is sold. In any case, however, the sale does not include the reed-bushes if they take more space than said above, and not the hut if smeared with clay, and not a carob or sycamore when inoculated.

GEMARA: What stones are to be considered to be needed for use? Here in this college it was explained, stones which are prepared for laying upon the sheaves, that they may not be scattered by the wind. Ula, however, said: It means stones that are arranged for a wall.

But did not R. Hyya teach: The stones that were gathered in heaps for this purpose? Read: arranged. To him who explains the stones as for laying upon the sheaves—according to R. Meir, who says elsewhere that if one sells a vineyard all the things which are useful for it are sold therewith, the stones in question are included, even when they are placed outside the field; and according to his opponents, only when they are placed in the field and prepared for this purpose. And to Ula's explanation that it means stones for a wall—according to R. Meir even when they were not arranged, and to his opponents only when they were arranged.

"*The sticks*," etc. The school of R. Yanai says: It means posts for supporting the vine, in order to prevent its bending. And according to R. Meir, even when they were not prepared for this purpose; and to the rabbis his opponents, however, only when already placed under the vine.

"*Stalks which are attached*," etc. Even when they are ripe for harvesting.

"*The reed-bushes*," etc. Although they are growing separately, or thick ones, which have nothing to do with the vineyard.

"*The hut*," etc. Although it was not attached to the ground.

"*And the carob*," etc. Although thick and strong.

"*But not the stones,*" etc. According to R. Meir, when they were not prepared for this purpose, and according to the rabbis when they were outside of the field; and also to Ula's explanation—according to R. Meir, when they were not prepared, and to the rabbis, when they were not arranged.

"*The posts for supporting,*" etc. According to R. Meir, when they were not prepared, and according to the rabbis, when they were not placed under the vine.

"*When they were not attached,*" etc. Even so they still needed the ground for drying.

"*And not the reed-bushes.*" Although they are still small. And R. Hyya b. Aba said in the name of R. Johanan: Not reed-bushes only, but even if there was a small bed of spices, having a separate name, it is not included in the sale. Said R. Papa: Provided they are called the spices of so and so.

"*And not the hut,*" etc. Although it were attached to the ground.

"*Nor the carob,*" etc. Whence is this deduced? Said R. Jehudah in the name of Rabh: From [Gen. xxxiii. 17]: "And the field of Ephron . . . and all the trees that were in the field, that were in all its borders round about, were made sure"; from which is to be understood that all those without the borders were excluded (and so also the inoculated carob, etc., are of separate value and had nothing to do with his field). Said R. Mesharshia: From this passage we infer that the boundary is sold to the buyer with the field biblically; *i.e.*, because it is written "round about," which is the boundary, and was sold by Ephron with the field.

R. Jehudah said: It is advisable for one who sells his estate to write in the bill of sale "acquire title to the trees, to the young plants, also to those trees that do not yield fruit." And although title is given to all these, even if it were not so written, it is better for the bill of sale to contain the words just mentioned. If one said: "I sell you the ground and date trees," then, if there were such on his estate, he must give him two of them; and if there were not, he has to buy two for him; and if he possesses them, but they were mortgaged, he has to redeem two for him. If he said: "I sell you the estate with the date trees," if the estate contains such the sale is valid; and if not, the sale is void. If he said: "An estate on which there are date trees," and there were none, the sale is valid; for he meant, it is fit for them. If he said: "I sell to you this estate,

except such and such a tree," it is to be investigated whether this tree is a good one that yields much fruit—then he reserves it for himself; but if it was a bad one, which yields no fruit at all, or only a little, and in this field were better ones, so much the more does he reserve them for himself. If he said: "I sell you this field, except the trees," if there were many kinds of trees they are certainly not included; but even if it contained only date trees or vines, they are excluded also. If, however, there were trees and vines, the trees only are excluded; and if there were date trees and vines, the date trees are excluded but not the vines.

Rabh said: A date tree is considered a reservation only when he must ascend with a rope for gathering the fruit; but if not so high, it is not considered a reservation. The judges of the Exile (Samuel and Karna), however, maintain: If it does not hinder the yoke of oxen which are ploughing around it, it is not considered a reservation; but if it does hinder, it is. However, they do not differ, as Rabh speaks of a date tree and they treat of other trees.

R. A'ha b. Huna questioned R. Shesheth: How is it if the seller says: Accept the half of such and such a carob? It is certain to me that he does not acquire title to other carobs; but I doubt whether he acquires title to the half of the carob in question? And the answer was: He does not. He objected to him from the following Boraitha: If he said, "Accept the half of such and such a carob," title is not acquired to the other carobs, by which is to be understood that he does not to the other carobs, but he does to the half in question? And he answered: Nay! Even to the half left to the buyer, title is not given, this case being similar to one in which it was said, "I sell you this field, except the half of such and such a one." Were we to assume that the buyer acquires title to all his fields except the half in question, although he said plainly, "I sell you *this* field," it must be said he does not acquire title to any except to that which he had shown him; and that his remark, "except the half field," etc., was but redundancy. The same is the case here. If he said, "I sell you this field, except the half tree," the last word is to be considered redundancy.

R. Amram questioned R. Hisda: If one has deposited something with his neighbor, and taken from him a receipt (approved by witnesses), and thereafter the depositary claims that he has returned the bailment, how is the law? May it be said that,

bécause if he were to claim that the bailment was taken away from him by force, he would be trusted, the same should be the case with the claim, "I have returned," or the depositor has a right to say: If it were so, how comes thy receipt in my hands? And he answered: He is to be trusted when he takes an oath, the same being the case when the depositary claims "it was taken away from me by force"—he must take an oath.

Shall we assume that R. Amram and R. Hisda differ on the same point as the Tanaim of the following Boraitha differ: If one holds a document which witnesses to an amount of money given by him to his deceased partner for a half profit, and claims that the amount was not returned to him, while the orphans say that they are not certain whether the amount was returned? The judges of the Exile said: The plaintiff has to take an oath, and collects the whole amount. The judges of Palestine, however, maintain that he collects only the half with this oath. And all of them agree with the sages of Nahardea, that of the money which is given for the purpose of a half profit half of the amount is considered a loan and the other half a deposit. (See Middle Gate, p. 277.) Now is it not to be supposed that the point of their differing is that one party holds that the claim of the plaintiff, "The document in my hand gives evidence that the amount was not returned," is to be listened to, and the other party (who says that with the oath he collects the half only) maintains that such is not considered evidence? Nay! All agree with R. Hisda, and the point of their differing is, that one party holds if the deceased had returned, he would have notified his heirs, and the other holds it may be that death prevented him from doing so.

R. Huna b. Abi sent the following message: A depositary who claims that he had returned the bailment, although his receipt is still in the hands of the depositor, is to be trusted (with an oath), and with a document of a half profit in the hands of the plaintiff suing the orphans, he may swear and collect the whole amount. Do these two statements contradict each other (as in the case of a depositary the document is in the hand of the plaintiff, and the *defendant* is trusted with an oath, and in the case of a half profit the *plaintiff* is trusted with an oath)? The latter case is different, because, if the deceased had made return, he would have notified his heirs. Said Rabha: The Halakha prevails concerning orphans, that he takes only the half with an oath. Mar Zutra, however, said: The Halakha

prevails with the judges of the Exile. And to the objection of Rabbina, that Rabha had long ago decided that he takes only the half with an oath, he answered: We have learned the reverse; *i.e.*, that the judges of the Exile hold that he takes the half only with an oath, and the Palestinians, that he collects the whole amount. Hence my decision is the same as Rabha's.

MISHNA IX.: In selling a field, if it contains a well, cistern, or pigeon-house, no matter whether they are still in use or damaged, they are not included in the sale. However, the seller must buy a way from the buyer for passing to them. So is the decree of R. Aqiba. The sages, however, say that it is not necessary. R. Aqiba, however, admits that if the bill of sale states, "except the above things," he need not buy a way. If the seller sold the above separately to another—according to R. Aqiba it is not necessary for the buyer of them to buy a passage, and according to the sages it is. This is all said concerning a sale; but if the owner of the field has made a gift of it, title is given to the field with all its contents. The same is the case when brothers divide their inheritance, and the field falls in a share of one of them: he acquires title to all its contents.

If one made a hazakah on the estate of a childless proselyte, the hazakah applies to all the above-mentioned things, if they were to be found on it. If one consecrate his field, all that is to be found in it is sanctified. R. Simeon, however, said: The above-mentioned things are not included in the sanctification; but if there was an inoculated carob or a trunk of a sycamore, it is included, because while growing they are nourished by the sanctified ground.

GEMARA: What is the difference between a sale and a gift? Jehudah b. N'qusa explained before Rabbi: The one who makes a gift, if he desires to reserve any part of it for himself, he ought to state so plainly, which is not the case with a seller, who needs money: the details of the sale must be determined by the buyer, and if not so done, the seller has the preference.

There was a man who said in his will: Give to so and so my house that contains a hundred barrels (*i.e.*, that within the width, length, and height of the house ten barrels square could be placed). After investigation it was found that the house contained one hundred and twenty barrels (*i.e.*, twelve rows, each of ten barrels), and no other house was found on the deceased's estate. And Mar Zutra said: The will states a hundred, but not a hundred and twenty. Said R. Ashi to him:

Did not our Mishna state: All this is said concerning a sale, but concerning a gift title is given to all; and the reason is that he who makes a gift does it with a good eye? The same is the case here. The deceased thought that it contained a hundred only. He therefore said so, that the donee should be aware that he bequeathed him such a big house, but not to exclude it if it contained still more than he thought, as it must be supposed it was given to him with a good eye.

"*If one consecrated his field,*" etc. R. Huna said: Although the rabbis have declared that he who buys two trees that are between others does not acquire title to the ground beneath, if the seller has sold the ground with the trees, but reserved two trees for himself, the ground beneath belongs to him. And even R. Aqiba's theory, that usually a seller sells with a good eye, is only concerning a well, etc., which does not cause any harm to the ground; but as for trees, which while nourishing do so, if the buyer should not agree that the ground beneath should belong to the seller, he would tell him to cut down the trees and go; and if he did not do so, it must be supposed that he was willing that the trees with the ground beneath should remain to the seller forever, so that in case the trees should wither he might plant others instead.

CHAPTER V.

RULES AND REGULATIONS CONCERNING SALES OF SHIPS, BOATS, ANIMALS, AND TEAMS; CONCERNING BROODS OF PIGEONS AND BEASTS; TREES, WITH THE GROUND AND WITHOUT. HOW TO ACQUIRE TITLE TO FRUIT AND FLAX. OF ARTICLES WHICH BECAME DEARER OR CHEAPER BETWEEN THE TIME OF SALE AND DELIVERY. AT WHAT TIME THE WHOLESALERS AND STORE-KEEPERS HAD TO CORRECT THEIR WEIGHTS AND MEASURES, AND OF WHAT MATERIAL THE WEIGHTS MIGHT AND MIGHT NOT BE MADE.

MISHNA I.: If one sells a boat, the sale includes the mast, the flag, the shovels, and all things pertaining to the leading of the boat, but not the slaves, and the sacks for carrying goods, nor the *entheca*. If, however, he sells the boat with all its contents, all is sold.

GEMARA: The rabbis taught: If one sold a boat, the sale includes the *scala*, and also the well with water therein. R. Nathan said: The sale includes also the safety boats. And so also said Symmachos, but he named them *dugit* as in Palestine, while R. Nathan named them *bisit* as in Babylon.*

It was taught: To acquire title to a boat, according to Rabh, as soon as one made a little drawing on it title is given. Samuel, however, maintains that title is not given unless he moved the entire boat. Shall we assume that they differ in the same way as the Tanim of the following Tosephtha do: How does one acquire title by transferring? By taking hold of the feet of the animal or its hair, its saddle or the load that is upon it, the bridle, the bell on its neck (although the animal has not moved from its place), title is given. And how does one acquire title by drawing? By calling it and it follows the voice, or by striking it with a stick and it runs from him: as soon as the animal has moved hand or foot, title is acquired. R. A'hi,

* Here in text are the well-known legends of Rabba b. b. Hana among the other Hagadah, which we find necessary to transfer to the end of this chapter.

and according to others R. A'ha, said: Not unless it has moved its whole body. Hence it is to be assumed that Rabh holds with the first Tana and Samuel with R. A'ha? Nay. Rabh may say: My decision is in accordance with R. A'ha's also, as R. A'ha speaks of a living body, which, even if it raised hand or foot, it remains still on its place without moving from it (and therefore he requires the moving of its whole body); but I speak of a boat, which, if one draws it a little, the entire body thereof is set in motion. And Samuel also may say: My decision can be also in accordance with the first Tana, who speaks of a living body which lifts its hand or foot, and usually it is to move the other one also; but concerning a boat, it is not considered a drawing unless he moves the entire boat.

Shall we assume that they differ in the same way as the Tanaim of the following Tosephtha do? To a boat, title is given by drawing. R. Nathan says: To a boat, and also to promissory notes, title is given by drawing, or by a bill of sale. And to the question: Where are promissory notes mentioned, so that R. Nathan's statement should apply? it was answered that the Tosephtha is not complete, and is to be read thus: To a boat, title is given by drawing, but to promissory notes by transferring. R. Nathan, however, maintains that to both title is given by drawing, as well as by a bill of sale.

But is, then, a bill of sale needed for a boat—is it not movable property, for which drawing is sufficient? It must then be said it was taught thus: To a boat, title is given by drawing, and to promissory notes by transferring. R. Nathan, however, says: To a boat by drawing, and to promissory notes by a bill of sale. And as R. Nathan's statement concerning a boat would be superfluous if his decision were the same as the first Tanaim, we must then say that they differ in the same way as Rabh and Samuel differ (*i.e.*, that R. Nathan requires that the whole body of the boat should be moved, while according to the first Tana a little drawing suffices)? Nay; both may agree with Rabh or with Samuel, and they do not differ at all concerning a boat. Wherein they differ is but as to promissory notes. Said R. Nathan to the first Tana (of the above Tosephtha): Concerning a boat I certainly agree with you, but concerning promissory notes I hold to my opinion that if there were a bill of sale the transferring gives title, but not otherwise. And they differ in the same point as the Tanaim of the following Boraitha do: To promissory notes title is given by transfer.

So is the decree of Rabbi. The sages, however, say: Title is not given by writing (as to all the debts contained in the promissory notes) unless the notes in question are transferred to the buyer, and the same is the case when the notes were transferred without a bill of sale: as to such things, both writing and transferring are needed.

Now let us see. The above Boraitha is explained in accordance with Rabbi. Let, then, the case of the boat also be explained in accordance with Rabbi, who holds that to a boat title is acquired by transfer, inasmuch as we have learned in the following Boraitha that such is the decree of Rabbi. But the sages say that title is not given unless he makes a drawing or he hires the place in which it is then placed? This presents no difficulty. Rabbi speaks of when the boat was placed on a public ground (as then drawing could not be made, because he must draw to a place which is under his control, which is not the case when it is in public ground; and the Boraitha speaks of when it was in a place where he could make a drawing to one under his control). Now we see that the Boraitha just cited speaks of a boat that was placed in public ground. How, then, is to be understood the latter part of it, which states: And the sages say title is not given unless the buyer makes a drawing? Now, if it was in public ground, from whom could the buyer hire the place so that a drawing should suffice? And aside from this, does, then, a drawing give title in public ground? Did not both Abayi and Rabha say: Transfer gives title in public ground, and also in a yard that does not belong to both (the seller and the buyer)? In a *semita* (path), however, or in a yard belonging to both, drawing gives title, and "lifting up" gives title everywhere? The expression "unless he makes a drawing" means that he shall move from the public ground to the *semita*, and the expression "unless he hires the place" is also to be explained as meaning that if it happens to be placed on premises belonging to one of them title is not given unless he hires the place.

Shall we assume that Abayi and Rabha both are in accordance with Rabbi (who holds that transferring suffices for a boat)? Said R. Ashi: If he should say: "Go make a hazakah and acquire title," then title would be given. Here, however, it is understood the seller told him, "Go make a drawing and acquire title." And the point of their differing is, one holds that the seller was particular with his words, that only by draw-

ing title should be given (but not otherwise), and the other holds that his expression is to be considered only as if he should show him the place where it is to be found (*i.e.*, "If you wish to make a drawing, here it is").

R. Papa said: If one sells a promissory note, he must write in the bill of sale, "Acquire title to it, and to all the debts it contains."

Said R. Ashi: I have explained the Halakha before R. Kahana and questioned him: How would it be if this were not inserted—would not title be given? Did, then, the buyer need it for the purpose of covering a glass with it (is it possible that a man should invest his money in a piece of paper that he cannot use but to cover something—must it not be assumed that he bought the debts which it contained)? And he answered: Yea! for this purpose he bought it. (And if the amount shows that it was double the value of the paper, then the sale would in any case be null and void, as exacting beyond a sixth makes the sale void.)

Amemar said: The Halakha prevails that to promissory notes title is given by transfer in accordance with Rabbi. Said R. Ashi to Amemar: Is your decision traditional or according to common sense? And he answered: Traditional. Rejoined R. Ashi: It is also according to common sense, as promissory notes are only words. (The note proper does not contain the debts or any money, but the promise of the borrower, which are words, and title cannot be given by words only.)

"*But not the entheca.*" What does this mean? It means the contents of the *entheca*.

MISHNA II.: If one sold a wagon, the bill of sale does not include the mules for it (when not hitched), and *vice versa*. If the yoke with the wagon were sold, the oxen when not hitched were not included, and *vice versa*. R. Jehudah, however, maintains: The amount paid may serve as evidence. How so? If one said: Sell to me your yoke for two hundred zuz, it is self-evident that he meant the whole team, as there is no yoke that could be worth two hundred zuz. The sages, however, say that such cannot be taken for evidence (as it may be he desires to make him a present without humiliating him).

GEMARA: R. Ta'hlipa b. Merba taught a Boraitha before R. Abuhu: If one has sold a wagon, the sale includes the mules. Said R. Abuhu: But our Mishna teaches that it does not. Rejoined the former: Then ignore my Boraitha. Said Abuhu: It

is not necessary, as it can be explained that your Boraitha speaks of when the mules were hitched to the wagon.

"*If one has sold the yoke,*" etc. Let us see how was the case? If people by the expression "yoke" mean the yoke without the cattle, then it is self-evident that he sold him the yoke only; and if the expression means "a team," then he certainly sold him the whole team? It speaks of a place in which some people by yoke mean the entire team, while others by this expression mean the yoke with harness, but not the cattle. According to R. Jehudah this can be ascertained from the amount; but the rabbis hold that the amount cannot be taken as evidence (as it is for the buyer to explain his desire plainly, as there are some who by yoke mean the wagon prepared for the oxen, not including them, and therefore the preference is given to the seller).

But even if the amount is not an evidence, let the sale be void if there was an exaction beyond a sixth of the value. And should you say that the rabbis do not hold to the theory that an exaction beyond a sixth makes void the sale but that they hold that the sale is valid, and the seller has only to return the amount which was overcharged, the answer is: This is not so, as we have learned in Middle Gate, Mishna, p. 132, that the rabbis hold this theory? Yea! They hold the theory only in a case where an exaction could be made (*i.e.*, in a sixth or more of the value); but in our case (two hundred zuz for the yoke only), where exaction cannot be made, it may be assumed that the buyer wishes to give a present to the seller (but does not wish to humiliate him, and so presents him the money for the yoke).

MISHNA III.: If one sells an ass, the harness is not included. Nahum the Modaite, however, maintains it is. Said R. Jehudah: At one time they may be sold, and at some other time they may not. How so? If the ass with its harness was before him, and the buyer says, "Sell me this ass," and the seller agrees, the harness is also sold; but if he says, "Is this your ass? sell it to me," then the harness is not included.

GEMARA: Said Ula: The first Tana and Nahum differ only in the sacks and *disacos* and *khumni*, as the first Tana holds that usually an ass is bought for riding (consequently the utensils that are not for this purpose are not included); but Nahum maintains that an ass is usually sold for carrying burdens, consequently the utensils for this purpose are included, as the saddle, sumpter-saddle, belt, and girdle.

An objection was raised from the following: "I sell you the ass with its harness": the saddle, the sumpter-saddle, the belt, and the girdle are sold, but not the sack, the *disacos*, nor the *khumni*, unless he said, "it and all pertaining to it"; then all is sold. We see, then, that only when he said, "the ass with its harness," the saddle, etc., are sold; but not, if he did not mention the harness? Nay; the same is the case even if he did not so mention, and the Boraitha comes to teach that the sack, etc., are not sold, even if he said, "the ass with its harness."

What does *khumni* mean? Said R. Papa b. Samuel: A saddle used by females only.

The schoolmen propounded a question: Does the Mishna treat of when the things mentioned above were upon the ass, so that, if they were not so, Nahum the Modaite would agree with the first Tana, or, on the contrary, does it treat of when the ass was not dressed in them, in which case the first Tana would agree with Nahum? Come and hear! If, however, he said, "it and all that is upon it," all is sold. And this is correct according to the supposition that they differ when the ass was dressed in these things, and the Boraitha is in accordance with the first Tana of our Mishna; but on the supposition that they differ when the ass was not dressed, according to whom would be the Boraitha? Nay; this cannot be taken for a support, as it may be that they differ even when the ass was not dressed, and the cited Boraitha is to be read: If he said, "the ass and all those things in my possession fit for its use."

Come, then, and hear what R. Jehudah says in our Mishna, and there is no doubt that he speaks of when the ass was dressed in them, as his expression "this ass" means all is sold. Is it not to be assumed that this was an answer to the first Tana (who said that even in such a case the things are not sold)? Nay! R. Jehudah was not answering, but taught a separate Halakha. Said Rabhina to R. Ashi: Did not R. Abuhu say, replying to R. Ta'hlipha (above, in the Gemara to the second Mishna): Explain your Boraitha, "When they were hitched," etc.? from which is to be inferred that the Mishna speaks of when they were not hitched; and when the second Mishna treats of them not hitched, it must be assumed that the third Mishna also speaks of the same case? On the contrary, take the first Mishna, which states, "not the slaves nor the *entheca*"; and to the question what does *entheca* mean, R. Papa answered: The

contents of the *entheca*. Hence the Mishna treats of when the load was upon it, from which is to be inferred that the second Mishna speaks also of when they were hitched (and this is not so). Therefore you cannot object or support from their teachings, as each Mishna speaks of a different case.

Abayi said: R. Eliezer, R. Simeon b. Gamaliel, R. Meir, R. Nathan, Symmachos, and Nahum the Modaite all hold that if one sells a thing the sale includes also all those things that are used with it—Eliezer, who said: If one sells a press-house, the treading-rod is included; Simeon b. Gamaliel, who said: If one sells a town, the *santer* is included; R. Meir, who said: If one sold a vineyard, all the vessels in use for the same are included; Nathan and Symmachos, who said above that the safety boats are included in the sale of the boat; and Nahum the Modaite with his statement in our Mishna.

"*R. Jehudah said,*" etc. What is the difference whether he said "this ass," or "is this your ass"? Said Rabha: If he said "this ass," he was sure that the ass belonged to him, and with the word "this" he meant the harness; but if he asked him, "Is this your ass?" he was not sure it was his. And he asked, if it was his, that he should sell it to him, meaning the ass only, without the harness.

MISHNA IV.: If one sold a she-ass, its foal is sold; but if a cow, the calf is not. If he sold the place where the manure is kept, the manure in it is sold therewith; a well, the water it contains is included; a beehive, the bees are included; a pigeon-coop, the doves it contains are included.

GEMARA: Let us see how was the case? If he said, "with its offspring," even if it is a cow why should the offspring then not be included; and if he did not say so, why should the offspring of an ass be included? Said R. Papa: It speaks of where he told him: I sell you a nursing ass, or a nursing cow. Of the latter the buyer can use the milk, but to what purpose did he say a nursing ass? We must assume that he means the nursing ass with its offspring.*

"*A well, the water it contains is sold.*" Said Rabha: Our Mishna is in accordance with an individual Tana of the following Boraitha (but the majority do not agree with him). If one sells a well, the water it contains is not included. R. Nathan, however, maintains it is.

* The Hagadah here we also transfer to the end of the chapter, as it has nothing to do with this text.

MISHNA V.: If one buys the brood of a pigeon-coop (e.g., if he buys in the month Nisan all the pigeons to be hatched during the whole year, but not the old ones, and usually each dove hatches two young ones every month, male and female, and those pigeons after two months hatch also, and so it is during the entire year, the month Adar excluded), he must leave the first pair of little ones with the parents. If one buys the brood of a beehive, he has to take the first three broods, after which the owner may make the bees impotent of propagation. If he buys the honey in combs, he must leave two with the beehive. If one buys olive trees for the purpose of cutting them down, he must leave the branches which are only two spans high for the seller.

GEMARA: But have we not learned in a Boraitha, concerning a pigeon-coop, that he must leave the first and second pair? Said R. Kahana: This presents no difficulty. The Mishna speaks of the old dove, and the Boraitha of both mother and daughter which have hatched—one pair for the old and one for the young mother. But why should not the pair left for the old mother suffice also for the young one, as she would not leave the pigeon-coop, because her mother and the pair remaining would bind her to stay there, even as the old dove is bound to the same? The old one is bound to both—to the young mother as well as to the pair left, while her daughter, as soon as she has hatched, has no longer anything to do with her mother, but is bound to her children.

"*Three broods*," etc. By what means does one make them impotent? Said R. Jehudah in the name of Samuel: By feeding them with mustard. In Palestine, however, it was said in the name of R. Jose b. Hanina: Not the mustard, but the honey which they consume after having eaten the harsh mustard, causes the impotency. R. Johanan said: He must not take the three broods at one time, but gradually, taking one and leaving one, etc.; and a Boraitha states that the first three he may take one after another, and after that he takes one and leaves one.*

"*Olive trees*," etc. The rabbis taught: If one buys a tree for the purpose of cutting it down, he must begin a span high from the ground; if it was an uninoculated sycamore, he must

* In the text there is a statement of R. Elazar repeated several times, which we leave for the forthcoming Tract Uktzin at the proper place.

leave three spans; and if a trunk of a sycamore, two spans. If sticks or vines, from the knots upwards. If date and cedar trees, he may take them with the roots, for if they were cut at the top they would not grow again.

Do we need three spans for an uninoculated sycamore? Have we not learned (Shebiith, IV. 5): One must not cut an uninoculated sycamore on a Sabbatical year, because it is considered a labor in a field? R. Jehudah said: One must not do it in the usual way, but higher than ten spans he may, or he may cut it at the level of the ground. Hence we see that it harms only if it is cut at the level of the ground, but not if a little higher than three spans. Said Abayi: If exactly three spans, it is beneficial for the growth of the tree, and at the level of the ground it surely harms it, but up to three spans it does neither good nor harm. Concerning a Sabbatical year, only what harms may be done; and concerning buying and selling, only things which are beneficial.

It is said that date and cedar trees one may take with the roots, because if cut at the top they will not improve. Has not R. Hyya b. Luliyni lectured that it is written [Ps. xxxii. 13]: "The righteous shall spring up like a palm tree, like a cedar," etc.? Why are both trees mentioned? If it mentioned the cedar only, one might say: As the cedar does not yield any products, so is the upright. Therefore it mentions the palm tree. And if the latter only were mentioned, one might say: As a palm tree does not improve after being cut off, so is the righteous. Therefore both are mentioned. Hence we see that a cedar does improve? This speaks of another kind of cedar which does so. As Rabba b. R. Huna said (Taanith, p. 75): There are ten different kinds of cedars.

MISHNA VII.: If one buy two trees within his neighbor's field, the ground beneath is not sold. R. Meir, however, maintains it is. If the branches were wide-spreading, the seller has no right to cut them off, though the shade of them harms his field. That which grows from the trunk belongs to the buyer, and that from the roots to the seller. If the trees die, the buyer has no right to the ground; however, if he bought three trees, the ground is included, and if the branches become wide-spreading, the owner of the ground may cut them off, and all that is growing from both trunks and roots belongs to the buyer; and if the trees die, he has the right to plant others.

GEMARA: There is a Mishna (Bikurim, I. 6): If one buy

two trees within his neighbor's ground, he may offer the first-fruit, but he must not read [Deut. xxvi. 10]: "The soil which thou hast given to *me*," as the earth is not *his*. R. Meir, however, said: He may offer and also read. Said R. Jehudah in the name of Samuel: According to R. Meir, one is obliged to offer the firstfruit, even if he bought it in the market. And whence has he inferred it? From the superfluous Mishna—*i.e.*, it is already said in our Mishna that he who buys even two trees has bought the ground therewith according to R. Meir. Why, then, was it necessary to repeat that in the cited Mishna? We must say that only to teach that, even if one does not possess any ground, he is nevertheless obliged to offer the firstfruit if he possesses such, even from the market (and the cited Mishna is to be explained thus: R. Meir said to the first Tana: Even if I should agree with you that the one who buys the two trees does not possess any ground, he is nevertheless obliged to offer the firstfruit). But is it not written [Deut. xxvi. 2]: "Which thou shalt bring in from *thy* land"? This is to exclude the land outside of Palestine. But is it not written [Ex. xxiii. 19]: "The first of the firstfruits of *thy* land shalt thou bring," etc.? This is to exclude the ground of a Gentile. But is it not written [Deut. *ibid.*]: "Which thou hast given *me*"? This means, "thou hast given me money to buy."

Rabba objected from the following: If one bought one tree within the trees of his neighbor, he may bring the firstfruit; but does not read, ". . . thou hast given," because he has no ground. So is the decree of R. Meir. Hence we see that if he has no ground he cannot read, "the earth thou hast given." This objection remains.

Said R. Simeon b. Elyakum to R. Elazar: On what reasons did R. Meir base his theory concerning one tree, and the rabbis theirs concerning two trees—that the men should bring the firstfruit and should not read? Does not the Scripture exclude him from bringing also? Said R. Elazar to him: Concerning a thing for which one previous master gave no reason you are questioning me in the college for the purpose of bringing me to shame? Said Rabba: I do not see any difficulty in it, as it may be assumed that the rabbis, as well as R. Meir, were doubtful as to the accuracy of the law: the rabbis could not absolutely decide that he who bought two trees had no ground, and R. Meir could not be certain concerning one tree, and therefore they decided he should bring, but not read.

But how can you say that R. Meir was doubtful—did he not plainly say above, because he has not acquired title to the ground? Read: "Perhaps he has not acquired title," etc. But according to both, why should the man in question bring? Suppose that, according to law, they are not considered first-fruit at all, and that he brings common fruits to the sanctuary, which is prohibited—*i.e.*, that he first sanctified them. But the fruit must be consumed by the priests, and if they are not considered firstfruit, they are consecrated for an offering or for another purpose, and it is prohibited that any one should derive benefit therefrom—*i.e.*, after he brings them, he redeems them. But even then, if they are not considered firstfruit, they are liable to separate "heave-offering and tithe"; and by bringing them he exempts them from these duties—*i.e.*, he previously separates the above from them. This can be correct concerning heave-offering, which belongs to the priest, and the same concerning "second tithe"; and also the "tithe for the poor" he may give to a poor priest, but to whom shall he give the first tithe that belongs to the Levite, as the Levite must not derive any benefit from consecrated things? This he may also give to the priest in accordance with R. Elazar b. Azaryha of the following Boraitha: Heave-offering must be given to the priest, first tithe to the Levite. So is the decree of R. Aqiba. R. Elazar b. Azaryha, however, maintains that even the first tithe may be given to the priest (after Ezra fined the Levites). But if they are considered firstfruit, the reading of the passages is obligatory? The obligation does not prevent the bringing. As R. Jose b. Hanina said elsewhere: If one has gathered the first-fruit, and sent it by a messenger who died while on the road, then the firstfruit may be brought into the sanctuary; but the passages should not be read, for it is written [Deut. xxvi. 2]: "Thou shalt take," and farther on, "Thou shalt go," etc., which means that the gathering as well as the bringing should be done by one person, and as the messenger is dead the reading cannot take place.

Said R. A'ha b. R. Ivya to R. Ashi: Let us see! The reading consists of passages from the Scripture, which are allowed to be read by every one and at any time. Let him then read, "And he answered": when he reads this with the bringing, it looks like a lie, which is not the case when he reads the Scripture.

R. Mesharshia b. R. Hyya said: The reason is that if the

reading were allowed, another, who has similar fruit, might think that such is really considered firstfruit, and will not separate the heave-offering therefrom.

"If the branches were wide-spreading." What is to be considered trunk, and what roots? Said R. Johanan: All above the surface of the ground is considered trunk, and beneath roots. But suppose that an upheaval should occur that will cover the trunk so that the branches shall have the appearance of three trees, and then the buyer may claim: You sold me three trees, and I have a right to the ground. Therefore said R. Na'hman: The expression in the Mishna, "from the trunk belongs to the buyer," means as to cutting it down, but not to leaving it. And thus also said R. Johanan.

R. Na'hman said: We have a tradition that a date tree has no trunk. R. Zebid was about to explain R. Na'hman's statement by what our Mishna states, that if such a tree is cut on the top it does not further increase, and therefore the buyer cannot claim a right to the outgrowth of the trunk, as, the remainder of the tree being only for removal, he renounced his hope to derive any benefit therefrom. To which R. Papa opposed the statement in our Mishna that he who bought two trees which are also for removal has no right to the ground, and nevertheless he has a right to the outgrowth of the trunk? "Therefore," said he, "R. Na'hman means that it can never occur that trunks of date trees may bring forth outgrowths."

But does not the Mishna oppose R. Zebid's theory? He may say: The Mishna treats of a case in which the buyer bought the trees for the term of five years (*i.e.*, if it should happen that in the meantime they shall die, he has a right to plant others instead), and therefore he has a right also to the outgrowth of the trunks.

"If he has bought trees," etc. To what extent of ground has he acquired title? Said R. Hyya b. Abba in the name of R. Johanan: He acquires title to the ground beneath the branches and that between them; and outside, to the extent that he may stand with his basket to gather the fruit from the outside branches. R. Elazar opposed: How is it possible that this should be granted to the buyer, when even a path through the field is not granted, as he has not any right to the ground which is outside of the trees?

Said R. Zera: From the teaching of our master (R. Elazar) we may learn that if he bought three trees he has no path, but

if he bought two trees he has, as he may claim: The trees are situated on your ground, and as you have sold me trees situated on your ground, so also have you granted me a path to them.

Said R. Na'hman b. Itz'hak to Rabha: Shall we assume that R. Elazar does not agree with his master Samuel, who said that the Halakha prevails in accordance with R. Aqiba, who holds that usually the seller sells with a good eye (and according to this theory, if he sold him three trees he granted him also a path to them). And he answered: Our Mishna cannot be in accordance with R. Aqiba, as it states that when the branches are wide-spreading the seller has the right to clear them, and in accordance with R. Aqiba, this right could not be given to him, for the supposition is that he sold them with a good eye. Rejoined R. Na'hman: We have heard R. Aqiba saying so only concerning a well, etc., which does not impoverish the ground; but have you heard him saying so concerning a tree, which does? Does not R. Aqiba agree that, in a case in which the branches of a tree overhang the field of another, he may clear the size of a plough handle?

There is a Boraitha in accordance with R. Hyya b. Aba that the buyer of three trees acquires title to the ground beneath, between, and outside to the extent that he can stand there with a basket in the hand. Said Abayi to R. Joseph: Who has a right to sow the outside ground that belongs to the buyer (the buyer of the trees, to whom it belongs, or the owner of the ground, who allows the buyer to be present there only at the time of gathering—therefore he may sow it, and the buyer has a right to step on it at that time)? And he answered: This we have learned in the Mishna farther on, that the outsider may sow the path which leads to the inside field. Rejoined Abayi: What comparison is this? There the buyer of the inner field does not suffer any damage when he steps on the sown path to his field; but here, if the owner of the ground should sow it, there is a damage to the buyer of the trees in not having the products of the ground belonging to him. Therefore if this case should be compared to the one in the cited Mishna, it is only to the latter part, which states that neither of them has a right to sow. There is a Boraitha in accordance with Abayi, which states plainly that neither of them has a right to sow.

How much space is to be left between the trees in question, that it should be considered the buyer's? R. Joseph in the name of R. Jehudah, quoting Samuel, said: From four to eight

ells. And Rabha in the name of R. Na'hman, quoting Samuel, said: From eight to sixteen. Said Abayi to R. Joseph: Do not quarrel with R. Na'hman, as there is a Mishna (Kilaim, IV. 9) in accordance with him: If one has planted his vineyard sixteen ells square, he may sow other seeds between the rows. And R. Jehudah said: It happened in the city of Zalmon that one had planted his vineyard sixteen ells square. One year he trained the branches of every two rows in one direction, and sowed in the opposite direction; and the next year he trained the branches in another direction, and sowed on the ground that had lain fallow. And when the matter was brought before the sages, they sanctioned it [his manner of proceeding]. And he answered: I took my theory from such a case as happened in the village of the shepherds, which was brought before R. Jehudah, and he decided to give them space for a yoke of oxen with the harness thereof; but I did not know the measure of such a space, and after I had given my attention to a Mishna stated above, as follows: "One must not plant a tree near his neighbor's field unless he leaves four ells space," and a Boraitha in addition to this states the four ells mentioned are for the purpose of working up a vineyard (as explained above, p. 78), I inferred from this that the measure of a yoke with the harness is four ells. But is there not a Mishna (Kilaim, IV. 9) in accordance with R. Joseph: Beth R. Meir and R. Simeon say: If one plants his vineyard eight ells square, he is permitted to sow other seeds therein? Yea; nevertheless, a practised act is more important for evidence.

It is correct in accordance with R. Joseph, which is according to R. Simeon's theory, as we have heard that R. Simeon's theory equals both cases, when the vines are scattered and also when they are growing together—"scattered," from the Mishna just cited, and "growing together," from the following Mishna: A vineyard which is planted in less than four ells is not to be considered a vineyard at all. So is the decree of R. Simeon, etc. But according to R. Na'hman, who is in accord with the rabbis' theory, we have heard their opinion concerning scattered ones (as said above in the case of Zalmon); but have you also heard their opinion about growing together? This is common sense. As R. Simeon considers the half space in his theory of growing together, the same is the case with the rabbis: they also consider the half space in their theory of growing together.

Said Rabha: The Halakha prevails—from four to sixteen

ells; and there is a Boraitha which supports him as follows: What is meant by being near one to another? Four ells. And what is meant by being far? Sixteen ells. In the latter case, if one bought the trees he bought also the ground, and also the shrubs between; and, therefore, if it happens that a tree withers or is cut off, the ground remains his. If, however, it were less or more than the above space, or he bought the trees not at one time, but one after another, the ground and the shrubs between do not belong to him; and, therefore, if a tree becomes withered or is cut off, he has no right to the ground (to plant another instead).

R. Jeremiah questioned: How should the ground belonging to the buyer be measured—from the end of the branches or from the trunk (so that he would have more space than by measuring from the branches)? And R. Gibiahh from the city of Khthil said to R. Ashi: Come and hear the following Mishna [Kilaim, VII. 1]: If a vine has been bent in such a manner that the main stem is out of sight [underground], the measure [as to legal distance] must be calculated from the second stem—*i.e.*, the place where it rises from the ground and again becomes visible. R. Jeremiah questioned again: How is the law if one has sold a tree of which the branches are separated by four ells from one another: And the above R. Gibiahh said to R. Ashi: Come and hear the second Mishna [ibid., ibid.]: If three vines are bent [and partly covered with mould] and their stems remain visible, R. Elazar ben Zadok said: If there remain between them not less than four and not exceeding five ells in width, they [the vines] must be looked upon as connected; otherwise, they are not to be so considered.

R. Papa questioned: If one has sold two trees situated in his field and one on the boundary, are they to be counted together, or not? The same question arises when one has sold two situated on his own ground and one on his neighbor's, and both questions remain undecided. R. Ashi questioned: (If in the above questions it were decided that they should be counted together,) how is the law if there were a well, or a channel, or intervention by a public ground or a row of young trees? This question also remains undecided.

Hillel questioned Rabbi: If a cedar tree intervened, how is the law? And he answered: Then title is given to him in the trees, as well as in the cedar. How should the trees be situated so that the sixteen ells in question should be measured? Ac-

cording to Rabh in a row (. . .) and according to Samuel diagonally (· · ·); and the difference is, that according to him who said "in a row" the ground belongs to the buyer, so much the more when they are situated diagonally; while according to him who says "diagonally," if they are in a row the ground does not belong to the buyer, as if in a row the ground between is fit for sowing. R. Hamnuna opposed: According to the theory that if they were placed diagonally the ground belongs to the buyer only for the reason that such a ground is not fit for sowing, how would it be if one should sell three thorns which are called *Higi Runiitha*, the ground between which is also unfit for sowing—shall we also assume that the ground belongs to him? And he was answered that the thorns in question are of little value, which is not the case with the trees in question (and the law dictates both that the trees should be of value and the ground between unfit for sowing).

MISHNA VII.: If one sold the head of a cow, the feet are not included, and *vice versa*; the windpipe, the liver is not included, and *vice versa*. However, concerning a calf, the feet are included in the sale of a head, and *vice versa*; and the same is the case with the windpipe and the liver.

There are four legal customs concerning sales: If one alleges having sold good wheat and thereafter it was found to be bad, the buyer may retract; if he alleged having sold bad and thereafter it was found good, the seller may retract. If, however, it was found as alleged, neither of them can retract (although from the sale of the wheat to the delivery the price for same has increased or decreased). If one sold dark red wheat and it was found to be white, or *vice versa*; trees of olives, and they were found to be sycamore, or *vice versa*; wine, if it was found to be vinegar, or *vice versa*—both have a right to retract.

GEMARA: Said R. Hisda: If one has sold wheat worth five zuz for six, and subsequently it increases to eight, who was imposed on prior to the increase? The buyer. Therefore the right of retraction from the sale is given to him only, but not to the seller, as the buyer may say: If you had not imposed on me in the beginning, you could not retract from the sale even if the price increased, and having imposed on me, should you have the right to retract? And it was learned in our Mishna that if one alleged having sold good and it was found bad, the right of retraction was given to the buyer and not to the seller, even if it had increased in price more than the seller took.

The same said again: If one has sold for five the value of six, and thereafter it lowered to three zuz, who was imposed on prior to that decrease? The seller. The right to retract is only for him and not for the buyer, for the reason stated above, that the seller may say to the buyer: If I had not been imposed on in the beginning, you could not retract though the price should decrease, and inasmuch as I have been imposed on, should you have such a right? And so teaches our Mishna: If one alleges having sold bad, and thereafter good was found, the right of retraction is given to the seller and not to the buyer.

But what then came R. Hisda to teach? Does not the Mishna state so? Without his statement, one might say that according to the Mishna, in those cases illustrated by R. Hisda, both have a right to retract, as there was imposition in the beginning of the sale (while the Mishna treats of where no imposition took place), and therefore R. Hisda came to teach us that the Mishna must be interpreted according to his illustration.

"*Wine, and it was found vinegar.*" Shall we assume that our Mishna is in accordance with Rabbi, and not with the rabbis of the following Boraitha? Wine and vinegar are considered one kind, concerning heave-offering (so that if he has separated *troomah* from the wine for the vinegar also, or *vice versa*, it is valid). Rabbi, however, maintains that it is not, because they are two separate kinds? Nay! Our Mishna may be in accordance with the rabbis also, as they differ with Rabbi only concerning tithe and heave-offering, and it is in accordance with R. Ilaha, who has inferred elsewhere from the Scripture that if one has separated tithe or *troomah* from the bad, for the good ones of the same kind (grain or fruit), his action is valid; but concerning selling and buying the rabbis also agree that the one who desires wine cannot be satisfied with vinegar, and *vice versa*.

MISHNA VIII.: If one has sold fruit, and the buyer has made a drawing on it, although it was not as yet measured, title is given, but not if it was measured for him, and the drawing has not taken place; and if the buyer were shrewd, he would hire the place where the fruit is to be measured, so that the seller should not have the right to retract even before the drawing is made.

If one buys flax, title is not given unless he removes it from one place to another; but if the flax was still attached to the ground, and the buyer pulled up some of it, title is given.

GEMARA: Said R. Assi in the name of R. Johanan: If he

has measured it, and placed it on the *semita* (path) for the buyer, title is given. Said R. Zera to him: Perhaps the master has heard from R. Johanan that he has measured and put it in the basket of the buyer. And he answered: The question of this scholar is similar to that of men who do not understand a Hala-kha at all, for is it then needed to teach that title is given if the seller puts it in the basket of the buyer?

(Says the Gemara:) Has R. Zera accepted R. Assi's theory, or not? Come and hear! R. Yanai said in the name of Rabbi: If the yard where the fruit was placed belonged to both the seller and buyer, title is given to the latter.

Is it not assumed that title is given even if it was placed on the ground of the yard? Nay; it means if it was placed in the basket of the buyer; and it seems to be so, as R. Jacob in the name of R. Johanan said: If after measuring he puts it on the *semita*, title is not given. And as this would contradict the above statement of R. Assi in the name of R. Johanan, we must then say that one has heard from him when the basket of the buyer was placed on the *semita*, and from the other, when the basket of the buyer was not. Infer from this that R. Zera had not accepted. Come and hear another objection! But when measured, and a drawing was not made, title is not given. Does this not mean in the *semita*? Nay; it means "public ground." If so, how is the first part to be understood: "If he has made a drawing, but not measured, title is given." Does, then, a drawing give title in public ground? Is it not said above, p. 169, that in public ground only transferring gives title, but not drawing? The expression "drawing" means that he removed it from the public ground to the *semita*. But how about the latter part: "If the buyer is shrewd, he hires the place," etc.? If it speaks of a public ground, from whom can he hire it? It means to say, if it still remained on the premises of the owner, then if the buyer is shrewd he will hire the place.

Both Rabh and Samuel said: The vessels of the buyer give title to him in every place, except on public ground. R. Johanan and R. Simeon b. Lakish both are of the opinion that it gives title even when on public ground. Said R. Papa: The above parties do not differ, as the latter speaks of a *semita*; and why they call it public ground is because it is not private ground. (Says the Gemara:) It seems to be so, as R. Abuhu said in the name of R. Johanan: The vessels of one give him

title in every place where it is permitted to him to place them. Hence we see that only to those places where it is permitted to him to place them is title given, but not to public ground where one is not permitted to place one's vessels. Come and hear the following Tosephtha: There are four legal customs concerning sellers: (a) If the measure does not belong to both of them and it was placed on public ground, or in a yard that does not belong to both, then, if the measure was not as yet filled up and the seller wishes for some reason to recede from his sale, he may do so; but if it was filled up, then it is considered already the buyer's (as it is supposed that for this purpose it was lent to the buyer, that as soon as filled he might take it with its contents); (b) if the measure belongs to one of them, to every atom that is put in the measure the owner of the measure acquires title, provided it was at those places named above; (c) if it was on the premises of the seller, the buyer does not acquire title unless he lifts it up or removes it from the seller's premises; and (d) if it was on the premises of the buyer, as soon as the seller agreed to sell him the grain for such and such a price the buyer has acquired title. If, however, the grain in question was deposited previously by the seller without the intention of selling it, and thereafter the depositary bought it from him, title is not given unless the seller agrees to renounce his right to the place where the grain is now placed, or the buyer hires it. We see, then, that if the measure was filled up title is given to the buyer, even if it was on the public ground? Also, here, by public ground is meant a *semita*; but if so, why the repetition, "a yard that does not belong to both"? Is it not the same as a *semita*? By this expression is also meant that the whole yard does not belong to one of them, as they were partners in it.

R. Shesheth questioned R. Huna: If the vessels of the buyer were placed on the premises of the seller, does the buyer acquire title or not? And he answered: This we have learned (Githin, I. 1): "If he put the divorce in the pocket of her dress or in her basket, she is divorced" (hence we see that one's vessels give him title). Said R. Na'hman to R. Huna: Why have you decided this question from that Mishna which was objected to, and there were about a hundred explanations of the meaning of it (*q.v.*)? You should decide this from the Tosephtha cited above: If it was on the premises of the seller, title is not given unless he lifts it up, or removes it; and it is to be assumed that it speaks of when the measure was the buyer's. (Answered he:)

Nay; it means if the vessels belong to the seller. (Rejoined he:) If the first part speaks of when the vessels belong to the seller, the second part must also treat of the same. How, then, is the decision to be understood: "If it was on the premises of the buyer, as soon as the seller has agreed," etc., title is acquired? Why, then, is it not still in the hands of the seller? Nay; the latter part speaks of when the vessels belong to the buyer. But what compels you to explain the two parts of it in different applications? Because, generally, if on the premises of the seller his measures are used, and on the premises of the buyer his are used.

Said Rabha: Come and hear another objection: If the buyer or his servants have led the asses of the seller, with the load, to his premises (and the load was still upon the asses or in the hand of the servants), whether the price was made but no measure taken, or measure taken but no price made, both have a right to retract. If, however, they were unloaded in the street and one brought the stuff to his house, if the price was made before measuring neither of them can retract; but if measured before the price was made, the sale is not considered settled, and both may retract. Now, as we see that the vessels belonging to the seller, if they are on the premises of the buyer, do not give title, it must be the same with the vessels of the buyer on the premises of the seller—neither do they give title? Said R. Na'hman b. Itz'hak, it speaks of when the buyer removed it from the vessels and placed it on his premises. Rabha became angry at this explanation: Does not the Tosephtha plainly teach "unloaded," and he says, "removed it and placed it on his premises"? Said Mar b. R. Ashi: It can be explained that the load was of bundles of garlic of which the unloading itself makes it rest on the premises of the buyer, and it needs no more work. Said Huna b. Mar Zutra to Rabhina: Let us see. It states "unloaded" (from which it must be supposed that he did it with the consent of the owner). What, then, is the difference whether the price was made or not? (Is it not said above that if on the premises of the buyer, as soon as agreed on, no retraction can take place, as the premises of the buyer give title?) Why, then, should a retraction take place in such a case? And he answered: If the price was made, the seller relies upon it, and the sale is made; but if otherwise, he does not. Said Rabhina to R. Ashi: Come and hear what both Rabh and Samuel declared above: The vessels of one give him title at *every*

place. Is this not equivalent to saying even on the premises of the seller? Yea, provided he told him: Go and acquire title.

There is a Mishna (Kidushin): To real estate title is acquired by money, deed, or hazakah, and to personal property title is given by drawing only. As to which in Surah it was taught in the name of R. Hisda, and in Pumbeditha in the name of R. Kahana, according to others in the name of Rabha, as follows: This is said concerning things which it is not usual to lift up; but to those which it is usual to lift, title is given only by lifting up, but not by drawing.

Abayi was sitting repeating this Halakha, and R. Ada b. Mathna objected to him from the following: If one steals a purse on Sabbath and takes it into the street, he is obliged to pay for the purse, because he was culpable of stealing before the violation of the Sabbath was committed. (There is a rule that if in one and the same thing a liability for money and a crime were committed, the punishment for the crime absolves him from payment.) In such a case, however, two separate crimes are considered, as after he steals the purse it becomes his (and the violation of the Sabbath is done with his own). If, however, he drew the purse little by little, and he picked it up when it was already on public ground, he is absolved from payment, as both crimes were committed together. Now a purse is certainly a thing which is usually lifted up, and nevertheless one acquires title to it by drawing; for should it not be Sabbath, he would be obliged to pay for it, even if he should not have lifted it up until it reaches the street? And he answered: It speaks of a purse fastened with a cord, of which drawing is usual. Said R. Ada: I also speak of such a kind of purse. And he rejoined: I mean such a big purse as could not be lifted up except by drawing it by the cord. It was objected again from the above Tosephtha that if on the premises of the seller, title is not given unless he lifted it up or drew it, from which we see that to a thing that can be lifted up title is acquired by drawing also. Said R. Na'hman b. Itz'hak: It is meant in parts. To a thing which is usually lifted up, title is given by lifting, and usually drawn, by drawing.

Come and hear! If one sold fruit, if he made a drawing although not measured, title is given. Now fruit is usually carried, and nevertheless drawing suffices? It means big loads of fruit. If so, how is the latter part to be understood: "If one buys flax, title is not given unless he removes it to another

place''? Is it not usual for flax to be in big loads? With flax it is different, because it is usually detachable in big loads.

Said Rabhina to R. Ashi: Come and hear! To a cow, title is given by transferring; and to a calf, by lifting up. So is the decree of R. Meir and R. Simeon b. Elazar. But the sages say: To a calf, by drawing also. Now a calf can be lifted up, and nevertheless drawing gives title? With a calf it is different, as it resists. Therefore it is difficult to lift it up.

Rabh and Samuel both said: If one says: I sell you a kur of thirty saahs for such an amount, the seller has a right to retract even at the last saah. If, however, he said: I sell you a kur of thirty saahs, each saah for a selah, title is acquired to every saah as measured. Come and hear! If the measure belongs to one of them, to every atom that was put in title is acquired, although the whole measure was not as yet filled. Hence we see that title is given even when one did not say: I sell you each measure for a certain price? It speaks of when in the measure were marks, as where one said: I sell you a hin for twelve selahs, each lug for a selah. And R. Kahana illustrates thus: There were marks in the hin for one, two, three lugs, etc. The same is it with the measure in question: there were marks for each saah. Come and hear! If one hires a servant to work for him in the barn (not in harvest-time) for one dinar a day, with the stipulation that he shall work for him for the same price in the harvest-time, although at that time the price is a selah a day (and advances him the wages for the whole time), it is prohibited to do so, as it looks usurious; but if he hires him for one hundred days from to-day for a dinar a day, and advances him one hundred dinars, although during the time the harvest begins and each day is worth a selah, it is permissible. Now, if you say that to a kur of thirty saahs, each saah for a selah, title is given for each saah measured, it ought to be the same with the days in question—for each working day a dinar shall be charged, and when the harvest comes he shall add every day for the increase in price at that time, and by not doing so it is to be considered usury? Said Rabha: Whence did you obtain that it is not permissible to one to lower the price for his work? Hence this does not contradict the statement of Rabh and Samuel at all. But if so, why is there a difference between the first part of the Boraitha and the latter? In the first part it does not say: Work from to-day. And if he begins his work at the harvest-time for a lower price, it looks usurious, as he has

lowered the price for advancing the money. In the second part, however, where he begins to work immediately, and works every day for the same price, it cannot be considered usury if he does not increase the price at harvest-time.

"*And the buyer pulled up some of it,*" etc. Because he pulled up some of it, he acquires title to the whole? Said R. Shesheth: It treats of a case in which the seller said to him: Fix something in the ground, and acquire title to all that is attached thereon.

MISHNA IX.: If one sold wine or oil, and it became dearer or cheaper, if before the measure was filled it is to be charged to the seller; and if afterwards, to the buyer. If the sale was made through a broker, and it happens that a barrel leaks, it is to be charged to the broker, and the seller is obliged to add a few drops to the measure. After the seller has turned over the measure, and some of the liquid has gathered, it belongs to the seller; the storekeeper, however, is not obliged to keep the measure until the last three drops are leaked out. R. Jehudah says that on the eve of Sabbath, when it grows dark, one is exempt from this duty.

GEMARA: Let us see to whom the measure in question belongs? If to the buyer, why should it be charged to the seller, even if it was not filled; and if to the seller, why should it be charged to the buyer, even if it was filled up? Said R. Ilaah: It speaks of when the measure was the broker's. But does not the Mishna state in the latter part, "if there was a broker," from which it is to be inferred that the first part means without a broker? The first part speaks of the broker's measure in his absence; and the latter, in his presence.

"*After the seller has turned over the measure,*" etc. When R. Elazar reached Palestine, he met Zeeri and asked him: Is there here some scholar whom Rabh has taught the laws about measures? And he showed to him R. Itz'hak b. Abdimi. And he asked him: What is your difficulty? The statement of our Mishna, which says that this belongs to the seller, and another: If, of *troomah* which was given to the priest, after the barrel was turned over and leaked out there was still some remainder, it is *troomah* (hence we see that it belongs to the buyer)? And he answered: This presents no difficulty, as additional to our Mishna was taught by R. Abuhu: The reason is that usually the seller renounced his right to such a trifle (which cannot be said there, as who can renounce *troomah*?).

"*The storekeeper,*" etc. The schoolmen propounded a ques-

tion: Does R. Jehudah with his statement mean to say that the wholesaler is exempt from adding the drops on the eve of Sabbaths, therefore being more lenient than the first Tana, or does he mean the storekeeper, and is rigorous, as he exempts him on the eve of Sabbaths and not on week-days? Come and hear the following Boraitha, which states plainly: R. Jehudah said on the eve of Sabbaths the storekeeper is exempt, for he is then busy.

MISHNA X.: If one sends his little son to the storekeeper with a *pundiun* (dupondius) to buy one issar's worth of oil and to get one issar change, and the storekeeper so acts, but the child loses the issar and breaks the glass containing the oil, the storekeeper is responsible. R. Jehudah, however, frees him, as for this purpose the child was sent. The sages, however, admit that when the glass was in the hand of the child and the storekeeper poured the oil into it, the storekeeper is free.

GEMARA: It is correct, in their difference concerning the oil and the change of the issar, that according to the rabbis the child was sent only to notify the storekeeper of his want, so that the storekeeper shall supply it, and according to R. Jehudah that it was sent to bring it; but why should the storekeeper be responsible for the *glass*, which the father should not have intrusted to the child, who was unable to take care of it? Said R. Houshiah: The Mishna treats of when the sender was a glass-dealer, and the storekeeper took it to examine it and it broke. And it is in accordance with Samuel, who said elsewhere that if one takes a vessel to a specialist for examination, and it was destroyed by an accident, the latter is responsible. Is it to be assumed that in this simple statement of Samuel the Tanaim differ? Therefore said both Rabba and R. Joseph: It treats of when the storekeeper was a glass-dealer also, and *he* gave the glass to the child; and R. Jehudah's decision that the sender is nevertheless responsible for the glass also is because it was sent for the purpose of bringing the oil (and as the father gave no vessel, the storekeeper did only what was demanded); and the rabbis are in accordance with their theory that the storekeeper had to supply. But if so, how is the latter part, "If the glass was in the hand of the child," etc., to be understood? Is it not said that the child was sent only to notify him? Therefore Abayi and R. Hanina, sons of Abin, both said: The Mishna speaks of a case in which the storekeeper took the glass to measure with (and although the storekeeper

had not requested that such should be sent to him, as soon as he took it for the purpose of measuring he is responsible). And this is in accordance with Rabba, who said (Middle Gate, p. 69): "If he has struck the animal, although he was not obliged to return it, he is responsible. But Rabba's statement was concerning a living thing, which usually runs away when struck. Have you also heard him stating in such a case as ours? Therefore said Rabba: I and the lion of our society, which is R. Zera, have explained thus: The Mishna treats of when the storekeeper took the glass for measuring to other customers—and the point of their differing is, "a borrower without consent." According to one, he is considered a robber and is responsible; and according to the other, he is considered a borrower who is not responsible for an accident.

The text says: Samuel said: "If one took a vessel from a specialist, to examine it, he is responsible for an accident." This is only when the price of the article was fixed.

There was a man who entered a butcher shop and lifted up a shoulder of meat, and while examining it a crusher came and took it away from him; and when the case came before R. Ziemar, he made him responsible, as the price for it was already made.

There was a man who brought cucumbers to the city of Pumnahara, and a crowd arriving, each of them took one for the purpose of buying, but the seller could not see of whom to demand the money. And he exclaimed, "All of them are consecrated for heaven." When the case came before R. Kahana, he decided that one cannot consecrate a thing not belonging to him (and as the price for each cucumber was fixed and they were in the hands of the buyers, they had acquired title to them even before paying; but if the price were not fixed, they would be still under the control of the owner and the consecration valid).

The rabbis taught: If one were examining herbs in the market, selecting from them and putting the same aside, even if he did so the whole day title is not acquired, and there is no obligation for tithe. (It treats of when the seller was one of the common people who was suspicious that he did not separate tithe therefrom.) If, however, he had made up his mind to buy, title is acquired, and they become a subject for tithe. In case of reconsidering he has no right to return, because they are already a subject obligatory for tithe; and also he has no right to separate the tithe if he intended to return, as he would dimin-

ish the value. Therefore he can do no other than separate the tithe and pay the owner for them.

But is it so, that because one has made up his mind to buy he acquires title and makes a thing subject for tithe? Said R. Houshiah: The Boraitha treats of one who fears heaven like R. Saphra, who always acted as it is written [Ps. xv. 2]: "And speaketh the truth in his heart."

MISHNA *XI.*: The wholesaler has to clean his measures once within thirty days (because the stuff sticks to them and impairs accurate measuring). A retailer, however, has to do so once within twelve months. R. Simeon b. Gamaliel, however, maintains that the reverse is the case. (With the wholesaler, who measures continually, the stuff does not stick, and it is sufficient to clean them once within a year; but with the retailer, who does not measure continually, the stuff sticks, and he is obliged to clean them once within thirty days.) The storekeeper must do the same with his measures twice a week, and the weights once a week (as he takes hold of them with wet hands, and consequently they become heavier, and when he buys something, in weighing the stuff he deceives the seller). The scales, however, he must clean before each weighing thereon. Said R. Simeon b. Gamaliel: All this is said when he sells liquids, but otherwise it is not necessary. The storekeeper is obliged to bend the cross-bit the size of a span to the scale that contains the stuff sold (in case he sells a *litra* or more). If, however, he weighs strictly, he must give him the overweight due—one-tenth of a liquid and one-twentieth of a dry thing. Where it is customary to measure with small measures, one must not do it with large ones, and *vice versa*. Where it is customary to smooth the measures, it must not be heaped; and to heap, it must not be smoothed.

GEMARA: Whence is all this deduced? Said Resh Lakish: From [Deut. xxv. 15] "A perfect and just weight shalt thou have"; and as the word "just" is superfluous, it is to be explained thus: Justify the perfect measure from thy own. If so, how is the latter part, "if he weighs strictly," to be understood? (If it is a biblical obligation to add to the exact weight, how can it be allowed to weigh strictly?) Therefore it must be said that the first part of the Mishna treats of places where it is so customary, and the interpretation of Resh Lakish refers to the latter part, which states that he must give him the overweight. And to the question, Whence is this deduced? Resh

Lakish interpreted the above-cited verse. And how much shall the overweight be? Said R. Abba b. Mamal in the name of Rabb: A tenth of a *litra* in liquid to a quantity of ten *litras*.

"*One-tenth to liquid*," etc. The schoolmen propounded a question: Does it mean one-tenth of a liquid to ten wet measures and one-twentieth to twenty dry measures, or one-tenth to ten liquid and to twenty dry ones? This question was not decided.

R. Levi said: The punishment for false measuring is harder than for adultery, as concerning the first the expression in Scripture is [Lev. xviii. 24], "with *all*," and the latter [Deut. xxv. 16], "with *iele*." And whence is it inferred that these words mean hard punishment? From [Ezek. xvii. 13]: "But the mighty (*iele*) did he take away."

And what is the reason? Concerning adultery one can atone by repentance, which is not the case with an unjust measure, as he cannot know whom he has cheated, in order to make amends.

The same said again: It is harder for the cheating of a commoner than for the cheating of the sanctuary, as the punishment for robbing a common man is more severe than for robbing the sanctuary.* Concerning a commoner it is written [Lev. v. 21]: "If any person sin and commit a trespass against the Lord—if, namely, he lie unto his neighbor . . . in a thing taken away," etc. Hence even in the beginning of the deception the passage calls him sinner, while concerning the robbing of the sanctuary [ibid., ibid. xiv. 15], "If any person commit a trespass," etc., he is not called sinner at the time he took it, unless he derived benefit therefrom.

The rabbis taught: Whence is it deduced that it must not be smoothed where the custom is heaping, and *vice versa*? From [Deut. xxv. 15]: "A perfect and just measure shalt thou have." And whence is it deduced that if one say, where the custom is not to smooth, "I will smooth and diminish the amount," or, in places where it is smoothed, "I will heap and increase the amount," he must not be listened to? From the same cited verse and from the superfluous word "just," as stated above.

The rabbis taught: Whence is it deduced that one must not weigh accurately where it is customary to add to the weight, and *vice versa*? From the same cited verse: "perfect and just

* The Hagadah in text will be placed at the end of this chapter.

weight." And if one cared to do otherwise than according to custom, and pay the difference? He must not be listened to, as said above.

Said R. Jehudah of Sura: It is written [ibid., ibid. 14]: "Thou shalt not have in thy house," etc. (the term "in thy house," which is superfluous, is to be interpreted thus: thou shalt not have money in thy house, for the purpose of smoothing where it is the custom of heaping, and *vice versa*, or for overweight, etc.), because this would bring one to keep in his house two divers measures. And the same explanation is to be given to [ibid., ibid. 13]: "As it is desired of every one to have one weight and one measure, just and perfect."

The rabbis taught: From the same verse is to be inferred that *gradums* must be appointed to investigate measures, but not to investigate prices. The Exilarchs used to appoint *gradums* for both (measures and prices). And Samuel said to Karna: Go and lecture to them that *gradums* should be appointed for measures only. He, however, lectured that for *both* (measures and prices) *gradums* must be appointed. And Samuel cursed him for this. However, Karna did it in accordance with Rami b. Hama, who said in the name of R. Itz'hak: *Gradums* should be appointed for measures as well as for prices, because of cheating.

The rabbis taught: If one desires a *litra*, a half, or a quarter, it may be given to him with its weight, but for less than this no weight should be made; but he may give it to him according to the money or by weight of coins.

The rabbis taught: If one desires three-quarters of a *litra*, he has no right to demand one shall weigh him each quarter separately (and give him overweight to each of them); but one may weigh him a *litra*, and leave the fourth quarter for overweight. The same is the case if he needs ten *litras*: he has no right to demand he shall weigh him each *litra* separately with an overweight; but he weighs him all the ten in one scale, and gives one overweight to all.

The rabbis taught: The scales must be hanging three spans in the air—*i.e.*, three spans from the ceiling or three spans from the ground; and the cross-bit with the cords of the scales must be the size of twelve spans; for wool and glassware two spans, and the cross-bit with cords of the scale nine spans; the store-keeper and privates, however, one span, and the cross-bit with cords of the scale six spans; and for gold and silver three fingers

in the air, and of the cross-bit and the cord of the scales I do not know the size (the Tana of this Boraitha says so).

(Says the Gemara:) For what purpose is the first-mentioned scale of which it is not stated what should be weighed upon it? Said R. Papa: For *gravita* (of iron and copper smiths, who weigh pieces of one hundred *litras* on one scale; according to others, their filings).

Said R. Mani b. Patish: The same sizes of scales are needed to make a subject for defilement (this will be explained in the proper place).

The rabbis taught:.. Weights must not be made of tin, lead, cassiterite, or other kinds of metal, but they may be made of granite or glass.

The rabbis taught: The roller for smoothing must not be made from a melon stem, as it is too light; nor of iron, as it is too heavy; but of olive, nut, sycamore, or box tree.

The rabbis taught: The roller must not be made thick at one end and narrow at the other; one must not strike rapidly, because this would be a benefit for the buyer and a disadvantage to the seller; and also not too slow, which is a disadvantage to the buyer and beneficial to the seller. And to all this was said by Rabban Johanan b. Zakkai: It would be painful to me to declare the art of measuring, as this would serve as a lesson for swindlers, and also painful not to declare it, as swindlers would say that the rabbis have no idea of the art of our profession.

And to the question of the schoolmen: Did R. Johanan declare so, or not? said R. Samuel b. R. Itz'hak: He did; and on the basis of the following verse [Hos. xv. 10]: "For righteous are the ways of the Lord, and the just shall walk in them, but the transgressors will stumble through them."*

Said R. Jehudah in the name of Rabh: One must not keep in his house an unjust measure, even if he uses it for a chamber. Said R. Papa: This is said of places where measures are not stamped; but in places where they are it does not matter, for no one would take a measure without being stamped. And even where they are not stamped, it is prohibited to keep them when they are not examined by the government; but if they are, it does not matter.

(Says the Gemara:) In reality, however, it is not so, as it

* Here is repeated matter in pp. 147-148 of Vol. XII. to "Rabha said."

may happen that one may measure with it by twilight. And so also we have learned in a Boraitha: One must not keep in his house an unjust measure, even if he uses it for a chamber. He may, however, keep a saah, a tarkab, a half of it; a kab, a half, or a quarter of it; a thuman or a half of it; and an ukla. [And how much is an ukla? A fifth of a lug.] And of liquids—a hin, a half, a third, a quarter; a lug, a half, a quarter, and an eighth, and an eighth of an eighth, which is named kartub. But why is it not allowed to keep a measure of two kabs? for one may take it for a tarkab. We see, then, that a mistake can be made in a third. Then it ought not to be allowed to keep a kab, as we may take it for a half tarkab. Therefore we must say that a measure of two kabs is not allowed, for one may take it for a half tarkab. We see, then, that a mistake can be made in a quarter, as a half tarkab measures a kab and a half. Why, then, is it allowed to keep a half thuman and ukla? Said R. Papa: Small measures are known to the people, and no mistake can be made. But why is it allowed to keep a third and a quarter of a hin? Because these measures were used in the Temple, the rabbis would not care to prohibit them. But why were they not prohibited in the Temple also? Because the priests were always careful.

Samuel said: If the elders of the city want to enlarge the measures, it must not be more than a sixth of them; and the same is the case when they want to enlarge a coin. And the seller should not fix his profit at more than a sixth (provided the price of the stuff has not increased; but if it has, then the profit may be even twofold).

Let us see what is the reason of Samuel's decision? Shall we assume that the reason is, if the wholesalers do not increase the price more in proportion, then they may do so even when it is enlarged to one-sixth exactly? And if the reason is not to make void the sale (as exacting more than a sixth makes the sale null and void)? Did not Rabha say: Every sale by measure, weight, or number, if there should be an exaction of even less than the law prescribes, it may be retracted? Therefore it must be said that the reason is that an outside seller should not suffer any damage (*i.e.*, if an outside seller, who is not aware of the increase, sells for the same price as before, and his profit is usually a sixth, if it was enlarged to a sixth only then he derives no profit, but neither does he suffer any damage in the cost price). Is that so? Does not the seller need to make profit on

his sale? Should one who sells at cost be called a merchant? Therefore said R. Hisda: Samuel took as a basis for his decision the following verse [Ezek. xlv. 12]: "And the shekel shall be twenty gerahs: (in pieces of) twenty shekels, five and twenty shekels, fifteen shekels, shall be your maneh." Was, then, a maneh sixty shekels, which makes two hundred and forty zuz? Therefore from this verse may be inferred three things: (a) That the maneh of the sanctuary was in value twice as much as the common shekel; (b) that it is allowed to increase a sixth, but not more; and (c) that the sixth may be added even from outside (*e.g.*, to add ten to fifty, so that the sixth may be reckoned after being added, as the maneh of Ezekiel is sixty shekels, while a maneh in general contains twenty-five shekels).

R. Papa b. Samuel made a kielah of three kpiz.* And to the question: Did not Samuel say there must not be added more than a sixth? answered he: I have invented a measure entirely new. He sent it to Pumbeditha, and it was not accepted; but the city of Papunia accepted it, and called it *Rus-Papa* (*i.e.*, the measure of Papa).

The rabbis taught: "Those who forestall fruit," etc. (here as in *Derech Eretz*—Rabba, Vol. IX., p. 1, line 17 *seq.*—*q. v.*). Those who forestall fruit—who are meant thereby? Said R. Johanan: People like Sabbati, the forestaller of fruit (whose custom was to buy fruit only for the purpose of selling it to the poor at a high price; but if one buys fruit at the cheap season not for this purpose, and the price increases, and he sells it at the existing price, it does not matter). The father of Samuel used to buy grain at harvest-time, and sold it at the same price. Samuel his son, however, used to store up the grain he bought in harvest until the price became higher, and then sold it at the same price as in harvest-time. And from Palestine a message was sent that the acts of the father were more meritorious than those of his son. Why so? Because through the acts of the father the wholesaler could not increase the price, while the acts of the son did not prevent the increase of price, and his selling cheap could not affect the high price which was already fixed.

Rabh said: One may store up the grain he has harvested from his field (as it is prohibited only to buy in the market at

* A kpiz was nine lugs, or a kab less one lug; according to others, one lug, and the kielah was the same as a half tarkab, which contains one and a half kabs.

harvest-time for the purpose of increasing the price). And so we have also learned in the following Boraitha: One must not forestall fruit, grain, etc., by which a livelihood is made, as, *e.g.*, wine, oil, and fine flour; but spices, pepper, etc., one may. This is said, however, if one buys it from the market; but from one's own field it is allowed to store everything. One is also allowed to store up in Palestine for the following three years—for the eve of a Sabbatic year, for the Sabbatic year itself, and for the succeeding year (as in the last year people must wait for the new crop). In famine years, however, even a kab of carobs must not be stored up, for it produces a curse to the prices. R. Jose b. Hanina said to Puga his servant: Go, store up for me grain for three years—for the eve of the Sabbatic year, the Sabbatic year itself, and the succeeding year.

The rabbis taught: There must not be exported from Palestine things by which a livelihood is made, as wine, oil, and fine meal. R. Jehudah b. Bathyra allows to export wine, because it diminishes intoxication; and even from Palestine to Syria the export of the above is prohibited. Rabbi, however, allows export from the last province of Palestine to the first province of Syria which bounds it.

The rabbis taught: One must not buy from the farmer things by which a livelihood is made for the purpose of selling in the market at a higher price in the provinces of Palestine; but for the farmer himself it is allowed to sell in the markets.

It was said, however, that R. Elazar b. Azarya used to sell wine and oil to the retail dealers, and they sold it at a higher price; and the reason was, that he holds with R. Jehudah concerning wine; and oil was abundant in the markets of his place, so that the retail dealers could not affect the price.

The rabbis taught: One must not derive twice a profit on eggs. Said Mari b. Mari: In the interpretation of the Boraitha Rabh and Samuel differ. According to one, it means one shall not double the price; and according to the other, it means one seller shall not sell it to another seller so that he has profit, and the seller in the market will also make a profit—but he himself must sell it in the market.

The rabbis taught: It may be prayed by blowing of horns, even on Sabbath, when business becomes dull. Said R. Johanan: This is to be done in case remnants of flax become very low in Babylon, and wine and oil in Palestine. Said R. Joseph: Provided that the stuff was lowered to near half-price.

The rabbis taught: One must not emigrate from Palestine to other provinces, unless the price of grain has increased to the extent of a selah for two saahs. Said R. Simeon: This is only when one could not find any grain at all to buy; but if he can get it even at the price of a selah for each saah, one must not emigrate. And so also was the opinion of R. Simeon b. Johai, who used to say that Elimelech, Mahlon, and Kilyon were the great men of their generation, and were their leaders; and they were punished only because they emigrated from Palestine. As it is written [Ruth, i. 19]: "All the city was in commotion about them, and people said, Is this Naomi?" And to the question: What does it mean? said R. Itz'hak: It means: See what has become of Naomi, who emigrated from Palestine.

He said again: At that day when Ruth reached Palestine, the wife of Boaz had died; and this is what people say, that before the deceased departed the substitute for managing the house was already prepared. Rabba b. R. Huna in the name of Rabh said: Boaz is identical with Ibzan. What came he to teach us? That which was said in his name elsewhere, viz.: One hundred and twenty banquets Boaz made for his children. As it is written [Judges, xii. 9]: "And he had thirty sons, and thirty daughters he sent abroad, and thirty daughters he brought in for his sons from abroad," etc. And at each marriage two banquets were given—one in the father's and one in the father-in-law's house—and to not one of them did he invite Manoah, saying: What return can I expect of this childless man? And there is a Boraitha that all the children died when he (Boaz) was still alive. And he remarried and begat one who was better than all the sixty, the same was Obed, who was born by Ruth, from whom David descended.

R. Hanan b. Rabha in the name of Rabh said: Elimelech, Shalman the kinsman, [Ruth, iv. 1] and the father of Naomi all were the descendants of Nahshon ben Aminadab. To what purpose was it said? To teach that even him who is a descendant of such great men, the meritorious acts of his parents do not absolve him when he emigrates from Palestine. The same said again in the name of the same authority: The name of Abraham's mother was Amthlai bath Khrubu, and the name of Haman's mother was Amthlai bath Urbthi; the name of the mother of David was Nzb'th bath Edal; the mother of Sampson, Z'llpunith, and his sister N'shiin. To what purpose was this said? For an answer to the Epicuristen (who deny all

the legends of the Bible, saying, for instance: If Abraham existed, why was his mother's name not mentioned, as doubtless his father had many wives, and the mother of Abraham should be distinguished, the same being the case with the others mentioned above? and we answer them that all their names are known to us traditionally).

The same said again in the name of the same authority: Abraham our father was in prison ten years—three in the city of Khutha and seven in Qurdu. R. Dimi of Nahardea, however, taught the reverse (seven in Khutha and three in Qurdu; some say that he was imprisoned by Nimrod and others by his father, because he broke his idols). R. Hisda said: The city Eibra-Zeira of Khutha is the city Ur Kasdim mentioned in the Bible.

R. Hanan b. Rabha in the name of Rabh said again: On the day when Abraham our father departed from this world, all the great men of the nations stood up in a file and said: Woe to the world, that has lost its leader! and woe to the ship, that has lost its *χυβερνήτης* (steerer)!

It is written [I Chron. xxix. 11]: "And thou art exalted as the head above all." And the above said in the name of Rabh: Even an officer of wells (who has to keep order in using them for watering the fields) is appointed by Heaven (*i.e.*, that even such an insignificant office is not filled without the decree of Heaven; and he takes the verse literally, "and thou art exalted over all the heads that are appointed by thee").

R. Hyya b. Abin in the name of R. Jehoshua b. Karsha said: Elimelech would not emigrate from Palestine, if he could get even bran-flour for use. But why was he punished? Because he ought to have prayed for his generation, which he did not. As it is written [Is. lvii. 13]: "By thy crying thou canst be saved with all who are gathered with thee." * Said Rabba b. b. Hana in the name of R. Johanan: One must not emigrate from Palestine when money is cheap, but the grain high; but if *vice versa*, even when the price of four saahs is only one selah, one may. As R. Johanan said: I remember a time when there were four saahs for one selah, and there were many who starved, as they did not have an issar. And he said again: I remember that working people did not wish to take work on the east side of the city, as the smell of bread (which the west wind carried

* Leeser translates differently; the Talmud, however, takes it literally.

to them) would kill them, as they had not eaten fresh bread for a long time. The same said again: I remember when a child used to break a piece of carob, threads of honey would leak out and moisten his hands. R. Elazar said: I remember, when a raven would catch a piece of meat, a thread of fat would be seen dropping from the height to the ground. R. Johanan said again: I remember times when a young girl of sixteen and a boy of seventeen walked together and did not sin. He said again: I remember what was said in college: Who yields to idolaters in discussion, the end will be that he will fall into their hands; and he who confides in them, all that he possesses will remain in their hands.

It is written [Ruth, i. 2]: "Mahlon and Kilyon," and in [I Chron. iv. 22]: "Joash and Saraph." Rabh and Samuel differ. One said that the real names were Mahlon and Kilyon; but why were they named Joash and Saraph? Joash, because they despaired of redemption, and Saraph, because they were liable to burning. And the other says their real names were Joash and Saraph; and why were they named Mahlon and Kilyon? Mahlon, because they made themselves very common by their emigration, and Kilyon, because they were liable to destruction.*

It seems that Mahlon and Kilyon were their real names, as we have learned in the following Boraitha: It is written [ibid., ibid.]: "And Jokim and the men of Coseba, and Joash and Saraph, who had dominion in Moab and Jashubi-lechem. And these are ancient things."

Jokim means Joshua, who had confirmed the oath which was given to the men of Gibeon; and "the men of Coseba" † means the men of Gibeon, who lied before Joshua. Joash and Saraph were Mahlon and Kilyon; and why were they named Joash and Saraph? Because they despaired of redemption, and for this they were liable to burning. "Who had dominion in Moab" means that they had married daughters of Moab. "And Jashubi-lechem" means Ruth the Moabitess, who had returned and was attached to Beth-Se'hem. "And these are ancient things" means the above was said by Him who is older than the days. As it is written [Ps. lxxxix. 21]: "I have found David my servant." It is also written [Gen. xix. 15]: "And

* Joash means *despair*; Saraph, *burn*; Choolin, *common*; and Kilyon, *destroying*.

† Khzb in Hebrew means *lie*.

thy two daughters, that are found."* It is written [I Chron. iv. 23]: "These were the potters (Hayozrim), and those that dwelt in plantations and sheepfolds; for the king's sake, to do his work, they dwelt there." Hayozrim† means the children of Jonadab b. Rechab, who preserved the oath of their father. "In plantations" means the king Solomon, who was a plant in his kingdom. Vegidroh (sheepfolds) means the Sanhedrin, who had fenced the broken partition of Israel. "For the king's sake," etc., means Ruth the Moabitess, who lived to see the kingdom of Solomon her great-grandson. As it is written [I Kings, ii. 19]: "And placed a chair for the king's mother." And R. Elazar said that it means "to the mother of the kingdom."

The rabbis taught: It is written [Lev. xxv. 22]: "Shall ye eat yet of the old harvest," which means without need of preserving. How is this to be understood? Said R. Na'hman: It will not be worm-eaten. And R. Shesheth said: It will not be singed. There is a Boraitha in accordance with R. Na'hman: "Of the old harvest," lest one say that Israel must wait for the new crop, as the old has already gone, therefore it is written [ibid., ibid.]: "Until its harvest come in," which means, until the harvest shall come by itself (and he will not need to take it before it is ripe, and make it fit for use by drying).

And there is also a Boraitha in accordance with R. Shesheth: "Ye shall eat yet from the old harvest," lest one say that Israel would have to wait for the new harvest because the old one became spoiled, therefore it is written, "Until its harvest come in," which means that the old will suffice until the new shall come in its natural way, without any need to take it before it is ripe.

The rabbis taught: It is written [ibid. xxvi. 10]: "And ye shall eat very old store." From this may be inferred that a thing that is older is better, but this is said of things which are used to be preserved. But whence do we know of things which are not to be preserved? Therefore it is written: "Joshon Noshon" (literally, *old, old*) [ibid., ibid.], "and the old ye shall remove because of the new," from which is to be inferred that at that time all their granaries were filled up with the old crop and their barns with the new. And Israel used to say: "Why

* Leeser translates "they are here"; but in the Bible is written Hninzouth, literally, "who are found."

† Nozar in Hebrew means *preserved*.

should we remove the old, which is as good as the new, for the latter?"

Said R. Papa: All old things are good, except dates and the beer thereof, and *harsnah* (a dish at that time used by the poor—see Aboda Zara, 73a).

Rabba said:* Sailors told me the wave that usually makes the ship sink is visible by a ray of whitish light, and we struck it with a stick, upon which is engraved, "I will be that I will be" [Ex. iii. 14]. Then it became quiet. He said again: The sailors told me that from one wave to the other are three hundred parsas, and the height of each wave is also three hundred parsas. It once happened that I was on the boat, and a wave lifted me up to such a height that I could see the basis of a little star, and in my eyes it looked as a space where forty saahs of mustard could be sown. Should the wave have lifted me up higher, I would have been burned by the heat of that star; and I heard a voice, one wave speaking to the other: My colleague, did you leave something in the world which thou hast not destroyed, that I may accomplish it? And the answer was: Go and see the Might of thy Master, as there is only one row of sand that separates the sea from the land; and yet I could not step over it. As it is written [Jer. v. 22]: "Will ye not fear me? saith the Lord; will ye not tremble at my presence, who have placed the sand as a bound for the sea by an everlasting law, which it never can pass over? and though the waves thereof be upheaved, yet can they not prevail; though they roar, yet can they not pass over it."

He said again: I have seen Hurnim bar Lilith, who jumped on the top of brick-houses of the city of Mehusa, and was running so fast from one to the other that a rider could not overtake him. Once it happened that two mules were saddled for him on the two bridges over the river Drugging, which were far from each other, and he jumped continually from one saddle to the other, while holding two cups of wine, pouring from one into the other continually without spilling one drop, and this

* This matter is transferred from its place at p. 167. See foot-note there.

The Hagadah is known under the name Rabba's or Rabha b. b. Hana's Legends. The scores of commentators thereon say that this is allegoric, and each of them tries to explain after his manner (*e.g.*, philosopher, philosophically, moralist, morally, etc.). We, however, translate literally, without any explanation, leaving it for the consideration of the reader.

day was such a stormy one, as illustrated [Ps. cvii. 28], until the government took notice of him, and he was slain.*

He said again: I have seen a roebuck one day old, which was like the mountain of Tabur, which measures four parsas; and the length of its neck was three parsas and the space covered by its head one and a half parsas; and when it emitted excrement it stopped the Jordan.

Rabba b. b. Hana said again: I have seen an alligator as large as the city of Hagrunia, which contained sixty houses. A snake came and swallowed it, and a large-tailed raven came and swallowed the snake, and then the raven sat on a tree. Come and see how strong was that tree! R. Papa b. Samuel said: If I had not been there, I should not have believed it.

Rabba said again: At one time when on board of a ship I saw a fish into whose gills a reptile crept from which it died, the sea throwing it out on land. And sixty streets were destroyed by its fall, and sixty streets consumed its flesh, and sixty other streets salted the flesh that was left; and from one eye they filled three hundred measures of oil; and when I returned thither after twelve months, I saw its bones being sawed to restore the streets that were destroyed by it.

He said again: At one time I was on board of a ship, which was driven between two fins of a fish, three days and three nights the fish was swimming against the wind and we were sailing with the wind [and lest one say that the ship did not go fast enough, when R. Dimi came from Palestine, he said that it was so fast that in the time of heating a *cumcuma* of water the ship ran sixty parsas, and a rider shooting an arrow at the same time could not be swifter than the ship]. And R. Ashi said that this was one of the smallest fishes of the sea which has two fins.

The same Rabba said again: It once happened that I was going on a boat, and saw a fish on which sand was gathered and grass grown thereupon. And we thought it was an island, descended, baked and cooked upon it. When the back of the fish grew hot, it turned over, and had the ship not been so near we would have been drowned.

The same Rabba said again: At one time while on board of a ship I saw a bird which was standing in water that reached only up to its toes; its head, however, reached the sky, and we

* Whether he was a human being or a demon, it is hard to say. As to this, commentators differ, and also as to which government—whether natural or supernatural.

thought the water was shallow, so we were about to bathe there, when we heard a heavenly voice: Do not go down, for a carpenter here lost an axe seven years ago, and still it has not reached the ground—not because it is so deep, but because of the current. Said R. Ashi: This bird is the *Zeez Sodai* mentioned in Ps. l. 11.

Rabba b. b. Hana said again: It happened once, while in the desert, that I saw geese of which the feathers fell out owing to their fatness, and a whole river of fat was beneath them, and to my question, "Have I a share in you in the world to come?" one of them lifted up its wing, and one of them a foot. When I told this to R. Elazar, he said: Israel will be punished for them, as by his sin Messiah does not come, and the geese must endure their fatness.

The same Rabba said again: Once while in the desert we were accompanied by an Arabian merchant who used to take a clod of earth, smell it, and say: This way leads to such a place, and this to such a one. And we asked him: How far are we from water? And he smelt the earth, saying: Eight parsas. Thereafter we gave him other earth to smell, and he said: Three parsas. I changed the clods of earth, but we could not deceive him, and he said to me: Come with me. I will show you the corpses of the dead in the desert at the time of Moses. I did so, and their appearance was as fresh as if they went to sleep while drinking. All of them were lying on their backs. The foot of one of them, however, was lifted up, and the merchant, while riding and holding a spear in his hand, passed beneath it, without reaching the joint of his knee. I took and cut off a corner of one's *taliths*,* in which were *tsitsith*. Then neither we nor our cattle could stir. Said the merchant to me: Perhaps you have taken something belonging to the dead, as I have a tradition that if one takes something from them he cannot stir. When I told this to the rabbis, they said: The whole Abba is an ass, and the whole Bar Bar Hanah is nonsense (all his stories are). For what purpose didst thou take it? To know with whom the Halakha concerning *tsitsith* prevails—whether with the school of Shammai† or with the school of Hillel? Then thou oughtest to have investigated their *tsitsith* by counting the threads and knots. Then (continued Bar Bar

* The garment in which *tsitsith* are woven.

† In Tract Menachoth the schools differ in the number of threads and knots.

Hanah) the merchant said to me: Come and I will show you the mountain of Sinai. I followed him, and saw that it was surrounded by serpents. All of them were standing, and looked like white asses. I also heard a heavenly voice saying: Woe is me that I have sworn; and now after having so done, who will absolve me from that oath? When I told this before the rabbis, they said again: The whole Abba is an ass, etc. Why didst thou not say: Thou art absolved, thou art absolved? [He, however, did not do so, because he thought: Perhaps it means the oath for the deluge, referring to what is written in Is. liv. 9: "As I have sworn that the waters of Noah," etc. The rabbis, however, were right in accusing him, as if it were about the deluge, why, then, "woe is me"?] The same merchant said to me: Come and I will show you the place where the children of Korah were swallowed. And I saw two crevices in the ground from which smoke issued. I took a piece of wool, wetted it with water, put it on my spear, placed it in the crevice, and when I took it out it was smudging. And the merchant said to me: Stoop down and hear. And I heard them saying: Moses and his Torah are true, and we are liars. Said the merchant to me: Each thirtieth day of the month, Gehenna turns them over here, like meat in a kettle, and they (the swallowed) repeat the above.

He said again to me: Come and I will show you where the sky and earth meet. I followed him, took my basket, and put it on the window of the sky. After praying, I searched for it but could not find it. Then I said to the merchant: Are there, then, thieves here? And he answered: It was the wheel of the sky which took it with it. Wait until to-morrow at this same time and you will find it.

R. Johanan used to tell: Once while on board of a boat I saw a fish which raised its head out of the water, and its eyes looked like two moons; water was pouring from both of its nostrils like the two rivers of Sura.

R. Saphra used to tell: Once while on board of a boat I saw a fish which had horns raising up its head from the water, and on its horns was engraved thus: "I am of the small creatures in the sea and measure three hundred parsas, and I am going into the mouth of the leviathan." Said R. Ashi: This is a sea-goat that digs with its horns the ground of the sea.

R. Johanan told again: Once while on board of a boat I saw a *χαρταλος* (a kind of basket) which was set with diamonds and

pearls and surrounded by a kind of fish called *karshah*, and a diver descended in order to catch it; but the basket made a motion and threatened to break his leg. He, however, threw a leather bag containing vinegar (according to others a leather bag with sand) towards it, and the basket sank. At the same time a heavenly voice spoke to us: What business have ye with this *kartilitha*, which belongs to the wife of R. Hanina b. Dosa, who will deposit in it the purple for the upright in the world to come?

R. Jehudah of Mesopotamia used to tell: Once while on board of a ship I saw a diamond that was encircled by a snake, and a diver went to catch it. The snake then opened its mouth, threatening to swallow the ship. Then a raven came, bit off its head, and all water around turned into blood. Then another snake came, took the diamond, put it on the carcass, and it became alive; and again it opened its mouth, in order to swallow the ship. Another bird then came, bit off its head, took the diamond, and threw it on the ship. We had with us salted birds, and we wanted to try whether the diamond would bring them to life, so we placed the gem on them, and they became animated, and flew away with the gem.

The rabbis taught: It happened with R. Eliezer and R. Jehoshua who were on a ship, that R. Eliezer was asleep and R. Jehoshua awake. The latter became frightened, so that R. Eliezer awoke, and said: What is the matter, Jehoshua? What have you seen that frightened you? And he answered: I have seen a great light on the sea. Rejoined R. Eliezer: Perhaps you have seen the eyes of the leviathan about which is written [Job, xli. 10]: "And his eyes are like the eyelids of the morning dawn."

R. Ashi said: Huna b. Nathan told me: It happened once, while I was in the desert, and we had with us a leg of meat, that we cut it, made it legal for eating, put it on the grass, and went to gather wood for roasting. When we returned, the leg had resumed the shape it had before it was cut; and we then roasted it. When we returned after twelve months, the coals upon which it was roasted were still alive. When I told this to Amemar, he said that the grass was *samtrie*, that has the quality of combining things which were previously separated; and the coals were of broom-brush, which when ignited remains alive for a long, long time.

It is written [Gen. i. 21]: "And God created the great sea

monsters." Here in Babylon they translate this the *reem* of the sea. R. Johanan, however, says: It means leviathan—leviathan male and female, as it is written [Is. xxvii. 1]: "On that day will the Lord punish with his heavy and great and strong sword leviathan the flying serpent and leviathan the crooked serpent, and he will slay the crocodile that is in the sea."

R. Jehudah in the name of Rabh said: All that the Holy One, blessed be He, created, was male and female, and also the leviathan—the flying serpent male and the crooked serpent female; and if they should have intercourse they would destroy the world. Therefore the Lord made the male impotent, and killed the female and salted it for the upright in the world to come, as it is written [ibid.]: "And he will slay the crocodile," etc.; "and also the cattle upon a thousand mountains" [Ps. l. 10]. He created them male and female, and if they should have intercourse they would destroy the world. Therefore the Holy One, blessed be He, made impotent the male and made cold the female, and preserved it for the upright in the world to come, as it is written [Job, xl. 16]: "only see (how great) is the strength in his loins," meaning the male, "and his force in the muscles of his belly," meaning the female.

But why did He not make cold the female of the leviathan also? Because a salted female has a better taste. And why did He not salt the females of the cattle in question? Salted fish gives a good taste, but salted meat does not.

The same said again in the name of the same authority: At the time the Holy One, blessed be He, willed to create the world, He said to the ruler of the sea: Open thy mouth, and swallow all waters that are to be found in the world. And he said: Lord of the Universe, is it not enough that I swallow the water under my dominion? And he was therefore killed immediately, as it is written [ibid. 12]: "By his power he split in pieces the sea, and by his understanding he crushed *Rahab*." Said R. Itz'hak: Infer from this that the name of the ruler of this sea is *Rahab*, and did not the waters of the sea cover the body, not one of the creatures could remain alive owing to the bad smell, as it is written [Is. xi. 9]: "They shall not do hurt nor destroy . . . as the waters cover the sea." Do not read "cover the sea," but "cover the ruler of the sea."

R. Jehudah in the name of Rabh said again: The Jordan discharges by the cave of Pmias. There is also a Boraitha: The Jordan discharges by the cave of Pmias, and flows to the sea of

Sipchi, of Tiberias, until it reaches the ocean; and through it it flows until it reaches the mouth of the leviathan, as it is written [Job, xl. 23]: "He remaineth quiet, though a Jordan rusheth up to his mouth."

Rabha b. Ula opposed: "Did not this verse speak of the cattle on the thousand mountains? Therefore," said he, "this verse must be interpreted thus: When are the cattle in question sure that they shall remain alive? When the Jordan reaches the mouth of the leviathan (*i.e.*, so long as the leviathan lives, they are sure that they shall remain alive, as all are prepared for the world to come when the Messiah shall appear)."

When R. Dimi came from Palestine, he said in the name of R. Johanan: It is written in Ps. xxiv. 2: "For upon seas he hath founded it, and upon rivers he hath established it." It means the seven seas and four rivers which surround the land of Israel (Palestine); and they are the sea of Tiberias, Sodom, Chirat, Chiltha, Sipchi, Aspamia, and the Ocean: these are the seven seas, and the four rivers are Jordan, Jarmuch, Kirumyun, and Phiga.

The same R. Dimi said in the name of R. Jonathan: The angel Gabriel will go hunting for the leviathan, as it is written [Job, xl. 25]: "Canst thou draw out the crocodile (leviathan) with a fishhook? or cause his tongue to sink into the baited rope?" And should not the Holy One, blessed be He, help him, he would not conquer him, as it is written [ibid., ibid. 19]: "He is the first in rank . . . he that hath made him can alone bring his sword near to him."

The same said again in the name of R. Johanan: When the leviathan becomes hungry, he expels from his mouth a gas which makes boil all the waters in the deep, as it is written [ibid. xli. 23]: "He causeth the deep to boil." And should he not enter his head in paradise, not one of the creatures could withstand the bad smell of the gas, as it is written [ibid., ibid.]: "He rendereth the sea like an apothecary's mixture." And when he gets thirsty, he makes the sea hollow like beds, as it is written farther on: "Behind him he causeth his pathway to shine." And R. Aha b. Jacob said: The deep does not come to its natural way before seventy years, as it is written: "Men esteem the deep to be hoary"—and hoary is not less than seventy years.

Rabba said in the name of R. Johanan: The Holy One, blessed be He, will make a banquet for the upright from the

flesh of the leviathan, as it is written [ibid. xl. 30]: "*Yichrov* Olof Chahvierim.*" Yichrov means a banquet, as it is written [II Kings, vi. 23]: "And he prepared for them a great meal" (the expression in Hebrew being *Veyichre*, etc.); and Chahvierim means scholars, as it is written [Solomon's Song, viii. 13]: "Companions (Chaverim) listen for thy voice," etc. And the remainder of it will be cut in pieces, and be sold in the markets of Jerusalem, as it is written [Job, xl. 30]: "Divide him among merchants."

The same said again in the name of the same authority: The Holy One, blessed be He, will make a booth for the upright from the skin of the leviathan, as it is written [ibid., ibid. 31]: "Canst thou fill his skin with *Soukoth*."† If the upright is to have a booth, a booth is made for him from it; and if less, a little hut; and if still less, a necklace will be made for him, as it is written [Prov. i. 9]: "And chains for thy throat"; and if still less, an amulet will be made for him, as it is written [Job, xl. 29]: "And tie him up for thy maidens"? And the remainder of the skin the Lord will spread on the walls of Jerusalem, and the brightness of it will shine from one end of the world to the other, as it is written [Is. lx. 3]: "And nations shall walk by thy light, and kings by the brightness of thy shining."

It is written [ibid. liv. 12]: "And I will make of *kadkad* (rubies) thy battlements," etc. Said Samuel b. Nahmeni: Two angels—in heaven, Gabriel and Michael, according to others two Amoraim of Palestine, and they are Jehudah and Hiskiyah the sons of R. Hyya—one says it means *shoham* (onyx) and others jasper, and the Holy One, blessed be He, said: Let it be as both say. [Is. liv. 12]: "And thy gates," etc. This is as R. Johanan lectured while sitting: The Holy One, blessed be He, will bring jewels and pearls the size of thirty ells square, twenty ells in height and ten in width, and will place them on the gates of Jerusalem. And one disciple ridiculed him: We do not even find a jewel as large as the egg of a dove, and he lectured about such sizes? Thereafter it happened that the same disciple was on a boat on the high sea, and he saw angels who sawed jewels and pearls the size of thirty ells square, boring holes in them twenty in height and ten in width. He asked them: For what purpose? And they answered: The Holy

* Leeser's translation could not be used here.

† In the Scripture it is written with *Seen*, which reads like *Samach*, and *Sukkah* means a booth. Leeser's translation cannot here be used.

One, blessed be He, will place them on the gates of Jerusalem. And when he returned he said to R. Johanan: Lecture, Rabbi, for all you said is true, as I have myself seen. And R. Johanan said to him: Ignoramus, if you had not seen it, you would not have believed. So you would ridicule the words of the sages? He cast his eyes on him, and he became a heap of bones.

An objection was raised: It is written [Lev. xxvii. 13]: "I will lead you *qummiuth*." * R. Meir said: It means two hundred ells, double the height of Adam the first, who was one hundred ells in height. R. Jehudah, however, said: It means one hundred ells, the size of the Temple with its walls, as it is written [Ps. cxliv. 12]: "So that our sons may be like plants grown up in their youth, our daughters like corner-pillars, sculptured after the model of a palace." (Hence we see that according to both the height of the Temple will be one hundred ells at least. Why, then, said R. Johanan only twenty in height?) R. Johanan only meant for the windows in the gates that let in air.

Rabba in the name of R. Johanan said: The Holy One, blessed be He, will make seven canopies (*chupas*) for each upright, as it is written [Is. iv. 5]: "And then will the Lord create upon every dwelling of Mount Zion, and upon her places of assembly, a cloud and smoke by day, and the brightness of a flaming fire by night; for over all the glory shall be a covering (*chupa*)."

Whence we deduce that the Holy One, blessed be He, will make a *chupa* to each upright according to His dignity. But why smoke to a *chupa*? Said R. Hanina: Each one who looks with a bad eye upon the scholars in this world, his eyes will be filled with smoke in the world to come. And why fire (in the *chupa*)? Said R. Hanina: Infer from this that each of the upright will be burned by the *chupa* of his neighbor. And woe to such a burn and such a shame! (i.e., the neighbor's *chupa* is so beautiful and large that my *chupa* looks like a small hut against his). Similar to this is what is written [Num. xxvii. 20]: "And thou shalt put some of thy greatness upon him." But not all of it. The elders of that generation used to say: The appearance of Moses was like the sun, and the appearance of Joshua like the moon. Woe to such a burn! woe to such a shame!

R. Hama b. Hanina said: Ten *chupas* were made by the Holy

* *Quomah* means the height of a person, *qummiuth* means two heights. Leeser's translation cannot be used.

One, blessed be He, for Adam the first in paradise, as it is written [Ezek. xxviii. 13]: "In Eden the garden of God didst thou abide; every precious stone was thy covering, the sardius, the topaz, and the diamond, the chrysolite, the onyx, and the jasper, the sapphire, the emerald, and the carbuncle, and gold." (From the word *sardius*, including the word *gold*, are ten different kinds.) Mar Zutra says: Eleven—as he counts all the precious stones also. Said R. Johanan: The gold was less in value than all (as it is placed last). What is meant by the continuation of the same verse: "Thy tabrets and thy flutes," etc.? Said R. Jehudah in the name of Rabh: So said the Holy One, blessed be He, to Hiram the king of Tyre: When I created the world, and saw that thou wouldst rebel, deeming thyself a god, I therefore created holes and flutes in men, in order that thou shouldst be known as human. And according to others He said: "I saw that thou wouldst rebel," etc. I have therefore punished Adam the first with death, so that it should be known that thou wast human. What mean the words, "upon her places of assembly" (Isaiah, in the above cited verse)? Said Rabba in the name of R. Johanan: Jerusalem in the world to come is not like Jerusalem of this world. In the latter every one who likes to enter does so, but in that of the world to come only those invited will enter.

He said again in the name of said authority: In the world to come the upright will be named with the names of the Holy One, blessed be He, as it is written [Is. xliii. 7]: "Every one that is called by my name, and whom I have created for my glory, whom I have formed; yea, whom I have made."

Samuel b. Nahmeni said in the name of R. Johanan: The following three will be named with the name of the Holy One, blessed be He: the upright, as said above; the Messiah, as it is written [Jer. xxiii. 6]: "And this is his name whereby he shall be called—The Lord Our Righteousness"; and Jerusalem, as it is written [Ezek. xlvi. 35]: "And the name of that city shall be from that day, The Lord is there" (*shamah*). Do not read *shamah* (there), but *shmah* (her name).

R. Elazar said: In the future, *holy* will be said before the upright as now it is said before the Holy One, blessed be He, as it is written [Is. iv. 3]: "And it shall come to pass that whoever is left in Zion, and he that remaineth in Jerusalem, shall be called holy—every one that is written down unto life in Jerusalem."

He said again in the name of the same authority: The Holy One, blessed be He, will increase Jerusalem three parsas, as it is written [Zech. xiv. 10]: "And she herself shall be elevated, and be inhabited on her former site," which means that it will be increased to its former size. And whence do you know that the size of the former Jerusalem was three parsas? Said Rabba: There was a certain old man who told me that he had seen the first Jerusalem, and the size thereof was three parsas. And lest one say that it would be difficult to ascend, therefore it is written [Is. lx. 8]: "Who are these that are like a cloud," etc. Said R. Papa: Infer from this that the clouds are at a height of three parsas from the ground.

R. Hanina b. Papa said: The Lord wanted to give a measure to Jerusalem, as it is written [Zech. ii. 6]: "To measure Jerusalem." And the angels said before the Holy One, blessed be He: Lord of the Universe, there are many great cities thou hast created in thy world, belonging to the nations, of which thou hast not determined their length and their breadth. For Jerusalem, upon which thy name rests, where is thy Temple, and dwell the upright, thou dost determine a measure.

[Ibid. 8]: "And he said unto him, Run, speak to this young man, saying, Without walls shall Jerusalem be inhabited, because of the multitude of men and cattle in her midst."

Resh Lakish said: The Holy One, blessed be He, will add a *Litsuy* (probably a suburb) to Jerusalem a thousand times the area of one containing country seats and twelve hundred *Ttrplirus*, a thousand towers and one hundred and sixty-nine thousand gardens, and each of all that is said above will be like *Ziporias* in her glory. And there is a Boraitha which states: R. Jose said: I have seen *Ziporias* in her glory, and there were one hundred and eighty thousand markets in which only spices for dishes were sold. It is written [Ezek. xli. 6]: "And the side chambers were three one over another, and thirty times." What does that mean? Said R. Levi in the name of R. Papi, quoting R. Jehoshua of *Skhui*: If there were three Jerusalems, each of them had thirty chambers on the top; and if thirty Jerusalems, each of them had three chambers on the top.

END OF FIRST PART OF TRACT BABA BATHRA
AND OF VOL. V. (XIII.).

APPENDIX TO MISHNA I, CHAP. III., PAGE 83.

WE deem it necessary to call the attention of the reader to the fact that the law of occupancy was chiefly taken from the ancient Roman law* about *usucapio* (occupancy), which dictates that each *usucapio* without *titulus* (claim) is not considered. The claims must be *pro emptore* (purchase) or *pro donato* (gift), *pro legato*, *pro dote*, or *pro herede* (inheritance); and with *usucapio*, which is based upon inheritance, no other claim was necessary. The law applied even when it was known that the occupant never had a deed to what he had occupied, and the reason was because the plaintiff had time to protest three years, or at three harvestings, and when he did not make any claim nor any protest, it was evident that the occupant had a right to occupy, and no other evidence was needed. There is also a difference between *præsentēs* and *absentes* of the occupant. However, concerning *servitutes* (service) there was also *usucapio*, in the reverse; namely, *pro libertate* (liberty), which means that the servant or bondsman had a right to free himself by *non usus*—namely, when during three years he was never put to any work by his master he became free. But there was no *usucapio* by using the bondsman, even if for several years: property in him was not acquired if he had no other evidence. (See Ltf. Schweppe, § 305.) According to this, Abraham Krochmal, in his Scholia to the Babylonian Talmud (p. 278) maintains that the term “to slaves” in the Mishna in question means that the law of occupancy applies to these slaves themselves; viz., after three years’ rest from any service to their masters, the slaves become free, but not, in accordance with the Gemara, conversely. And so he also explains Resh Lakish’s statement (p. 96), “that the law of hazakah does not apply to a living creature,” as unchangeable, and it seems to us that so it is.

* The law of occupancy also existed in Persia, but it prescribed no less than twenty years. See text, p. 101.

NEW EDITION
OF THE
BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and
Translated into English

BY
MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACT BABA BATHRA
(LAST GATE, PART II.)

Volume VI. (XIV.)

BOSTON
NEW TALMUD PUBLISHING COMPANY
100 BOYLSTON STREET

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tenia*—We have learned in a Boraitha; *Itemar*—It was taught.
2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.
3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waibayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.
4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.
5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.

COPYRIGHT, 1903, BY
MICHAEL L. RODKINSON.

TO THE REVEREND GENTLEMEN
HERRN GEHEIMER REGIERUNGSRATH
MORITZ LAZARUS, PH.D., D.D.
UNIVERSITY PROFESSOR
AND
MONS. ZADOC KAHANA
GRAND RABBIN
DU CONSISTOIRE CENTRAL DES ISRAÉLITES DE FRANCE
WHOSE NAMES ARE FAMOUS
IN THE SCHOLARLY WORLD ALL OVER THE GLOBE
THIS FOURTEENTH VOLUME
IS MOST SINCERELY INSCRIBED BY THEIR ADMIRER AND
PERSONAL FRIEND
MICHAEL L. RODKINSON

New York, Eve of Passover, 5662 (April 21st, 1902)

CONTENTS.

(PART II.)

CHAPTER VI.

	PAGE
RULES AND REGULATIONS CONCERNING THE SALE OF SEEDS WHICH BECOME SPOILED, THE QUANTITY OF DUST WHICH MAY OR MAY NOT BE ACCEPTED IN THE MEASURES OF GRAIN AND FRUIT, AND WINE WHICH BECOMES SOUR AFTER SALE BEFORE DELIVERY.—CONCERNING CONTRACTORS FOR HOUSES AND STABLES, WELLS AND GARDENS, SITUATED IN NEIGHBORS' PROPERTIES OR PUBLIC THOROUGHFARES IN PRIVATE GROUND, AND CONCERNING GRAVES AND CAVES FOR BURYING	215

CHAPTER VII.

RULES AND REGULATIONS CONCERNING ROCKS AND PITS IN GROUND SOLD; THE QUANTITIES OF GREATER OR LESS MEASURE WHICH MAY OR MAY NOT VOID A SALE OF FIELDS, VILLAGES, ETC.	231
--	-----

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING BEQUESTS TO AND INHERITANCE BY NEAR AND DISTANT RELATIVES, MALE AND FEMALE SLAVES AND THEIR DESCENDANTS, FIRST-BORN AND HUSBANDS. ONE MAY OR MAY NOT WISH TO BEQUEATH HIS ESTATE TO STRANGERS WHEN HE HAS CHILDREN. WHICH WILLS MUST BE CONSIDERED AND WHICH WILLS MUST NOT. THE DIVIDING OF AN INHERITANCE BETWEEN GROWN-UP AND MINOR CHILDREN, MALE AND FEMALE	241
---	-----

CHAPTER IX.

	PAGE
RULES AND REGULATIONS CONCERNING THE SUPPORT OF UNMARRIED DAUGHTERS AFTER THE DEATH OF THEIR FATHER, IF AMONG THE CHILDREN WERE AN HERMAPH- RODITE OR AN ANDROGYN. MAY OR MAY NOT ONE BEQUEATH HIS ESTATE TO STRANGERS IF HE HAS CHIL- DREN? DOES THE SECOND WILL ABOLISH THE FIRST? IF A SICK PERSON RECOVERS AFTER MAKING A GIFT WHILE SICK, MAY HE RETRACT OR NOT? IF SUDDEN DEATH OCCUR TO MANY PERSONS, AND IT IS NOT KNOWN WHO DIED FIRST, AND EACH OF THE HEIRS CLAIMS FOR HIS BENEFIT	312

CHAPTER X.

HOW DEEDS SHOULD BE WRITTEN AND WHERE THE WITNESSES SHOULD SIGN. CONCERNING ERASURES OF SOME WORDS IN DEEDS. IN WHICH CASES BOTH PARTIES MUST BE PRESENT AT THE WRITING OF THE DEEDS, AND IN WHICH ONE OF THEM SUFFICES. CONCERNING A DEPOSITED DEED WHICH WAS PAID IN PART. HOW SHALL THE COURT AP- PROVE AN ERASED DOCUMENT? PROPERTY FOR PRIVATE USE WHICH WAS LEFT TO POOR AND RICH BROTHERS .	358
---	-----

SYNOPSIS OF SUBJECTS

OF

TRACT BABA BATHRA (LAST GATE).

(PART II.)

CHAPTER VI.

MISHNAS I. TO VIII. If one sold fruit and it did not sprout, or an ox and thereafter it was found a goring one. May the trouble of slaughtering and selling the meat be taken into consideration? If an ox was found killed at the side of another pasturing one. Between majority and hazakah, which should be preferred (see footnote p. 217)? All hold the theory of majority. If one delivered wheat for grinding to fine meal, but the miller did not properly grind it; or if meal were delivered to a baker and he did not bake it properly. If one buys fruit, he has to accept a quarter of a kabh of dust on a saah. If he sold a cellar of wine, he must accept ten harsh barrels on each hundred. If wheat, a quarter of a kabh of peas; if barley, a quarter of chaff; if lentils, of dust. If the buyer has found more than the above prescribed quantity. The difference between a cellar and *this* cellar, and also if for keeping was added. May or may not wine which is sold in retail stores be considered products of the vine? If one sells wine, and it turns sour. Which wine is considered an old one. If one is proud, he is not tolerated even by his family. A commoner who disguises himself in the garment of a scholar cannot enter into the habitation of the Holy One, etc. If one sells, or a contractor undertakes to build, a wedding or a widow house. A groom who resides in the house of his father-in-law is lighter than bran, and still lighter is an invited guest who brings with him an uninvited one, and still lighter is he who answers before hearing the question. If one wishes to build a stable. If one possesses a well, situated on the other side of his neighbor's house, or a garden inside of his neighbor's. If there was a public thoroughfare through one's field, etc. If one sells a place for digging a grave, or an undertaker makes a place for one, the inside of the cave must be four by six, etc., 215-230

CHAPTER VII.

MISHNAS I. TO VI. I sell you earth of the size whereon one kur can be sown, etc., or measured with a line. In case the buyer has to make return, it shall be in money. If the seller said "the size of a kur," without

any addition, how is the law? "I sell you the estate," with a measurement a trifle more or less; or, "this estate . . . with its marks and boundaries." If two versions of the seller contradict each other, which is to be considered? The difference in opinion of the Amoraim in the explanation of Mishna IV. R. Papa bought an estate said to be twenty saahs—after it was measured it was found only fifteen. To two brothers who had divided their inheritance came a third brother (of whose existence they were not previously aware). If brothers divided their inheritance, and a creditor of their father came and took away the share of one of them. If the members of the court differ in the amount, upon appraisement brought before them. "I sell you the half of the field"; "The southern half of this field," etc.—the seller has to give space for a partition, etc., 231-240

CHAPTER VIII.

MISHNA I. There are those who bequeath, and also inherit; others who inherit but do not bequeath; and also those who neither bequeath nor inherit. The passage [Num. xxvii. 8] in the Scripture does not correspond with all that is taught above. Who were the grandfathers of Pinchos ben Elazar on his mother's side. If one is about to marry, it is advisable for him to investigate the character of the bride's brothers. It is better for one to hire himself to Abhada Zarah (idolatry) than to rely upon people that shall support him. Abhada Zarah means "idolatry." Literally, however, it is "a strange service." Is the tribe of the mother's side equal to the tribe of the father's side? What happened to Janai and Jehudah the second when they came together? The husband from his wife. Whence is this deduced? Whence came Pinchos ben Elazar to have a mountain which his father did not possess? Whence is it deduced that the husband does not inherit the estate to which his wife during her life is only heir apparent? In the case of a gift with the ceremony of a sudarium, whether healthy or sick, what time may be given him to retract, 241-255

MISHNAS II. TO IV. The order of inheritance is thus, etc. If one decides that a daughter shall inherit, when there is a daughter of a son, even if he were a prince in Israel, he must not be listened to. What happened to Rabban Johanan with the Sadducean? "The daughters of Z'lophchod have inherited," etc. The land of Israel was divided among the ascendants from Egypt, and not among their children. Joshua and Caleb inherited the shares of the spies. Whence is this deduced? May or may not a disciple be honored in the presence of his master? Why is the order in mentioning the daughters of Z'lophchod different in the Scripture? If a woman marries at less than twenty years of age, she bears children until sixty; but when she marries after forty, she does not then bear children. There were seven men who encompassed the whole world since its creation until now, etc. How was the land of Israel divided—into twelve parts, or among the people severally? The land of Israel will be divided among thirteen tribes. A son and a daughter are equal concerning inheritance, etc. How shall the double share of the first-born be counted—double as to each brother or as to the whole estate. What is the reason that Jacob took away the privilege of the first-born from Reuben and gave it to Joseph? Jacob's children, who came to Egypt, in sum you find seventy; however, if you will number

them in detail, you will find only sixty-nine. In the case of inheritance of a promissory note, the first-born took a double share, etc. A first-born does not take a double share in a loan. The Palestinians, however, say he does. What is to be done with an estate bequeathed for life only, which the inheritor has sold? A first-born does not inherit property to come in the future, and the same is the case with a husband. If the first-born protests when his brothers come to improve the estate left by their father, 255-271

MISHNAS V. TO VII. A will which is against the law of the Scripture must not be listened to; however, if it is as a gift, it may. "My son is my first-born," he takes a double share; "My son is a first-born," he does not. "Go to Sh'kh'at my son, who is a first-born, whose spittle cures eyes." If two wives of one have born two sons in a secret place which was dark, and it is not known who was born first, they may write a power of attorney each to the other, etc. If one was known to the people as a first-born, and his father said of another, etc. A creditor may collect from bondsmen belonging to orphans for their father's debt. A second-cousin, a third-cousin, may be a witness (according to the law). If one says, "This child shall inherit all," or, "My wife shall take an equal share with one of my sons," he is to be listened to. If the word "gift" was mentioned in the beginning, etc. How is this to be illustrated? If one wrote, "The field on the east side shall be given to A, and B shall inherit that on the west side," is title given or not? All that is said in one speech is valid, except as to idolatry. If one says: "A shall inherit my estate," and he has a daughter, he said nothing; or, "A shall inherit my estate instead of my daughter," or, "My daughter instead of my son"—how is the law? A Halakha must not be taken for granted from a discussion or from an act, unless one is told to do so. Rabbi said: My youth made me presume to contradict Nathan the Babylonian. If one bequeath all his estates to his wife, he makes her a guardian only. (All that is said above treats of a will by a sick man.) How is it if this was done while in good health? If one has bequeathed all his estates to his sons, but has left to his wife a small portion of ground. How is it in a similar case when one is in good health? A sick person who has bequeathed all his estate to a stranger, it is to be investigated if the latter is in some way fit to be called a direct heir. An inheritance has no interruption, and goes direct to the heirs of the inheritor. The rabbis condemned one who bequeathed his estate to strangers, leaving out his children. What happened to Shamaï the elder with Jonathan b. Uziel,

271-297

MISHNAS VIII. TO XII. "This is my son," he is to be trusted; "My brother," he is not. If one testify he has divorced his wife, he is to be trusted. If a short period of time, can one's testimony be divided—that for the past he should not be trusted, and for the future he should? If a sick person said to witnesses: "Write, and give a mana to so and so," and before they did so he dies. How is it if the same was said by one in good health? If one wishes to bequeath his estate to his children, etc. How if he has written "from to-day and after my death"? If a sudarium is mentioned, no matter what version was used, nothing is needed to be added. "My estates are bequeathed to you, and after you to B," etc. Who is called a crafty villain? To a gift presented by one who is dying, at what time is title given? There was a woman who had a tree on the estate of

R. Bibbi b. Abayi, etc. If A said to B, "I give you this ox as a present, with the stipulation that you shall return it to me." If a sick man said, "I have a mana with so and so," the witnesses may write this, etc. The Halakha prevails that it must not be feared the court will err. The father has the right to gather the products bequeathed to his son, etc. If he left grown-up and minor sons, the grown ones have no right to derive any benefit on account of the minors, etc. How is it if a woman has borrowed money, consumed it, and thereafter she married without paying her debt, and brought estates with her at marriage? "The following is not to be returned in the jubilee year," etc. (p. 310). In some respects the husband should be considered as an heir, and in some respects as a buyer, 297-311

CHAPTER IX.

MISHNAS I. AND II. If one leave sons and daughters, if the inheritance is of great worth, the daughters must be supported from it; if a moderate one, the daughters must be supported, and the sons may go a-begging. If the estates were of great worth, but there was a promissory note in the hands of a creditor. If the deceased left a widow and a daughter, and the estates left could support only one of them. If one leave sons, daughters, and an hermaphrodite. "If my pregnant wife shall bear a male," etc. A child of one day inherits and bequeaths, etc. All that was said here was taught in the city of Sura. In Pumbeditha, however, it was taught otherwise, etc. One said, "I bequeath my estate to the children who shall be born of you by me," etc. One said, "My estate shall be for you and your children." And R. Joseph decided: One half of the estate belongs to her, and the other half to her children. There was one who had sent home pieces of silk, without any order to which member of his household they belonged, . 312-321

MISHNAS III. TO VII. If one left grown-up and minor sons, and the former improved the estate, etc. If one has made the wedding of his son in one of his houses, the son acquires title to the house, etc. Three things the rabbis enacted as laws without giving any reason. Brothers partners in business; if one of them was taken by the government to work, etc. If one of the brothers took two hundred zuz to begin the study of the Torah or to learn a trade, etc. Wedding presents may be replevined by the court. If one has betrothed a woman and dies before marriage, a virgin collects two hundred and a widow one hundred zuz. Five things were said about wedding presents: (a) They may be collected by the court; (b) they are returned at the time when the donator marries, etc. Who is like unto a wealthy man who is known to be rich by his many cattle and estates, etc.? The different explanations of Prov. xv. 15. If one sends presents to the home of his betrothed's father, to the value of one hundred manas, and has partaken of the betrothal meal, even for one dinar, they are not to be returned. How is it when the presents have improved, etc.? If a sick person had bequeathed all his estates to strangers, etc. Three things Achithophel charged his sons, etc. If a sick person said: "A shall reside in such a house," or, "B shall consume the products of such and such a tree," etc. A sick person who has bequeathed all of his estates to strangers, it must be investigated how was the case. If a sick person has bequeathed all his estates to strangers and thereafter is cured. The expressions, "He shall take," "shall be rewarded."

How shall it be done if he expresses himself: "A is the one who shall derive benefit from my estates"? If a sick person has confessed, "I owe so much to so and so," shall it be taken for granted, etc.? In five cases the act of a gift is not considered unless the bequeather writes "all my estates." What is considered estates? How is the case with the Holy Scrolls—as they must not be sold, are they considered estate or not, etc.? The mother of Rami b. Hama bequeathed to him her estates on one evening. The mother of R. Amram the Pious possessed a bundle of deeds, etc. Concerning a gift in part of a sick person—in one respect it is equal to a gift by one in good health, etc. A sick person who has bequeathed all his estates to strangers, although made with a sudarium, if he was cured he may retract. If one bequeathed first to one and thereafter to another, etc., . . . 321-345

MISHNA VIII. If in the deed it was not mentioned that he was sick, and he claims that he was sick at the time of writing and had a right to retract. What kind of evidence is required, etc. It happened in the city of Bene Brack, that one sold the estate of his father and died; and his relatives complained that he was not of age when he died. What must be the age of one who has the right to sell the estates left him by his father? How is he to be considered during the nineteenth year—nineteen, which is still not of age, or twenty? There was one lad less than twenty, who had sold the estate of his father. If a lad of thirteen years and one day presented a gift to some one, his act is valid. If one divides his estates verbally, no matter if he was in good health or dangerously sick, according to R. Elazar to real estate title is given by money, etc. It happened with an inhabitant of the city of Mruni, who was in Jerusalem, that he possessed much valuable property which he desired to present to different persons, etc. If it happens that a sick person divides his estates verbally on the Sabbath, etc. Suppose a house falls upon A and his father or on any persons, that one of them has to be bequeather and the other inheritor, and it is not known who dies first. If a son has sold his share of the inheritance of his father to some one, and dies while the father was still alive, and thereafter his father died, the son of the seller has a right to take away the goods from the buyer. And this is a complicated case in the law of money matters. A son inherits from his mother when he is already in the grave, so that his brothers from his father's side should inherit from him, 345-357

CHAPTER X.

MISHNAS I. TO V. A simple get (document) the witnesses must sign at the end of the contents. A folded one, however, the witnesses must sign outside, etc. In what place should the witnesses sign a folding document? If the signatures of the witnesses were separated by a space of two lines from the writing, the document is invalid; is it meant with their usual space or without? There was a folding document which came before Rabbi, and he said: "There is no date to it," etc. All must be done as is customary in the country. If there was only one witness to a simple, etc. If in the document was written, "hundred zuz," which make twenty selas, etc. If on the top of the document was written "a mana," and on the bottom "two hundred zuz," or *vice versa*, etc. There was a document in which was written, "six hundred and a zuz," etc. There was a toll-master of a bridge who was a

Jew who said to Abayi: "Let the master show me his signature," etc. A divorce may be written by the court for a husband in the absence of his wife—the husband must pay the fees. Documents of arbitrating and all other acts of mediating by the court must not be written unless both parties are present—at the expense of both. There was a receipt approved by Jeremiah b. Abba. However, the same woman came into his court to claim her marriage contract several years later, etc. If one has paid a part of his debt, and deposited his document with some one. If it happened to one that a promissory note became erased, he must find witnesses. The approval must be written: "We three, E, F, G, the undersigned, were sitting together, and before us was brought by A, the son of B, an erased note," etc. If one comes before the court claiming that he has lost a promissory note from so and so, etc. If one has presented a gift to his neighbor by a deed, if the deed was returned by the beneficiary the gift is considered returned. The following is the order of claims before the court. The lender comes to the court to complain that the borrower does not pay his debt, etc. Concerning deeds, they may write another one without mentioning the responsibility of the seller for the estate, etc. There was a woman who gave money to one that he might buy estates for her, etc. If one came to claim a field saying that he possesses a deed, and also that it was in his possession the years of hazakah, etc. If there was any forgery in the document, or there were incompetent witnesses, the transferring is not considered, 357-379

MISHNAS VI. TO IX. If one has paid a part of his debt, according to R. Jehudah the promissory note must be changed. According to R. Jose, the lender has to give a receipt for the amount paid. The Halakha prevails neither with R. Jehudah nor with R. Jose, etc. If the document was written at the date used by the government, and such a date fell on a Sabbath or on the Day of Atonement, etc. It happened with R. Itz'hak b. Joseph, who had money with R. Abba, etc. Abba said to his scribe: "When it shall happen that you have to write a document with a later date, you must write as follows: This document was postdated by us for a certain reason," etc. If one holds a promissory note for a hundred zuz, and requests that it shall be rewritten in two notes each of fifty zuz, etc. If there were two brothers, one rich and one poor, and they inherited from their father a bath-house, or an olive-press house, if for business they must share equally; but if for private use, etc. If there are two persons who bear one and the same name, they cannot give promissory notes to each other, nor to any of the inhabitants. If a promissory note was paid, etc. If one (while struggling with death) says to his son: "A promissory note among the notes I possess is paid, but I do not remember which," etc. If one made a loan to his neighbor through a surety, he must not collect first from the surety, etc. Whether a surety has to pay or not, R. Jehudah and R. Jose differ, etc. If the surety said: "Lend to this man, and I am the surety," etc. If the expression was, "Give to him, and I will return you," then has the lender nothing to do with the borrower. There was a judge who transferred the estate of the borrower to the lender, before the lender had demanded his money from the borrower, etc. There was a surety for orphans who had paid the lender before he notified the orphans. If one was put under the ban because he declined to pay his debts. If the promissory

note of the deceased was in the hands of the surety, who claims to have paid the lender, etc. There was a surety for a deceased debtor to a heathen, who paid the heathen before he had demanded his debt from the orphans. If one made himself surety to a woman for a marriage contract, etc. A sick person who has consecrated all his estates, and at the same time said : "So and so has a mana with me," he may be trusted. A sick person who said : "A has a mana with me," and thereafter the orphans claimed that they have paid, they are to be trusted. If one borrows money on a promissory note, the lender has a right to collect from encumbered estates. If it happen that a creditor sees his debtor in the market, grapples him by the throat, and one passes by and says, "Leave him alone, I will pay," he is nevertheless free, because the loan was made not upon his surety. Biblically there is no difference between a loan on a document and by word of mouth, and it should be collected from encumbered estates. A verbal loan is not collectible—neither from heirs nor from buyers. If the surety signed before the signatures, it may be collected from encumbered estates. Only a surety in the presence of the court is free from a sudarium, but all others are not,

379-395

TRACT BABA BATHRA (LAST GATE).

(PART II.)

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE SALE OF SEEDS WHICH BECOME SPOILED, THE QUANTITY OF DUST WHICH MAY OR MAY NOT BE ACCEPTED IN THE MEASURES OF GRAIN AND FRUIT, AND WINE WHICH BECOMES SOUR AFTER SALE BEFORE DELIVERY. —CONCERNING CONTRACTORS FOR HOUSES AND STABLES, WELLS AND GARDENS SITUATED IN NEIGHBORS' PROPERTIES OR PUBLIC THOROUGHFARES IN PRIVATE GROUND, AND CONCERNING GRAVES AND CAVES FOR BURYING.

MISHNA I.: If one sold fruit or grain (without any stipulation), and the buyer sowed it but it did not sprout, even if this were seed of flax, the seller is not responsible. R. Simeon b. Gamaliel, however, maintains that if he sold seeds for gardens, which could not be used for eating, the seller is responsible.

GEMARA: It was taught: If one sold an ox, and thereafter it was found it was a goring one, the sale is void according to Rabh. Samuel, however, said: The seller may say: "I sold it to you for slaughtering." Let us see: If the buyer was one of those that buy for slaughtering (*e.g.*, a butcher), why then should the sale be void according to Rabh? And if he was one who buys for working purposes (*e.g.*, a farmer), why should the sale be valid according to Samuel? It treats of one who buys for both purposes (*e.g.*, if he was both a farmer and a butcher). But even then, let us see the amount he paid for it, from which we can judge whether he bought for slaughtering or for work. It treats of where the meat has increased in price to the extent of the value of an ox for working. If so, what is the difference (the buyer gets the full value for his

money in any case)? The difference is, if the trouble of slaughtering and selling the meat should be taken into consideration (according to Rabh it should, and therefore the sale is void; and according to Samuel it should not). Again, let us see how was the case. If the seller has no cash to return, why, according to Rabh, should the sale be void, so that the buyer has to return the ox? Let him keep the ox for his money; as people say: "If you keep something in hand belonging to your debtor, even if it is bran, take the trouble to make money by it." It means when the seller is not lacking in cash. According to Rabh, the sale is void because the majority must always be taken into consideration, and the majority of cattle-buyers are traders; and Samuel maintains that only in prohibitory laws the majority is to be taken into consideration, but not in money matters.

Come and hear an objection from the following (First Gate, V., Mishna I.): "Should an ox gore a cow and the new-born calf be found dead at her side, and it be not known," etc. (see there, end of the Mishna, p. 106). Now, according to the theory of our Mishna, the decision of the cited Mishna would not be correct, as the majority of cattle should be taken into consideration, which conceive and bring forth living offspring. Hence the dead one found at her side is dead because of the goring. Why, then, is it considered doubtful there? The doubt was, if the ox gored the cow in front, so that the premature birth took place because of terror before goring, or if the cow was gored in the back, and the premature birth was occasioned by the goring, and therefore the extent of the injury is considered doubtful. And there is a rule that such be divided.

Shall we assume that the point of difference between Rabh and Samuel is the same as that in which the Tanaim of the following Boraitha differ? "If an ox was pasturing and another one was found killed at his side, although investigation shows that the death occurred from goring, and the pasturing ox was vicious in goring, or the death occurred from biting, and the pasturing ox was vicious in biting, it is still uncertain that this ox has gored or bitten the other." R. Aha, however, said: If there was found a camel killed at the side of a biting camel, although the latter was not yet vicious, it must be taken

for a certainty that he killed the other. The schoolmen thought majority and hazakah * identical; for as a goring or a biting animal has a hazakah to gore, bite, and kill, it is to be taken for a certainty that the gored or bitten one found at his side was killed by him, and the same is the case with the majority.

Is it not to assume that Rabh holds with R. Aha, and Samuel with the first Tana?

Nay! Rabh may say: My decision is correct, even in accordance with the first Tana of the cited Boraitha, as the reason of his decision is not majority, but hazakah—i.e., there was not a majority of vicious oxen, but one, which had a habit (hazakah) of goring or biting, as hazakah and majority are not identical; but if there should be a majority, it would be taken into consideration. And, also, Samuel may say: My decision is correct, even in accordance with R. Aha, as his reason is the habit (hazakah) of that animal which was found near, and a majority would not be taken into consideration.

Come and hear an objection from our Mishna, which states that the seller is not responsible, even for seeds of flax. Does not the term "even" mean, although the majority is for sowing, and nevertheless it is not taken into consideration? Hence it opposes Rabh? In this point the Tanaim of the following Boraitha differ: "If one sold fruit, and the buyer has sown it but it did not sprout, if it was garden seed, which could not be used for eating, he is responsible; but if it was seed of flax, he is not." R. Jose, however, said that the seller has to return to the buyer the value of the seed, as the majority buy it for sowing only. The sages, however, answered him: There are many who buy it for other purposes.

But who of the Tanaim in this Boraitha hold not the theory of majority? Shall we assume that it means R. Jose; and the sages answered *him* that there are many people who buy seeds, etc.? Then all of them hold the theory of majority, but one takes into consideration the majority of the seed (i.e., the majority of seed which is bought for sowing, and the other the majority of men)? Therefore we must say that it means, the difference of opinion between the first Tana and R. Jose, or the difference of opinion between the first Tana and the sages,

* The translation of "hazakah" is chiefly "occupancy"; however, this term is applicable to everything which is the habit of persons, animals, etc.

who answered *him* (i.e., the statement in the Boraitha, "and they said to him," means the first Tana, not R. Jose).

The rabbis taught: "The seller has to return to the buyer the value of the seed, but not the expenses for ploughing, sowing, etc.; according to others, however, the expenses also." Who are the others? Said R. Hisda: R. Simeon b. Gamaliel. Which R. Simeon b. Gamaliel? Shall we assume from our Mishna, which states that for seeds which could not be used for eating, he is responsible, and from the first Tana's statement, that the seller is not responsible for seeds of flax, that it is to be inferred for seeds of flax only, but for other seeds which cannot be used for eating, the Tana is also of the opinion that the seller is responsible? Then they do not differ at all. Therefore it must be said that they differ in the expenses, the first Tana holding the seller must return the value of the seeds only, and R. Simeon all the expenses also (and so R. Hisda means R. Simeon of our Mishna). But perhaps the reverse is the case—R. Simeon holds the value of the seeds only, while the first Tana holds the expenses also? This presents no difficulty; for as usual the second Tana adds something. But perhaps the entire Mishna is in accordance with R. Simeon and is not complete, but should read thus: If one sells fruits and they were sown and did not sprout, even if they were seeds of flax, he is not responsible. Such is the decree of R. Simeon b. Gamaliel, who holds that only for garden seeds that cannot be used for eating the seller is responsible. Therefore we must say that R. Hisda means R. Simeon b. Gamaliel of the following Boraitha: "If one delivered wheat for grinding of fine meal, but the miller did not properly grind it, but made it into bruised grain or bran; or if meal were delivered to a baker and he did not bake it properly, but when he took it out it fell to pieces; or if an ox were delivered to a slaughterer, and he made it illegal, each of these persons is responsible, as they are considered bailees for hire." R. Simeon b. Gamaliel said, that they not only have to pay the damages, but also for the shame of the owner in the eyes of the guests who were invited to the meal, as well as for the shame of the guests themselves; and so the same R. Simeon used to say: There was a great custom in Jerusalem, if one ordered a banquet for guests, and the host spoiled it, he had to pay for his own shame, and for the shame

of the guests. There was also another great custom in Jerusalem: "a flag was put at the door where a banquet was to be given, and the invited guests had to enter only when the flag was still at the door, but when it was taken off they were not to enter any more."

MISHNA II.: If one buys fruit, he has to accept a quarter of a kabh of dust on a saah; of dry figs, he has to accept ten wormy ones in a hundred; on a cellar of wine, he must accept ten harsh ones on each hundred; if he sells him earthen jugs made in Sharon he has to accept ten unglazed ones on each hundred.

GEMARA: R. K'tina taught: By a quarter of a kabh of dust is meant peas, but not earth proper. Is that so? Did not Rabba b. Hyya Ktuspha'h say in the name of Rabba: If one has cleaned off little stones from the barn of his neighbor he has to pay him the value of wheat (*i.e.*, as if they were there, he may put them in the measure, but to put them intentionally he is not allowed)? Peas, he has to accept a quarter of a kabh on a saah, but dust he has also to accept, although a less quantity. You say less than a quarter of dust, but did not the following Boraitha state: "If one sells wheat, he has to accept a quarter of a kabh of peas on a saah; if barley, a quarter of chaff on a saah; and if lentils, a quarter of dust." Is it not to assume that a quarter of dust is to be accepted for wheat and barley also? With lentils it is different, because they are not cut, but torn out from earth, and therefore usually a great deal of dust remains with them, which is not the case with wheat and barley; but if it is so, infer from this that for wheat and barley no dust must be accepted at all, while it is stated above that less than a kabh is to be accepted? Nay, from the statement that for lentils he has to accept a quarter nothing is to be inferred; this being stated, lest one say because there is usually much dust more than this quantity is to be accepted, it comes to teach us that it is not so.

R. Huna said: If the buyer has found more than the above prescribed quantity and sieves it, he may sieve the whole quantity he bought, without leaving any dust at all, and the seller has to fill the measure without allowing for the prescribed quantity. According to some it is the strict law, as usually one gives his money for clean fruit, but if for a trifle of dust, as

much as a quarter of a kabh on a saah, the buyer is not very particular and does not take the trouble to sieve it; but in our case, when he is compelled to trouble himself with sieving, he may make the whole fruit extremely clean; and according to others, it is a fine, as usually no more than a quarter of a kabh ought to be found in a saah, and when there was found more, it is presumed that the seller put it in intentionally, and therefore he is fined by the rabbis.

Come and hear an objection from the following Boraitha: "If a planter undertakes to plant a field with fruit trees, the owner of it must accept empty space for ten trees on each hundred, but if, however, it was found empty for more than this, he has to plant trees on the whole empty space." Hence is R. Huna's above statement law? Said R. Huna b. R. Jehoshua: This is not a support to R. Huna, as an empty place for more than ten trees is to be considered as a separate field, and the planter who undertook to plant the owner's fields is to be considered as if he had to begin the planting in this empty field, and therefore he has to plant the whole field, which case is not similar to that of R. Huna.

"If he sold a cellar of wine," etc. Let us see how is the case. Whether the seller said to the buyer, "I sell you a cellar of wine" or "*this* cellar of wine," it is a difficulty from the following Boraitha. "If he said 'I sell you a cellar of wine,' all of it must be good; if '*this* cellar of wine,' he must give him wine which is sold in the retail stores; but if he said, 'I sell you *this* cellar,' even if it was found to be all vinegar, the sale is valid." Our Mishna speaks of the case wherein the seller said, "a cellar of wine," and there is no contradiction of the cited Boraitha as it should read, and the buyer has to accept the ten spoiled ones in the hundred. But has not R. Hyya taught: If one sells a barrel of wine, he must give the buyer all good wine? With one barrel it is different, as a barrel contains only one kind of wine; but has not R. Z'bid in the name of the school of R. Ossiah taught in "a cellar of wine" all must be good, in "the cellar of wine" the seller must give the buyer all good wine, but the latter must accept ten bad in the hundred; and this is the word *Outzar* ("treasure of wine") which the sages have taught in our Mishna? Therefore it must be said that our Mishna treats of the case wherein the seller said

"this cellar," and the contradiction from the above Boraitha in the case, if "this cellar," presents no difficulty, as R. Z'bid says, if the seller told the buyer, "I sell you wine for keeping," and the Boraitha says the words "for keeping" were not said, and therefore (the Halakha prevails thus) if the seller said, "a cellar of wine for keeping," all of it must be good; if "*this* cellar of wine for keeping," the buyer must accept ten in the hundred; if "*this* cellar of wine," without the addition "for keeping," the seller may give the buyer wine that is sold in retail stores.

The schoolmen propounded a question; How is it if the seller said, "a cellar of wine," without the addition "for keeping"? On this point R. Aha and Rabhina differ. According to one the buyer has to accept ten in the hundred, and according to the other he has not, the one who says "he must accept" inferring it from R. Z'bid, who states in the case of "a cellar of wine," all of it must be good, and it was explained above that he speaks of the case in which the seller added "for keeping," from which it is to be inferred that if these words were not added, the buyer must accept; and the other, who says the buyer must not, infers from the above Boraitha, which states in the case of "a cellar of wine" all of it must be good; and it was explained above that the Boraitha treats of the case wherein "for keeping" was not said. But to him who infers from R. Z'bid, is not the Boraitha contradictory? He may say the Boraitha is not completed, but should read thus: This is said, if the seller told the buyer "for keeping," but if not, the buyer must accept, and if the seller said "this cellar of wine" without any addition, he may give the buyer wine which is sold in the stores; but to him who infers from the Boraitha, is not R. Z'bid contradictory who, as explained, said that the seller told the buyer the wine was "for keeping"? He may say that the same is the case if the seller did not say "for keeping," and the above explanation was only in order that the Boraitha and R. Z'bid might not contradict each other; in reality, however, R. Z'bid does not agree with the Boraitha.

R. Jehudah said: On wine which is sold in stores the usual benediction may be made. (The benediction is, "Blessed be Thou the Lord our God King of the Universe who hast created the products of the vine,") and R. Jehudah means to say that

although the wine in stores is usually bad, it is still called the product of the vine. R. Hisda, however, said: What have we to do with such a wine (*i.e.*, how can such wine be called a product of the vine)?

An objection was raised: In the case of moulded bread and sour wine, and any dish of which the appearance is spoiled, the benediction should be "That all is created by His words" (hence it contradicts R. Jehudah). Said R. Z'bid: R. Jehudah admits that over wine made of kernels, which is usually sold on the corners of streets, the right benediction may be said. Said Abayi to R. Joseph: "There is R. Jehudah, and there is R. Hisda, each of them with his opinion; I would like to know how is yours, master?" And he answered, "I am aware of the following Boraitha: 'If one examine a barrel of wine for the purpose of separating heave-offering from it, for all others, and he did so for a month or two, and thereafter it was found that the wine turned into vinegar, three days is considered certain, and further on doubtful.' How is this to be understood? Said R. Johanan thus: The first three days from the examination it is to be considered certainly wine, and thereafter it is to be considered doubtful. Why so? Because usually wine becomes sour from the top, and when he tasted it, it was not sour, and if you say it had become sour immediately after he tasted it, the smell only was vinegar-like, but the taste still of wine (as the sages had a tradition that less than three days from the beginning it becomes not vinegar) and such is considered wine. R. Jehoshua b. Levi, however, said that all he separated in the last three days is certainly vinegar, but previous to that it is doubtful. Why so? Because usually wine begins to turn sour from the bottom, and maybe when he tasted it it was sour already, of which he was not aware; and even should I admit that wine begins to turn sour from the top, my decision is still correct as it may be that it began to turn sour immediately after being tasted, and I hold that if it smells of vinegar, though the taste is still of wine, it must be considered vinegar" (hence according to R. Jehoshua b. Levi the wine which is sold in stores is not considered wine at all, and according to R. Johanan it is considered wine).

The sages of the South taught in the name of R. Jehoshua b. Levi thus: The first three days it should be considered as wine,

the last three days as vinegar, and in the days between as doubtful. But does this statement not contradict itself? The first three days it certainly is wine, hence if the smell is of vinegar and the taste of wine, it is considered wine; and thereafter they said, the last three days it is certainly vinegar, from which it is to be inferred that if the smell is of vinegar and the taste of wine, it is considered vinegar. The case was that it was found wholly strong vinegar, and it is stated above that it takes no less than three days after it turns sour to become wholly vinegar; hence it is to be supposed that in the last three days it was already vinegar. However, according to which of these two was the conclusion of R. Joseph? In this, also, R. Mari and R. Z'bid differ, one saying that his conclusion was in accordance with R. Johanan, and the other saying it was in accordance with R. Jehoshua b. Levi.

It was taught: If one sells a barrel of wine and it turns sour, according to Rabh the first three days it is considered under the control of the seller, and thereafter "it is considered under the control of the buyer." Samuel, however, maintains that the seller is not responsible even when it was still in his barrel, as this is to be considered the fate of the buyer.

R. Joseph acted in accordance with Rabh concerning beer of dates, and according to Samuel with wine, the Halakha, according to Samuel, however, prevails in every respect.*

MISHNA III.: If one sells wine and it turns sour, the seller is not responsible; if, however, it was known that the nature of his wine was to turn sour (and the buyer was not aware of it), the sale is void. If he said, "I sell you wine, prepared with spices, in good order," the wine must remain in good order until the feast of Pentecost. (Afterward it may become spoiled by heat.) If the seller sold the buyer old wine, it must be from last year; and if he said "very old," it must be aged not less than three years.

GEMARA: Said R. Jose b. Hanina: All this is said of the case wherein it was delivered to the buyer in his own jugs; but if it was placed in the jugs of the seller, the buyer might say: "Here are your jugs and your wine." Why then may not

* The text treats concerning the benedictions on wine, beer, etc., for which the proper place is the Tract Benediction, and to which it will be transferred

the seller claim: You ought not to keep it so long? It means that while selling, the seller told the buyer "for keeping." But what compels R. Jose to such a difficult interpretation, in which the jugs were the buyer's, and the seller says "for keeping"? Why is it not simply said that the jugs were the seller's and he said nothing? Said Rabha: It is because the further statement of the Mishna, "that if it was known that the nature of the seller's wine was to turn sour the sale is void" was a difficulty to him. Why, then, let the seller claim he ought not to keep it so long? We must then say, that the Mishna treats of the case wherein the seller told the buyer "for keeping" (he therefore interpreted the whole Mishna, that such was the stipulation), and infer from this that so it is. He, however, differs with R. Hyya b. Joseph, who said that the fate of one causes the spoiling of his wine; as it is written [Habakkuk, ii. 5]: "And even the wine of a proud man rebels."

Said R. Mari: If one is proud, he is not tolerated even by his family, as the above verse reads "the proud man whose house will not stand," which is to say that he is not tolerated by his household. R. Jehudah in the name of Rabh said: A commoner who disguises himself in the garment of a scholar, cannot enter into the habitation of the Holy One, blessed be He; and this is deduced from an analogy of expression, *Nvie*, which is to be found in Ex. xv. 13. The Hebrew expression in the above cited verse is also *Y'nvie* (literally, "dwelling," "inhabit").

Rabha said: "If one sells a barrel of wine to a storekeeper (with the stipulation that he shall sell it at retail and then pay the owner), and a half or a third of the wine turns sour, the law is that the seller must accept the return of his wine; and this is said only in case the faucet was not changed by the storekeeper, but if it was changed and placed near to yeast, there is no responsibility, and there is also no responsibility if the storekeeper kept the wine over the market day." He said again: "If one has accepted wine for half interest, with the intention of taking it to the suburb of Dwulchpht (where usually wine is dear), and by the time it reached there the price was lowered, the law is that the owner has to accept the return of the wine." The schoolmen propounded a question: How is it when the same was vinegar? Said R. Hillel to R. Ashi:

When we were at R. Kahana's he said to us, the same is the case with vinegar, as he agrees with R. Jose b. Hanina's statement above.

"*Old wine*," etc. A Boraitha in addition to our Mishna states that if it was said, "very old wine, it must keep its good quality until the feast of tabernacle in the third year."

MISHNA IV.: If one sells to one a place for the purpose of building a wedding-house for his son or a widow-house for his daughter, and the same is the case if a contractor undertakes to build such for him, the size must be not less than four ells in length by six in breadth; such is the decree of R. Aqiba. R. Ishmael, however, maintains that this is the size of a stable. If one wishes to build a stable for cattle, he builds it four by six. The smallest house is no less than six by eight, a large one eight by ten, and a triclinum (restaurant) ten by ten, and the height must be a half of its length and of its width. An example of this, said R. Simeon b. Gamaliel, was the building of the Temple.

GEMARA: Why does the Mishna state "a wedding-house for his son and a widow-house for his daughter"? Let it state a wedding or a widow house for his son or daughter. The Mishna incidentally teaches us that it is not a good custom for a son-in-law to dwell with his father-in-law, as it is written in the book of Ben Sira: "I have weighed everything on the scale and did not find a thing to be lighter than bran; however, a groom who resides in the house of his father-in-law is lighter than bran, and still lighter than he is an invited guest who brings with him an uninvited companion, and still lighter is the one who answers before he has heard thoroughly the question, as it is written [Prov. xviii. 13]: 'When one returneth an answer before he understandeth (the question), it is a folly unto him and a shame.'"

"*If one wishes to build a stable*," etc. Who said this? According to some, R. Aqiba himself, and he said so; and although this is the size of a stable for cattle, it nevertheless happens that human beings live in such a building (and as the seller or the contractor did not stipulate the size, the minimum may be taken). Others say R. Ishmael taught this saying: That if one wishes to build a stable, it is the size of four by six.

"*Triclinum*," etc. There is a Boraitha: For a *quantir*,

twelve ells square is needed. What does it mean? A fore yard?

"*An example of this,*" etc. Who taught this? Some say R. Simeon b. Gamaliel, and it should read thus: Whence is this deduced? Said R. Simeon b. Gamaliel: All must be judged according to the building of the Temple, and some say that the first Tana taught an example of it (and he was about to finish his statement with "the building of the Temple," but R. Simeon b. Gamaliel interrupted him saying:) Do you want to compare all common buildings with the building of the Temple; do all people build such buildings?

We have learned in a Boraitha: Anonymous teachers say the height must be not less than the length of the crossbeams of the ceiling. But why not say, simply, the height must be as the width? If you wish, it may be said that usually a house is wider at the top than at the bottom; and if you wish, it may be said that, because the ends of the beams are placed in the enclosures of the wall, they are longer than the width of the house.

MISHNA V.: If one possesses a well, situated on the other side of his neighbor's house (by inheritance, or even bought from him with a path), so that when water is needed he must pass through the house, he may enter and leave at the time people usually enter and leave. However, he is not allowed to take his cattle to the well, but he has to take water for them outside of the house and water them. The owner of the well, as well as the owner of the house, has a right to put a lock on it.

GEMARA: A lock on what? Said R. Johanan: Both locks may be put on the well. It is right that the owner of the well should put a lock on his well, so that no one can use the water; but for what purpose should the owner of the *house* put a lock on it? Said R. Elazar: Lest his neighbor, while passing his house to the well in his absence, should remain alone with his wife.

MISHNA VI.: If one has a garden inside of his neighbor's garden, he may enter and leave only when people are wont to do so. He must not take buyers with him to his garden, and he also has no right to pass through his neighbor's garden for the purpose of entering another field conjoining this one, when he has no business in his own garden; and only the owner of

the outside garden has a right to sow the path. If, however, a path was designated to him by court, on the side, with the consent of both parties, then he may enter and leave whenever he pleases and may also take with him buyers; however, the right to pass through to another field is not given, and neither of them has the right to sow the path.

GEMARA: R. Jehudah in the name of Samuel said: If one says, "I sell you a place of one ell for digging a well to water your dry land," it must contain the width of two ells, and he also has to add him two ells from his field to the edges of the well, on which to erect walls to prevent the overflow of the water; and if he said, "I sell you an ell for making a sewer," it must be one ell wide and one-half ell to each edge. But who has a right to sow the edges (while the walls were not as yet made)? R. Jehudah in the name of Samuel said: The owner of the field; and R. Nhaman in the name of Samuel said: The owner of the field may plant trees there, but not sow it, as by sowing he harms the water.

R. Jehudah in the name of Samuel said again: If the walls of a channel fall, the owner of it may repair it from the material of the field upon which the walls were placed; as certainly they fall on the same field where they were placed (but the material was scattered by the wind all over the field). R. Papa, however, opposed, saying that the owner of the field may claim that the water of "your well has underwashed the material and caused it to fall"; therefore he gave another reason, that such a stipulation must have been in existence when he hired that place, for otherwise he would not have wasted his money.

MISHNA VII.: If there was a public thoroughfare through one's field and he took it for himself and designated another one at the side of his field, what he has given is considered the public's, and to that which he took for himself he does not acquire title. If one sells a path in his field for a private thoroughfare it must be four ells, for the public it must be no less than sixteen. A way for the government has no limit. The way for carrying a corpse to the grave has also no limit; however, the space where the people stand for condoling was determined by the judges of Ziboras of a space where four kabhs may be sown.

GEMARA: Why should he not acquire title to that thor-

oughfare he took for himself, when he designated another one for the public; let him take a stick with which to drive off intruders, or do you want to infer from this that one cannot take the law in his own hands, even when he suffered damage? Said R. Zebid in the name of Rabha: It is to be feared that if this would be allowed, one would give to the public a crooked way; but R. Mesharshia in the name of Rabha said that our Mishna treats of a case wherein the owner of the field has designated such. R. Ashi, however, maintains that a way which is placed at one side is considered crooked, because it is near to one who resides near to this side, while it is far to him who resides on the other side, (and therefore he does not acquire title) to that which he took. But let him say to the public, "take your way and return mine" (and the Mishna states what he has given is lost). It is in accordance with R. Eliezer of the following Boraitha: "R. Jehudah said in the name of R. Eliezer, if the public has chosen a way for itself, what was done remains." But may the public be robbers, according to R. Eliezer? Said R. Gid'l in the name of Rabh: He speaks in case the public has lost a way in this field (*i.e.*, some time ago there was a thoroughfare which afterwards was lost). If so, why then said Rabba b. R. Huna in the name of Rabh that the Halakha does not prevail with R. Eliezer? The one who has taught this statement was not aware of the other statement (*i.e.*, R. Gid'l does not approve the statement of Rabba b. R. Huna in the name of Rabh). But according to Rabba b. R. Huna, what is the reason of our Mishna's statement, that of R. Jehuda, who said above (p. 145) that a path of which the public took charge must not be spoiled? By which act did the public acquire title to the thoroughfare, according to R. Eliezer? By passing, as we have learned in the following Boraitha: If one passed (in an ownerless field) on its length and breadth he acquired title to the place he has passed, so is the decree of R. Eliezer. The sages, however, maintain that passing has no effect at all, and title is not acquired unless he makes a hazakah. Said R. Elazar: The reason of R. Eliezer is the following verse [Genesis, xiii. 17]: "Arise, walk through the land in the length of it and in the breadth of it, for unto thee I will give it." The sages say this cannot be taken for a support, however, as Abraham was beloved by Heaven, and it was said to him for

the purpose of making easier for his children the subjection of the land. Said R. Jose b. Hanina: The sages admit to R. Eliezer in case of a footpath between vineyards, because it was made for passing, title is also given by passing. When such a case came before R. Itz'hak b. Ami he decided that the plaintiff should get a footpath upon which he should be able to carry a bundle of branches on his shoulders, which in turning here and there should not touch the walls. But this is said in a case wherein the places for the walls are not yet designated; but if they were, the space should be given him, so as to put one foot after the other.

"*For a private,*" etc. There is a Boraitha: Anonymous teachers say: "As much as an ass with its load could pass." The judges of the exile said: Two cubits and a half. And R. Huna said: The Halakha prevails with them. But did not R. Huna say elsewhere that the Halakha prevails with the anonymous teachers? The limit of both is "equal."

"*A public thoroughfare is sixteen ells.*" The rabbis taught: A private way is four ells, a way from one city to the other is eight ells, a public way is sixteen ells, and the way to the cities of refuge (Num. xxxv. 11) thirty-two. [Said R. Huna: Whence is this deduced? From the Scripture (Deut. xix. 3): "*The way to them.*" It should be "a way," and the word "the" makes it double.] The way of the government has no limit, as the king has the right to erect partitions, houses, and no one has a right to prevent him, and the way for burying a corpse has no limit, because of the honor of the dead.*

MISHNA VIII.: If one sells a place for digging a grave, or an undertaker makes a grave for one, the inside of the cave must be four by six, and opening into it eight niches for coffins, three on each side and two at the top and bottom. The length of the niches is four ells, the height seven spans, and the width six. R. Simeon, however, said: The inside of the cave must be six by eight, the niches must be thirteen, four on each side, three on the upper side, and one on the right side of the door and one on the left. He also makes a fore yard at the mouth of the cave six ells square, as much as the coffin with its carrier needs. He also has to open to this fore yard two

* The continuation of the text about graves and condolence, etc., we have transferred to Tract Great Mourning, page 60.

caves from two sides. R. Simeon, however, said four to all its four sides. R. Simeon b. Gamaliel, however, maintains that all must be done according to the rock (*i.e.*, if the earth is soft more niches could be made, but if rocky the number must be limited accordingly).

GEMARA: The two niches which R. Simeon requires, one on the right side of the door, etc., how shall he dig them? If their length should be dug from the wall of the cave under the fore yard, then they will be trodden down; furthermore, there is a Mishna to the effect that one who stands in the yard of a grave is clean, but if the niches should be dug under the yard the one who stands above would not be clean. Said R. Jose b. R. Hanina: He made the niches like an upright bolt; *i.e.*, placed the bodies in an upright position. But did not R. Johanan say that asses are buried in like manner? According to him, the niches should be made in the corners. But then each of them would come in contact with the other. Said R. Ashi: If he makes those in the corners deeper (according to R. Simeon, who said that four niches must be on each side), if they were all equally dug they would come in contact. It must be said that he digs some of them deeper, and the same may be said here.* R. Huna b. R. Jehoshuah, however, maintains that he makes the niches crooked. (Says the Gemara:) This statement does not hold, as according to it he would have to make eight inches in the space of eleven and one-fifth ells, which is impossible.†

* The text is so complicated here that the commentators have to make many illustrations, and after all the matter is hardly understood. However, according to our method we could not omit this, as it is essential from the historical point of view to know how these graves are made. We have done our best to make it intelligible.

† In the text are also mathematical calculations by the rule that one ell square contains one ell and two-fifths when crooked, which is not exactly correct. We have already mentioned this in a foot-note in Erubin, and therefore we have omitted the whole discussion here.

CHAPTER VII.

RULES AND REGULATIONS CONCERNING ROCKS AND PITS IN GROUND SOLD; THE QUANTITIES OF GREATER OR LESS MEASURE WHICH MAY OR MAY NOT VOID A SALE OF FIELDS, VILLAGES, ETC.

MISHNA 1.: If one says: "I sell you earth the size where one kur can be sown, and there were crevices ten spans deep, or rocks ten spans high, they are not measured, but if less than that size they are measured. If, however, he said to him, "about the size of a kur," and there were crevices or rocks even more than the size of ten spans, they are measured.

GEMARA: Said R. Itz'hak: The statement of the Mishna about rocks and crevices which are measured when they are less than ten spans holds good only when all of them together do not measure four kabhs, but not if they do. Said R. Uqba b. Hama: Even then they are measured only when they are scattered within five kabhs space (but in less they are not measured); and R. Hyya b. Abba in the name of R. Johanan says that five kabhs do not suffice, and they are measured only when they are scattered within the greater part of the field, which is at least sixteen kabhs, as a kur is thirty kabhs; and R. Hyya b. Abba himself questioned: How is the law according (to R. Johanan's theory) if the greater part of the rocks in question were scattered within the smaller part of the field, and the smaller part of them within the larger part of the field (and if altogether they measured four kabhs)? These questions are not decided.*

There is a Boraitha: "If there were a single rock (but it bears a separate name; *e.g.*, 'the west rock') even if of less than ten spans, it is not measured; and also if the rock were placed

* In the text are some other questions: If the rocks were placed round, or square, etc.; and these need many illustrations, and all remain at last undecided. As they are of no importance, we have omitted them.

near to the boundary, whatever size it may be it is not measured." *

MISHNA II.: "I sell you earth of the size wherein a kur can be sown, measured with a line." If there were a trifle less, he may deduct; if a trifle more, the buyer has to return it. If, however, the seller says "about this size, a little more or less," even if there were less than a quarter of a kabh on each saah, the sale is valid; but if it were more than that size, an account must be taken. In case the buyer has to make return, it shall be in money; however, if he wishes to return him land, he may do so. And why was it said that the buyer should return the seller money? To favor the seller, so that if there were a trifle more the buyer should not have the right to return him this trifle, which the seller could not use; but if there were a kabh and a half more than the prescribed size, it means in the case of nine kabhs of land in a field and a half kabh in a garden, and according to R. Aqiba even a quarter of a kabh, then the buyer may return the land, and not only the land which is in excess of the prescribed size, but even that of this prescribed size itself is to be returned with the other.

GEMARA: The schoolmen propounded a question: If the seller said "the size of a kur," without any addition, how is the law? Come and hear. If the seller says, "I sell you an estate the size of a kur," or "about the size of a kur, a little less or more, I sell you," and thereafter it were found a quarter of a kabh less or more to a saah, the sale is valid. Hence we see that even if he does not add to the words "the size of a kur," it is the same as if he would say "about." Nay, the Boraitha is to be explained thus: The last part of the Boraitha explains the first part. If one says, "I sell you of the size of a kur," "about" is to be understood in case he should add a trifle less or more. R. Ashi objected: If this were so, why the repetition "I sell you, I sell you"? Therefore the Boraitha is to be explained as above, that the size of a kur means "about," and so it is.

"It shall be in money." We see from this that the advantage of the seller and not the buyer is taken into consideration; but

* The text contains questions of no importance—e.g., if the rocks were placed round, crooked, etc.—which remain undecided. We have therefore omitted the whole discussion.

valid? If, however, the estate is larger, the court compels both the seller to sell and the buyer to buy; hence we see that the advantage of both is taken into consideration? (*I.e.*, that even have we not learned in the following Boraitha: If there were less or more than seven kabhs and a half on a kur, the sale is if the seller insists that the excess should be returned to him, he is not to be listened to if it is an advantage for the buyer to have it.) The Boraitha treats that at the time it was found over the prescribed size, the estate was lower in price and the seller willing to sell. Therefore we say to the buyer, "You may reckon it at the existing price," and the same is said to the seller, "If you do not wish the estate to be returned to you, you must accept the existing price." But have we not learned in another Boraitha that if the buyer compensates the seller, he must reckon at the previous rate? That Boraitha speaks that when the reverse was the case, the price was low at the time of the sale and became higher after it was known that there was an excess over the prescribed size.

"*It means in the case of nine kabhs,*" etc. Said R. Huna: This applies even in a valley which is of more than ten kurs. R. Na'hman, however, says seven and a half to each kur; but if there were a kabh and a half more (which counts nine kabhs) even to one kur, all must be returned, even if to the other kurs the addition were not over the prescribed size. Rabha objected R. Na'hman from our Mishna, which states that if he left nine kabhs in a field, etc. Does not the Mishna mean at least two kurs as the size of the usual field? Nay, it means one kur. Farther on, in a garden, a half of a kabh is given as the minimum of excess. Does it not mean at least two saahs, as usually a garden is called of that size? Nay, it means one saah, and according to R. Aqiba one quarter. Does it not mean, if the garden was a saah? Nay, it means if it was half a saah. R. Ashi questioned: If one sold a field, and afterwards, but before the money was paid, it became a garden, and there were found more than a quarter to a saah, but it should not reach the size of nine kabhs or *vice versa*, how should the prescribed size be reckoned—as that of a field or that of a garden? This question remains undecided.

There is a Boraitha: "If the estate over the prescribed size sold was conjoined with the other estate of the seller, even if

that were but a trifle, the buyer has to return the seller the estate." R. Ashi questioned: How is the law if there were a well between this estate sold and the other estate of the seller, a channel, a public thoroughfare, or a row of trees, should these constitute lines of demarcation or not? This question remains undecided.

"*And not only the land which is in excess,*" etc. How is this to be understood? Taught Rabhin b. R. Na'hman: Not only that which was over the prescribed size the buyer returns the seller, but all the quarters to each kur, although the rest be not over the prescribed size, he must return.

MISHNA III.: "I sell you the estate with a measurement, a trifle more or less." The last words, "more or less," nullify those preceding them. "I sell you a trifle more or less to be measured with a line." The last words here nullify the preceding ones (and the seller must give the purchaser a just measurement; so that if the land were in excess, the excess must be returned, and if less the seller must supply the deficiency), such is the decree of ben Nanas.

GEMARA: Said R. Abba b. Mamal in the name of Rabh: "The colleagues of ben Nanas differ with him." What came he to teach us? Have we not learned in the Middle Gate, p. 269, Mishna 8, that it happened in Ciphorius that one rented a bath-house for twelve golden dinars a year? The payment was to be one dinar monthly; and thereafter the year was made intercalary. When the case came before R. Simeon b. Gamaliel and R. Jose they decided that the payment for the intercalated time should be made at the same rate as for the ordinary time. If from that Mishna one says that the last words, "one dinar monthly," are to be interpreted as a retraction of the first words, "twelve a year," the last words, "a dinar monthly," may also be interpreted as explaining the former, "twelve a year" (over which the sages differed with ben Nanas); however, here, in that the last words cannot be interpreted as an explanation, but as a retraction of the former, the sages agree with him. He comes to teach us that they differ also in this case. R. Jehudah in the name of Samuel said: This which is taught in our Mishna is in the words of ben Nanas, but the sages say that the shorter expression must always have the greater weight (*i.e.*, "with a measurement" is shorter than "a

trifle less or more”), no matter whether the shorter phrase were said before or after the longer one. Says the Gemara: Shall we assume that with the expression “this” Samuel meant to say that he himself does not agree with him? Do not both Rabh and Samuel say (p. 188) that if one said “a kur for thirty selas,” he may retract even at the last saah; and if he added each saah for one sela, to all which was measured title is acquired, which corresponds with the decision of ben Nanas? Therefore we must say that he meant to say “this,” and I agree therewith. But is that so? Did not Samuel say (Middle Gate, p. 270): “The decision was so made . . .” but if they had appeared in the beginning, would it be entirely the owner’s; and if in the end, the renter’s? (This, at all events, cannot correspond with ben Nanas’ decision.) Therefore it must be said again that by the word “this” he means that “I do not agree,” and the reason of his decision in the case of each saah for selah is because that which was measured is considered already in his hands, and the same is the case with the rent for the intercalary month; if at the end of the month, it belongs to the renter, because it is already in his hand. R. Huna said: It was said in the college of Rabh: If one said: “I sell this to you for an *istra* a hundred *moahs*, he must give him a hundred *moahs*; but if he says a hundred *moahs* an *istra* he has to give him an *istra* although it is less in value than a hundred *moahs*.”

What came he to teach us—that the last expression must be considered? Has not Rabh said this already concerning the case of the cited Mishna (page 270): “If I were there, I should give it to the owner of the house” (and that is because the last words were “a dinar monthly”)? Lest one should say that in one case the last words (“hundred *moahs*,” or *vice versa*) are to be considered as an explanation to the first words, he comes to teach us that it is not so.

MISHNA IV.: If one says, “I sell you this estate, the size of a kur, with its marks and boundaries;” and afterwards it were found that the size is less than stipulated—if it were less than a sixth of the whole size, the sale is valid; but if there were a sixth wanting, the buyer may deduct from the payment.

GEMARA: It was taught: R. Huna and R. Jehudah differ in the explanation of our Mishna. According to the former

the Mishna means that an exact sixth should be considered as less than a sixth, and the Mishna is to be explained thus: "With less than a sixth wanting, a sixth inclusive, the sale is valid." If, however, more than a sixth is wanting, it may be deducted. According to R. Jehudah the Mishna means that an exact sixth is to be considered as more, and it is to be explained thus: "With less than a sixth wanting the sale is valid; a sixth, however, or more wanting is to be deducted."

An objection was raised from the following Tosephtha: "With its marks and boundaries, and there was a sixth less or a sixth more, it parallels a case wherein the court appraises an estate, and the sale is valid." Now we know that in a case wherein the court appraises, if there were an error as to an exact sixth, it is considered as if it were more, and the appraisement is void; hence this contradicts R. Huna? R. Huna may say that there is no contradiction, as the Tosephtha ends with the words "the sale is valid," and if this paralleled the case wherein the court appraises, how could it be valid in case there were more than a sixth? Does not the law provide that in the case of an error of the court in more than a sixth, the appraisement is void? It must be said then that it is parallel in one respect but not in the other; and it is to be explained thus: It parallels the case wherein the court appraises with an error of less than a sixth (which does not affect the appraisement), but it does not parallel the case in which the error of the court is of a sixth or more and affects the appraisement, which differs from our case, as the purchaser has only to deduct the money value of the deficiency, while the sale is still valid.*

R. Papa bought an estate from some one who told him that it measured the size of twenty saahs. After it was measured it was found that there were only fifteen; and the case came before Abayi, who decided that the sale was valid, because the seller had used the qualifying words "as you see its marks and boundaries." But have we not learned that if there were more than a sixth lacking its value is to be deducted, and here there is a fourth part? In the first case the condition is not known to the buyer before the sale; but in the latter case, as the condition was known to R. Papa and he saw it at the time he

* We are compelled to explain this in accordance with R. Gershom, as Rashbam's explanation is still more complicated.

bought, it must be supposed that he had considered and accepted it. Rejoined R. Papa: But did he not tell me that it measured twenty? He probably meant to say that "these fifteen are better than twenty elsewhere."

There is a Boraitha: R. Jose said: "Some brothers divided their inheritance by lot, and when to each of them his lot fell, all of them acquired title to their shares." Why so? Said R. Elazar: At the time the land of Israel was allotted to the tribes. But was there not also the Urim v'tumim, as it is said farther on that the high priest Elazar had on the Urim v'tumim, and then the lots were cast? Said R. Ashi: By their arrangement prior to allotment (whereby the estate was divided into shares of equal value) they had prepared themselves that each should acquire title to the share which the lot should cast for him, and therefore no other ceremony was necessary.

It was taught: To two brothers who had divided their inheritance between them came a third brother (of whose existence they were not previously aware). Their division is null and void according to Rabh. Samuel, however, maintains that each of the two must relinquish a third of his inheritance to the third brother (*e.g.*, they inherited six fields, and each of them must give one of these to the newcomer, so that the three brothers may have two fields apiece). Said Rabha to R. Na'hman: According to Rabh, who says that the division is null and void, it must be said he holds that since all of them did not share in the first division, the inheritance must be redivided. Would the same be the case with three partners, two of whom have divided (in the presence of three persons who are considered a Beth Din) in the absence of the third one, and there is a decision (Middle Gate, p. 74) that such holds good? The cases are dissimilar. In the latter case the partners divided the property into three shares, and as it was done in the presence of a Beth Din the division holds good; but in the former case the two brothers had divided the inheritance into two parts only, as they were unaware of the third brother's existence.

Said R. Papa to Abayi: According to Samuel's decision that the first division is valid, it must be said he holds that such an act, done in accordance with the law, must not be abrogated, although thereafter it appears that the brothers took more than belonged to them; but did not both Rabh and Samuel say: If

one says, "I sell you a kur for thirty selas," the seller may retract even at the last saah (above, p. 235)? (We see then that even when done in accordance with the law an act may still be abrogated.) There is, however, here a difference. The rabbis enacted that law to please both the seller and the buyer. (*I.e.*, in case the price should become lower, before the buyer has received the property, it is to his advantage to retract; and in case the price becomes higher, the advantage is for the seller. Hence this law is beneficial to both.)

It was taught: If brothers divided their inheritance and a creditor of their father came and took away the share of one of them, according to Rabh the former division is null and void. Samuel, however, said that such was this brother's lot, and it did not concern the other. R. Assi, however, maintains, not as Rabh, that the division is void, and they must divide the remainder, and not as Samuel, that it does not at all concern the other one; but that the second brother must surrender one quarter of his estate and a quarter of the money he has inherited. Rabh holds that the heirs, even after their division, are still to be considered heirs (hence if one of them has lost the property through his father's debt, he is still an heir to the remainder), while Samuel holds that at the time they divide they are considered buyers (each of them buying his share of his brother) without any security; and consequently each has no further concern after the division. R. Assi was doubtful whether they are to be considered heirs of buyers; therefore the half which ought to be taken from the one who did not suffer loss is considered doubtful money, and there is a rule that doubtful money is to be divided. Said R. Papa: The Halakha concerning the two cases, that of the third brother as well as that wherein the share of one was taken away by their father's creditor, prevails in accordance with Samuel, who says the division holds good, and it is for them to divide from their shares in payment of the debt. Amimar, however, said: The Halakha prevails in accordance with Rabh, who said that the division is void and the property must be redivided, and so the Halakha prevails.

The rabbis taught: If there are three who have qualified as a Beth Din to appraise the estate of one deceased, for the support of his widow and daughters, and if one says that in his opinion the estate is worth twenty-five selas (a moanah of

100 zuz), and the two others say two hundred or *vice versa*, the opinion of the individual is of no effect; but if one appraises the estate at one hundred zuz, which are twenty-five selas, the second for twenty, and the third for thirty, the value is fixed at one hundred zuz. R. Eliezer b. R. Zadok, however, says that it should be taken for ninety zuz, and anonymous teachers say that a third of the difference between the second and third valuations must be added to the second, which will give $93\frac{1}{3}$ zuz. The reason of him who says the estate is worth one hundred zuz is that the opinion of the arbitrator is to be taken into consideration, and the reason for R. Eliezer's opinion that the estate is worth ninety zuz is that he who appraised it at eighty underestimated by ten zuz, while he who appraised it at 100 overestimated by ten zuz, and as there is a majority who appraised it at not more than 100 zuz, the third, who appraised it at twenty zuz over a moah, is not to be taken into consideration at all. Why not say that the one who said 100 zuz has underestimated by ten and he who says thirty has overestimated by ten, and the estate should therefore be valued at 100? Because the majority declare it not worth more than 100 zuz, or one moah. The anonymous teachers maintain that the estate is worth $93\frac{1}{3}$ zuz, because the one who estimated its value at twenty selas (eighty zuz) underestimated by $13\frac{1}{3}$, and the one who said 100 zuz overestimated by $13\frac{1}{3}$, although he had intended to say $103\frac{1}{3}$ zuz, but thought he would not like to make his difference too large. And why not say that the one who said thirty selas (120 zuz) has overestimated by thirteen, and the estimate should be fixed at 113 zuz? The opinion of the majority that the estate is not worth over a moah is to be taken into consideration. Said R. Huna: The Halakha prevails with the anonymous teachers. Said R. Ashi: The reason of the anonymous teachers is not acceptable; should we decide according to them? There is a Boraitha that the judges of the exile are in accordance with the anonymous teachers, and R. Huna said again that so the Halakha prevails, but R. Ashi objected again for the same reason stated above.

MISHNA V.: If one says "I sell you the half of the field" (the half of the value is meant), the better one against the inferior is to be appraised, and the seller has a right to give the buyer the latter. The same is the case when he said "I sell you

the southern half of this field," and the buyer takes the half determined on by the seller. The seller, however, has to give space for a partition, and for a large and a small ditch. What is the breadth of a large ditch? Six spans. And of a small one? Three.

GEMARA: Said R. Hyya b. R. Abba in the name of R. Johanan: The buyer has to take the inferior. And he (when he heard this statement from R. Johanan) said to him: Does not the Mishna say "the better one against the inferior is to be appraised"? And should not this be explained to mean that each of them should take half of both good and inferior? And he answered: It seems to me that you have eaten too many dates in Babylon (so that you have no time to descend into the depths of the Mishna). Does not the Mishna contain the same expression, in the latter part,* concerning the sale of the south side of his field? And why the repetition? It should read "he should take a half at the south side," and we would understand it to mean half of the size. We must then say that it is repeated to teach that also in that case the half of the value is meant, as the same was in the first part.

"*The partition*," etc. There is a Boraitha: "The large ditch must be outside and the small one inside of the field, but both beyond the partition, so that beasts may not jump over the partition in the field." Why then the small ditch? Does not the large one suffice for this purpose? Because it is six spans wide, the beasts could enter in it and jump over. But does not the small ditch suffice? Because it is small, the beasts could stand on the edge of it and jump over. And how much shall the space be between the large and the small ditch? One span.

* The Mishna repeats the same language concerning the southern part which we, according to the sense, have translated "the same is the case."

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING BEQUESTS TO AND INHERITANCE BY NEAR AND DISTANT RELATIVES, MALE AND FEMALE SLAVES AND THEIR DESCENDANTS, FIRST-BORN AND HUSBANDS. ONE MAY OR MAY NOT WISH TO BEQUEATH HIS ESTATE TO STRANGERS WHEN HE HAS CHILDREN. WHICH WILLS MUST BE CONSIDERED AND WHICH WILLS MUST NOT. THE DIVIDING OF AN INHERITANCE BETWEEN GROWN-UP AND MINOR CHILDREN, MALE AND FEMALE.

MISHNA I.: (Concerning inheritance, there is a difference between relatives.) There are those that bequeath at their death, and also inherit at the death of their relatives. There are those who inherit but do not bequeath, and also those who neither bequeath nor inherit. The father, his children, and also the brothers of the father may both bequeath and inherit to and from each other. The son from his mother, and the husband from his wife, and also the children of sisters inherit, but the former do not bequeath to the latter. The woman to her children, her husband, and her brothers bequeaths, but does not inherit from them. The brothers of the mother, however, neither bequeath to nor inherit from her.

GEMARA: Why does the Mishna mention the father his sons first? It does so, first, because the reverse order would imply a curse, and usually the beginning must not be with a curse (for when the son dies before his father it is certainly a curse), and, secondly, the Scripture [Numbers, xxvii. 8] reads, "If a man die and have no son," etc.; hence the death of the father is mentioned first. The Tana of the Mishna does thus because the law that a father shall inherit from his son is not written in the Scripture but is deduced (as will be explained farther on) and he desires to mention it first. Whence do they deduce it? From the following Boraitha: "(It is written) 'his kinsman means the father, from which it is deduced that if one dies and leaves brothers and a father, the father is the heir and not the brothers'; but lest one say that the father of the

deceased is preferred to his son, it is written 'that is next to him,' which means, whoever is nearest, and the son to his father is considered nearer than a father to his son. And what is the reason that you exclude the brother and include the son? Because the Scripture has substituted the son for the father in the case of a man servant [Ex. xxi. 9] and also in that concerning the possession of a field [Levit. xxv. 13], of which it is said elsewhere that only when the son has redeemed the field sanctified by his father, it may be returned in the jubilee year, but not if the father's brother or any other relative has done so. But why not say that the brother shall have the preference, as he inherits from his brother in case the latter dies childless [Deut. xxv. 5]? This cannot hold good, as the brother thus inherits only if there is no son; but if there is a son the brother does not inherit." Is it only for this reason, and if it were otherwise would the brother be the heir? May the son be substituted for his father in the two cases above stated, and the brother in the one case only? Nay, the same reason is given in the case of the above-mentioned possession of a field, wherein the son is preferred to the brother, also because the brother inherits only when there is no son. But why not say a kinsman means the father, from which we infer that he is preferred to his daughter? Lest one say that he is preferred to his son also, therefore it is written, "who is next to him," and a son is nearer to his father than the father to his son. As said above, this could be opposed thus: Let us see! If one dies and leaves a daughter, it is the same concerning Yeboom as if he should leave a son. Hence we see that a son and daughter are here equal before the law, and the same equality would obtain concerning inheritance. But why not infer from this that the father has the preference over *his* brother? And lest one say that he should have the preference over the brothers of the deceased also, it is written "the next," and brothers are considered nearer than the father to his son. It is not necessary that the father's brother be considered as excluded in the Scripture, as that would be contrary to common sense. What is the basis for the inheritance of the uncle of the deceased from his nephew, if not that his brother is the father of the deceased; and when the father is still alive, why should the brother be the heir?

But let us see. The passage in the Scripture does not corre-

spond with all that is taught above [Num. xxvii. 8], "If a man die and have no son, then shall ye cause the inheritance to pass unto his daughter, and if he have no daughter . . . unto his brothers . . . and if no brothers, unto his father's brothers, and if . . . no brothers, . . . to the kinsman." (Hence when the kinsman is mentioned at the end, how can you say that it means the father, who is the first in case the deceased left no son?) The passages are not written in order, as the kinsman, meaning the father, should be mentioned first, but the Scripture relies upon the words "who is next to him," and it is for the court to decide who is nearest to him. The following Tana, however, deduces it from the same passage in another manner, as we have learned in the following Boraitha: R. Ishmael said: "It is written, 'If a man die and have no son, then ye shall cause his inheritance to pass,' etc. Infer from this that you transfer the inheritance from the father only when the deceased left a daughter, but not when he left brothers." But why not say that the daughter transfers the inheritance from his brothers but not from his father? Because if it were so, the passage would read "and ye shall *give* the inheritance," and not "ye shall *cause to pass*," which means that if there is a daughter, her father may pass the inheritance to her, even when his own father is still alive. Now, what does kinsman mean in the opinion of R. Ishmael, who has deduced this from the words "ye shall cause to pass"? That which the following Boraitha states: "His kinsman means his wife. Deduce from this that the husband inherits from his wife." But to him who infers this from the word kinsman, what do the words "ye shall cause to pass" mean? That which we have learned in the following Boraitha: Rabbi said: In all the passages it is written "shall ye give," and only concerning the daughter "ye shall pass," to show that there is no one who shall pass an inheritance to another tribe except a daughter; so if she marries one of another tribe, her son or her husband may inherit from her.

But, after all, where is it you are assured that kinsman means the father? In Levit. xix. 12, "Thy father's kinswoman." Then why not say it means the mother, as the next verse reads "thy mother's kinswoman"? Said Rabha: It is written [xxvi. 11] "next to him of his family," and the family is named

only from the father's side as [ibid., 2] "after their families, by the descent from their fathers." But is not the name of the mother's side also employed? Is it not written [Judges, xvii. 7], "And there was a young man out of Bethlehem-Judah of the family of Judah, but he was a Levite, and sojourned there"? Now does not this passage contradict itself? It is written "of the family of Judah," from which it is to be inferred that they came from the tribe of Judah, and then it says he is a Levite, which means that he was of the tribe of Levi. We must conclude that his father was from Levi and his mother from Judah, and nevertheless this is called a family name. Said Rabha b. R. Hanan: The verse reads "and he is Levi," which does not mean that he was a Levite, but that his name was Levi. If so, how is to be understood (ibid., 17), "I have obtained a Levite for a priest"? There it is also written Levi, and means a man by the name of Levi. But how can you say that his name was Levi? Was not his name Jonathan, as it is written (ibid., xviii. 30), "And Jonathan the son of Gershom . . . were priests," etc.? And he answered: Even according to your theory, was he then the son of Menashe? He was the son of Moses, as it is written [I Chron. xxiii. 15]: "The sons of Moses were Gershom and Eliezer." It is written Menashe, because he acted like Menashe, who was an idolator; and therefore the phrase "of Judah" is employed because Menashe came from Judah. R. Johanan in the name of R. Simeon b. Jo'hai said: From this is to be inferred that we confer a corrupt name on a corrupt man. R. Jose b. Hanina, however, said that this may be inferred from the following [I Kings, i. 6]: "And his mother had after Abshalom." But was not Adoniyah the son of Chag-gith, and Abshalom the son of Maacha? We must say that because he acted like Abshalom, who also rebelled against the kingdom, the verse conjoined him with Abshalom.

R. Elazar said: We see that when Moses married the daughter of Jethro, Jonathan was the outcome, and when Aaron married the daughter of Aminadab the outcome was Pinchos.

But was not Pinchos also a descendant of Jethro, as it is written [Ex. vi. 25], "Elazar took of the daughters of Putiel for wife and she bore unto him Phinchas," and it is said elsewhere that Jethro and Putiel are identical? Nay, this Putiel is Joseph, as it is also said elsewhere that Joseph and Putiel are

identical.* But is it not said elsewhere that the tribes chided Phinchas, saying: "See the descendant of Puti, whose grandfather had fattened calves for idols; shall he dare to kill a prince of the tribe of Israel?" Both names are applicable; for if his mother's father was a descendant of Joseph, his mother's mother was a descendant of Jethro or *vice versa*, and the word Putiel instead of Puti may mean both.

Rabha said: If one is about to marry, it is advisable for him to investigate the character of the bride's brothers; as it is written (*ibid.*, 23), the "sister of Nachshon." To what purpose is it written the "sister of Nachshon"? Is it not evident that she was the sister of Aminadab? Hence this is an intimation to one about to marry to investigate the brothers of his prospective bride. There is also a Boraitha to the effect that the majority of children resemble the brothers of their mother. It is written [Judges, xviii. 3], "Who brought thee hither?" (*halom*) which means "Are you not a descendant of Moses?" of whom it is written [Ex. iii. 5] "hither" (*halom*), and "thou shalt be a priest to the idol"? And he answered: "I have a tradition from the house of my grandfather that it is better for one to hire himself to *Abhada Zarah* (idolatry) than to rely upon people that shall support him." [(Says the Gemara:) He has misunderstood it. *Abhada Zarah* means "idolatry." Literally, however, it is "a strange service" and it is as Rabh said to Kahana: (If you are in need), fleece a carcass in the middle of the market and do not say you are a great man, and it is not fit for you.)]

David saw that he was fond of money and appointed him treasurer for the government, as it is written [I Chron. xxvi. 24], "Shebuël the son of Gershom, the son of Moses, superintendent of the treasuries." Was then his name Shebuël? Was it not Jonathan? Said R. Johanan: Shebuël is composed of two words, *Shebu*, which means "repented," and *El* means "God"; and "Shebuël" means that he repented to God with all his heart.

* The Gemara infers it from terms in Hebrew or Chaldaic which it is impossible to translate into English; namely, Putiel, which is a name, *Pitem* meaning in Aramaic "fat," and *Pitpet*, which means in Aramaic "subduing." Hence by Putiel can be meant Jethro, who fattened calves for idols, and also Joseph, who subdued the evil spirits.

"*His children . . . inherit.*" Whence is this deduced? It is written [Numbers, xxvii. 8], "If a man die, and have no son," etc. We see the case is one wherein he has no son, but if he has one, that one has the preference. Said R. Papa to Abayi: But perhaps it means that if there is a son only, he shall inherit, and if there is a daughter only, she shall inherit; but if there were a son and a daughter neither of them should inherit. Said he: Who then shall inherit—the mayor of the city? I mean to say that neither of them shall inherit all, but each take an equal share. Said Abayi to him: Was it then necessary for the Scripture to state that if there were only one son he may inherit all the estates of his father? Answered he (R. Papa): I mean to say that the verse perhaps came to teach that a daughter may also be an inheritor. And he (Abayi) answered: This is already written [ibid., xxxvi. 8], "And every daughter that inheriteth," etc. R. A'ha b. Jacob said: This is to be deduced from the following [ibid., xxvii. 4], "Why should the name of our father be done away from the midst of his family because he hath no son?" But if he should have a son, the son would have the preference; but perhaps this was only the saying of the daughters of Zelophchod (*i.e.*, they thought that such was the law, as it was customary at that time). But after the Torah was given the law was changed, that a son and daughter should inherit together; therefore Abayi's explanation is better.

Rabhina said: This is to be deduced from the words "next to him," and a son is nearer than a daughter; and why? As it is said above, he may be substituted for his father in the cases concerning a maid-servant and a field, etc. But could then a daughter be substituted for her father in the case of a maid-servant? Hence the best interpretation is Abayi's; and if you wish, it may be deduced from Levit. xxv. 46, "For your sons after you," etc., which means to your sons* and not to your daughters. But according to this the verse [Deut. xi. 21], "The days of your children," which is also written with "*Bniechein*," should also be explained the sons and not the daughters? With a blessing it is different.

"*The brothers of the father.*" Whence is this deduced? Said Rabba: By analogy of expression "brothers" here [Num-

* It is written *bniechein*; literally, "sons." Leeser translates "children," according to the sense.

bers, xxvii. 9] and in Genesis, xlii. 32. "We are twelve brothers, the sons of our father"; as there they were brothers of the father, so are they here also on the father's side. But was it not said above that from the father's side the family is named, but not from the mother's? (See above, p. 244.) Yea, this is deduced from verse 11, as above, and Rabba's statement was taught concerning Yeboom (the marriage of a brother to the widow of his childless brother).

"*The son from his mother.*" Whence is this all deduced? From that which the rabbis taught. It is written [Num. xxxvi. 8], "Any daughter who inherits the estate of the tribes."* How can a daughter inherit from two tribes? It must be concluded that her father was from one tribe and her mother from another, and both died leaving estates, and she has inherited both. This is concerning a daughter, but whence have we knowledge concerning a son? From the *a fortiori* argument that as a daughter who has no share in the inheritance of her father when there is a son is nevertheless an heir to the estate of her mother, a son who inherits from his father so much the more inherits from his mother. And from this it is to be deduced that, as there the son has the preference over the daughter as an heir of the father, so is it also with the inheritance from the mother. Both R. Jose b. Jehudah and R. Elazar b. Jose, however, say in the name of Zecharia the son of the butcher that a son and a daughter are equally heirs of their mother. Why so? Because there is a rule: It is sufficient that the result derived from the inference be equivalent to the law from which it is drawn (and as the law that a son may inherit from his mother is drawn *a fortiori* from the case of the daughter, it is sufficient to say that he inherits also, but not that he shall have the preference). But does the first Tana ignore the theory of "it is sufficient"? Is this not biblical, as we have learned (First Gate, p. 51, in the beginning of the Gemara)? In all other cases he uses the theory; here, however, it is different, because of the reading "from the tribes." We see then that the tribe of the mother is equal to the tribe of the father, and as concerning the father's the son has the preference, so also is it concerning the mother's.

Nithai was about to act in accordance with Zecharia, and

* Leeser's translation does not correspond.

Samuel said to him: Ignore Zecharia, as the Halakha does not prevail with him. R. Tabla had acted in accordance with R. Zecharia, and R. Na'hman asked him what he had done. And the answer was that he had done so because R. Hinna b. Shlamiah said in the name of Rabh that the Halakha prevails with R. Zecharia the son of the butcher, and R. Na'hman told him, "Go and retract from your statement, and undo what you have done, and if you will not listen, I will put out R. Hinna from your ears" (I will place you under the ban). R. Huna b. Hyya was also about to act in accordance with R. Zecharia, and R. Na'hman said, "What are you doing?" And he answered: "I do so because R. Huna said in the name of Rabh that the Halakha prevails with R. Zecharia. Said R. Na'hman: "I will send immediately a message to R. Huna asking him if he said so." And Huna b. Hyya became ashamed. Said R. Na'hman to him: "If R. Huna were dead, you would rebel against me and act accordingly." But in accordance with whose was R. Na'hman's opinion? With both Rabh's and Samuel's decision that the Halakha does not prevail with R. Zecharia.

R. Janai leaned upon the shoulders of R. Simlai his servant, when he walked on the street, and it happened that R. Jehudah the second was coming in an opposite direction, and R. Simlai said to him: "The man who is coming in an opposite direction is a respectable one, and he is also nicely dressed." When they came together, R. Janai fumbled about R. Jehudah's dress * and said: "Is this what you call nicely dressed? It seems to me like a sack." Jehudah the second questioned him: "Whence is it deduced that a son has the preference over a daughter in the estate of their mother?" And he answered: "Because it is written 'tribes,' and the verse compares the tribe of the mother with the tribe of the father. As in the former case the son has the preference, so is it in the latter." Said Jehudah: "If so, why not say that as in the father's case the first-born takes a double share, so should it be in the mother's?" Said R. Janai to his servant: "Take me away from him, this man does not want to learn." And what was the reason? Said Abayi: It is written [Deut. xxi. 17], "of all that is found in his possession," not in her possession. But why not say that

* R. Janai was very infirm and could not see well.

this is so when a single man has married a widow who has children from the first husband, but if a single man has married a virgin, the first-born shall take a double share? Said R. Na'hman b. Itz'hak: The same verse cited reads, "for he is the beginning of *his* strength," *his* but not *her*. Is this verse not necessary to include a first-born who came after a miscarriage, that he is entitled to a double share, although he is not considered as such to be redeemed? Because it should be read, "he is the first of strength," and from the addition *his* both inferences are drawn. But still it may be said in case a widower married a virgin, but if a bachelor married a virgin then the first-born is entitled to a double share also from his mother. Therefore said Rabha: The verse ends "to him belongeth the right of first birth"; which means to him a *male*, but not to a *female*.

"*And the husband from his wife.*" Whence is this deduced? From that which the rabbis taught. It is written [Numbers, xxvii.], "his kinsman," and his wife is meant. Infer from this that the husband inherits from his wife; but lest one say that she inherits from him also, it is written [ibid.] "and he shall inherit from her." "*Outhoh*" means he inherits from her, but not she from him. But the verses are not written in that order, you say? Said Abayi: Read thus: "Then shall ye give his inheritance to his next kinsman and *he* shall inherit from her." Said Rabha to him: It seems to me that you have a keen knife to cut the verses. Therefore, said he, the verse means he shall give the inheritance from *his* kinsman to him; as he holds that the sages have a right to subtract, to add, and to interpret. (I.e., it is written *nachlossou*, literally "his inheritance," with a Vav at the end; *lishourou*, literally "to his kinsman," with a Lahmed at the beginning. Subtract the Lahmed from *lishourou* and the Vav from *nachlossou*. Put these two letters together and they will read *lou*, literally "to him," and then the verse will read thus: "Ye shall give the inheritance of his kinsman to him.) The following Tana, however, infers this from the same verse in another way, as we have learned in the following Boraitha: It is written, "And he shall inherit from her." Infer from this that the husband inherits from his wife. So said R. Aqiba. R. Ishmael, however, said: It is not necessary to cut the verses (he does not hold the theory of subtracting, adding,

etc.), as there are other verses [ibid., xxxvi. 8], "every daughter that inheriteth," which refers to the transferring of an estate from one tribe to another through the husband, who is of one tribe and has married a woman of another tribe. It is written [ibid. 7], "And the inheritance of the children of Israel shall not pass from tribe to tribe," and it is also written next, "and no inheritance shall pass from one tribe to another," and then it is written [Joshua, xxiv. 33], "And Elazar the son of Aaron died and they buried him in the hill of Pinchas his son." Where then had Pinchas a hill which Elazar did not possess? We must then conclude that Pinchas married a woman who owned a hill, she died and he inherited it. And it is also written [I Chronicles, ii. 22], "And Segub begat Jair, who had three and twenty cities in the land of Gilad." And wherefrom did Jair obtain that which his father, Segub, did not possess, if not by inheritance from his wife. But to what purpose did R. Ishmael cite all the above verses? Lest one might say that the first cited verse does not speak of transferring an estate through the husband, but through her son, and the husband does not inherit. Therefore is the other verse cited, "And the inheritance of the children of Israel shall not pass," etc. But lest one say that this verse is written to make the one who transgresses answerable under a positive and a negative commandment, but still through the son and not the husband, therefore is the third verse cited. But lest one say that this verse is also written for the purpose of making the transgressor answerable under two negative and one positive commandments, therefore is the fourth verse cited; and lest one say that Elazar's wife owned a hill and Pinchas inherited it from her, therefore is the fifth verse cited. And lest one say that the same was the case with Segub and Jair, then why two verses which contain the same case?

Said R. Papa to Abayi: But what does this support? It may be said that the husband does not inherit, and all the above cited verses state that it was through the son, and did both Jair and Pinchas buy the estate in question? And Abayi answered: You cannot say that Pinchas bought the estate, as if this had been so the property would have been returned to the seller in the jubilee year, and then the upright Elazar would have been buried in ground not his own. But perhaps the hill

in question was transferred to Pinchas from estates set apart for the priests [Numb. xviii. 14]. Said Abayi to him: If we were to agree with your theory, the estate would be still transferred from one tribe to another. Is it not explained above that verse 8 refers to a woman who has inherited from both father and mother, who were of two different tribes? Why, then, if she should marry one belonging to the tribe of her father, would the estate of her mother be transferred to another tribe? And R. Papa said: This is no objection, as the case may be different, and perhaps the estate of her mother was already transferred. Rejoined Abayi: Such a supposition cannot be taken into consideration; as one would not say that because a part had already been transferred, the other part should now be transferred. Furthermore, the transfer was according to the law, as when a woman has married one of another tribe, her brother being still alive, she then possessed no heritage, but received it after she was already married. Afterward her daughter, who has inherited her mother's estate, if she should marry even one belonging to her father's tribe, her son would inherit from her the estate which had belonged to another tribe.

Said R. Jiiman to R. Ashi: Even in accordance with Abayi, who holds that the husband does inherit, it is correct. If the verse is to be explained that the daughter has already inherited from her mother, who was of another tribe, the Scripture commands that she shall marry one of another tribe, to the end that the estate of one tribe shall not be transferred to another one, no matter whether through son or husband; but if the estate of her mother was not as yet transferred, why should she marry one of her father's tribe? The estate of her mother, which belongs to her, if her husband inherits from her, would be transferred to him; hence the estate of one tribe would be transferred to another. The answer was that she might marry a man whose father was of the tribe of her father, and his mother of the tribe of her mother, and in such a case the estate of her father remains within the tribe of her father, and the estate of her mother remains also with the man whose mother is of the same tribe. But if so, should not the verse read "to one who is of the family of her father's and mother's tribe"? If the verse should so read, one might say that even if her husband's father were of her mother's tribe, and his mother was of

her father's tribe, this would not be in accordance with the law, as the estate of her father would be transferred to her husband, who is of another tribe. There is a Boraitha that through the son the estate is transferred, namely: "The seventh verse reads 'the inheritance of the children of Israel shall not pass,' etc., which refers to the son. But perhaps it refers to the husband? This could not be, as verse 9 reads 'as no inheritance shall pass from one tribe to another,' which refers to the husband; hence verse 7 refers to the son." There is another Boraitha: "Verse 9 refers to the husband, but perhaps it refers to the son? This cannot be, as verse 7 has already referred to the son." We see, then, that both Boraithas hold that verse 9 refers to the husband. Where is this taken from? Simon in the name of Rabba b. R. Shila said: From the expression "*ish*" in verse 8, which means husband. But is not the same expression in verses 7 and 9? Said R. N'ahman b. Itz'hak: From the expression "*Idbako*" (adhere). But also this expression is in 7 and 9? Therefore said Rabba: From the end of verse 9, which reads "the tribes of Israel shall adhere"; and R. Ashi maintains, from the expression "from one tribe to another tribe," a son cannot be called of another tribe.

R. Abuhu in the name of R. Johanan, who spoke in the name of R. Janai, who heard it from Rabbi, quoting R. Joshua b. Kar'ha, said: Whence is it deduced that the husband does not inherit the estate to which his wife during her life is only heir apparent (e.g., his wife is an only daughter and she dies before her father, leaving a child, and thereafter her father dies, and her child but not her husband inherits)? From [I Chronicles, ii. 22]: "Segub begat Jair, who had three and twenty cities." Whence did Jair obtain these, which his father did not possess. Infer from this that Segub had married a wife who had twenty-three cities, and she died while her nearest heirs yet lived. Thereafter her nearest heirs also died, and Jair, her son, not Segub, her husband, was her heir. And the same is the case with Elazar, who married a woman who possessed a hill, and she died while her nearest heirs were still alive, and thereafter the nearest heirs also died and Pinchas inherits from her. How are we assured that Elazar's wife brought him the hill; perhaps Pinchas' wife possessed it? By the words "his son," in Joshua, xxiv. 33 (which are superfluous, as every one

knows that Pinchas was his son), meaning his son who was the proper heir."

"*And also the children of sisters.*" There is a Boraitha, "Sons but not daughters of sisters." How is this to be understood? Said R. Shesheth: It means that if there were sons and daughters, the sons would have the preference. As R. Samuel b. R. Itz'hak taught in the presence of R. Huna: It is written [Numb. xxvii. 11] "and he shall inherit it," which means that the second inheritance shall be equal to the first; as in the first the son has the preference, so it shall be with the second. Rabba b. Hanina taught in the presence of R. Na'hman: It is written [Deut. xxi. 16], "Then shall it be (in the day *) when he divideth an inheritance," which means in the daytime he may divide an inheritance but not in the night-time. Said Abayi to him: "Do you mean to say that only from him who dies in the daytime his children may inherit, but otherwise they cannot? Perhaps you mean to say that judges must not discuss a case of a will, at night, as we have learned in the following Boraitha: It is written [Numb. xxvii. 11] "a statute of justice," which means that the whole section which treats of inheritance is a statute of justice (which must be discussed in the daytime *only* and by no less than three judges). It is as R. Jehudah said elsewhere: If three persons visited a sick man and he made verbally his last will before them, they might, if they wished, write it down, and, further, they might execute it. If, however, there were only two, they might write down his will (as witnesses), but could not execute it. And to this R. Hisda added that so it is as to the daytime only, but if it were at night, even if there are three, they may write down the will, but not execute it; because they are considered witnesses only, and a witness cannot qualify as an executor. And Rabba answered him: Yea, this is what I meant to say.

It is taught: In the case of a gift with the ceremony of a sudarium by any person, whether healthy or sick, what time may be given him to retract? Rabba said: As long as they are sitting at that place where the ceremony was performed. And R. Joseph said: As long as they are discussing this matter. Said R. Joseph also: It seems to me that I am right in my decision, as R. Jehudah said that three who are visiting a sick person

* The Scripture reads *byoum*, "at the day," which Leeser has not translated.

may, if they like, write down his will and execute it; now, if you say he may retract as long as they are sitting there, though they do not discuss the matter, how can they execute the will but in the doubt that while they are doing so he may retract? Said R. Ashi: I have maintained before R. Kahana, even in accordance with R. Joseph's theory, that it is to be feared that even while they are discussing this matter he will retract; how then can they execute the will? Say, then, that they have ceased to discuss this matter and are discussing another one. The same can be said here, that they arose after hearing his will, and again took their seats. The Halakha, however, prevails in accordance with R. Joseph concerning the field mentioned above (p. 38), concerning this case, and concerning the case of "a half" (when the sick man says, "I bequeath my estate to you and your son," upon which, according to R. Joseph, the estate may be divided equally), which matter will be explained in Chapter IX.

"The woman to her children." To what purpose is this repeated? Does not the first part read "the son from his mother," etc.? It comes to teach us that the case of "the woman to her children" is equivalent to that of the woman to her husband. As the husband does not inherit in the place of his wife that which she would have inherited had she lived (as illustrated in the case of the woman who predeceases her father), so also the son inherits his mother's share, but his brothers (of the one father) do not inherit from him if he dies.* R. Johanan in the name of R. Jehudah b. R. Simeon said: Biblically a father inherits from his son, and a mother also inherits from her son, as it is written "tribes," from which is deduced the tribe of the mother as well as the tribe of the father; as concerning the tribe of the father, the father inherits from his son, the same is the case with the mother. R. Johanan, however, opposed R. Jehudah, from our Mishna, which states that a woman to her son, her husband, and the brothers of the mother may bequeath but not inherit. R. Jehudah answered: I am not aware who taught our Mishna; but let him say that our Mishna is in accordance with R. Zechariah, who does not care to explain the

* This is the explanation of Gershom. Rashbam, however, interprets it to mean that if the son dies while his mother is still alive, the legal heirs are not his brothers, but the relations of her father.

word "tribes" as a comparison. Our Mishna cannot be explained in accordance with R. Zechariah, as it states "and the children of sisters," and a Boraitha adds that the sons but not the daughters are meant, which was explained by R. Shesheth as meaning that the sons have the preference, and according to R. Zechariah, sons and daughters are equal heirs of their mother. But how is to be explained the teaching of the Tana of our Mishna? If he holds that the word "tribes" is to be taken as a comparison of one tribe to another, why should not a woman inherit from her son; and if he does not, whence does he derive his theory that a son has the preference in the estate of his mother? The comparison holds good, but this case is different; because it is written "every daughter that inheriteth," which means she may inherit but does not bequeath.

MISHNA II.: The order of inheritance is thus: If a man dies, leaving no son, the inheritance shall pass to his daughter (reads the passage), by which we see that the son has preference before the daughter, and the same is the case with all the descendants of the son, who also have preference before the daughter. The daughter has preference over the brothers of her father, and the same is the case with her descendants. The brothers of the deceased have preference over the father's brothers, and the same is the case with their descendants. This is the rule: After every one who has the preference concerning an inheritance, his descendants have, in order, a like preference. The father has the preference before all his descendants.

GEMARA: The rabbis taught: It is written "a son"—from which we know the son himself only, but whence do we deduce the son's son or his daughter, or even the grandson of his daughter? It is written *ien lou*; and we read the word *ien* as if it were written *ayin*, which means investigate, for perhaps his son left a son or a daughter, etc. It is also written "a daughter," by which we know indeed the daughter, but whence do we deduce her daughter, son, and daughter of her son? It is written *ien*, "*ayin*," as said above. And the same is the case with investigation in the opposite direction (*i.e.*, perhaps the father's father is yet alive), so that an investigation concerning inheritance may stretch back to Reuben, the son of Jacob. Why only back to Reuben, and not as far as Jacob? Said Abayi: We have a tradition that the whole tribe cannot be ex-

tinguished.* R. Huna in the name of Rabh said: If one decides that a daughter shall inherit, when there is a daughter of a son, even if he were a prince in Israel, he must not be listened to, as so acts the Sadducean, which we have learned in the following Boraitha: On the 24th day of the month Tebheth we returned to our old law, namely: the Sadducean used to say that a daughter should inherit an equal share with the daughter of the son, and Rabban Johanan b. Zakai said to them: "Ye fools, wherefrom have ye taken this?" And none was there to answer him, except an old man who talked (childishly) against him thus: Is this not an *a fortiori* conclusion? The daughter of his son who comes upon the strength of her deceased father, the son of the bequeather inherits. So much the more the daughter who comes upon the strength of the bequeather himself should take a share in the inheritance. R. Johanan then read before him [Gen. xxxvi. 20], "These are the sons of Seir the Chorite, who inhabited the land, Lotan and Shobal and Zibon and Anah," and there is also written [ibid. 24]. "And these are the children of Zibon, both Ajah and Anah." How is it to be understood? Infer from this that Zibon had lain with his sister Ajah, and she bore Anah. [But perhaps there were two Anahs?] Said Rabba: I shall say a thing which would be fit for King Sabur to say [Samuel is meant, although, according to others, R. Papa said so when he meant Rabba]. It is written in the same verse cited "that Anah," which means one that is the same as the Anah of verse 20. Said the Sadducean to R. Johanan: Rabbi, with such an explanation do you think to override me? R. Johanan answered: And why not? Should not our Torah with its regulations ignore your gossip? Your *a fortiori* conclusion could be easily overthrown by the following theory: How can you compare one's daughter to the daughter of his son, when the latter has a right of inheritance even when the brothers of her father are still alive, while the former has no such right (for a daughter does not inherit when she has brothers)? And with this he conquered the Sadducean, and this day was established for a festival.

It is written [Judges, xxi. 17]: "And they said their inheritance must be secured for Benjamin, that not a tribe may

* *I.e.*, it cannot happen that all the descendants of one of the twelve tribes of the sons of Jacob should die. The basis of this is Malachi, iii. 6.

be blotted out from Israel." Said R. Itz'hak of the school of R. Ami: Infer from this that at that time a stipulation was made that as long as the tribe of Benjamin should continue, the daughter of a son should not inherit her share with existing brothers, in order that, through her marriage to a man of another tribe, she might not divert the estate from the tribe of her father. R. Johanan in the name of R. Simeon b. Johai said: He who leaves no son to succeed him is unloved of heaven, as it is written [Psalms, lv. 20]: "Those who leave * no changes fear no God." R. Johanan and R. Joshua b. Levi differ. According to one a son is meant, and according to the other a disciple. From the fact that R. Joshua b. Levi did not go to a funeral unless the deceased was childless, because it is written [Jeremiah, xxii. 10], "Weep sorely for him that goeth away," which R. Jehudah in the name of Rabh interpreted as meaning "he who passeth away without a son," it must be concluded that R. Joshua b. Levi was the one who said "a disciple." R. Pinchas b. Hama lectured: It is written [I Kings, xi. 21]: "And when Hadad heard in Egypt that David slept with his father and that Joab the captain of the army was dead." Why concerning David is it written "slept," and concerning Joab "dead"? Because David left a son, and Joab did not. But is it not written [Ezra, viii. 9]: "From the children of Joab, Obhadia b. Jechiel"? Therefore, as "slept" is the word employed for David, we must conclude that he left a son like himself, which was not the case with Joab. Wherefore in his case the term "dead" is used. And he also said: Poverty in the house of one is harder than fifty plagues, as it is written [Job, xix. 21]: "Spare me, spare me, O ye my friends! for the hand of God hath touched me." And he was answered [ibid. xxxvi. 21]: "Thou hast chosen this instead of poverty." † The same said again: If one has a sick person in his house, he shall go to a wise man and request him to pray for the sick one, as it is written [Prov. xvi. 14]: "The fury of a king is like the messengers of death; but a wise man will appease it."

"*This is the rule.*" Rami b. Hama questioned: If the deceased left a grandfather and a brother, as did Abraham and Jacob to the estate of Esau, who had the preference? Said

* Leeser translates "dread," which does not correspond.

† Leeser does not correspond at all.

Rabha: Come and hear the decision of our Mishna, which states that the father has the preference before all his descendants. Rami, however, maintains that the father has the preference over his descendants, but not over the descendants of his son. (Says the Gemara:) It seems that Rami is right. As the Mishna states, this is the rule: He who has preference concerning inheritance, his descendants have the same. Now, if when Esau died Isaac and Abraham were both alive, Isaac would have had the preference to the estate; the same would have been the case if Isaac had been dead. Then Jacob would have had the preference over Abraham, because he was a descendant of Isaac. Infer from this that so it is.

MISHNA III.: The daughters of Z'lophchod have inherited three shares from the inheritance of their father, his share as one of the ascendants from Egypt, his share in the division of Chipher his father (who was also among the ascendants from Egypt), and because he was a first-born he inherited a double share.

GEMARA: Our Mishna is in accordance with him who said that the land was divided among the ascendants from Egypt, and not to their children (*i.e.*, the person who entered the land of Israel, if he was among the ascendants of Egypt, took his share, and divided it among his children; and if an ascendant had died and his children entered the land, the share of their deceased father was given to them and they divided it among themselves), as we have learned in the following Boraitha: R. Iashiah said: The land was divided to the ascendants of Egypt, as it is written [Numb. xxvi. 55], "According to the names of the tribes of their fathers." But how does this correspond with [ibid. 53], "unto these shall the land be divided," which means to those who entered the land? Those are meant who are of sufficient age (twenty years), excluding the minors. R. Jonathan, however, said that to those who *entered* the land it was apportioned, not to their fathers, as it is written in the verse just cited. But how would this correspond with verse 55? This inheritance is different from all other inheritances, as in all others the living inherit from the dead, and here the dead inherit from the living; and to illustrate this, said Rabbi, I shall give you a parable. It is similar to the case of two priests in one city, one of whom has one son, while the other has two;

and when they go to the barn to take the Taruma, he who has only one son takes one share (*e.g.*, a saah), and he who has two takes two shares, and they turn them over to their fathers, who divide the shares equally among themselves, according to the number of souls. Such, also, was the apportionment of the land of Israel. Each received land according to the number of his souls, and after that they divided it among themselves according to the number of the heads of the family who were of the ascendants from Egypt; hence the dead ascendants inherit from the living. R. Simeon b. Elazar, however, said that the land was apportioned to both, in the manner stated in both of the above-cited verses. How so? He who was of the ascendants from Egypt took his share among them, and he who was of those who entered the land of Israel took his share among them, and he who was of both the ascendants and the entering took his shares with both of them. The shares of the spies Joshua and Caleb took and divided equally. Those who murmured and the congregation of Kora'h had no share in the land at all, and their children took their shares, as the direct heirs of their grandfathers on both the paternal and maternal sides. But whence do you know that in Num. xxvi. the ascendants from Egypt are meant? Perhaps it means the tribes themselves who entered the land? It is written [Ex. vi. 8]: "I will give it you for an heritage." Inheritance implies from parents to children, and this was said to the ascendants from Egypt.

Said R. Papa to Abayi: It is understood by him who says that the land was divided among the ascendants from Egypt [Num. xxvi. 54], "To the large tribe shalt thou give the more inheritance, and to the small shalt thou give the less inheritance," etc.; but to him who says "to those who entered the land," what does this verse mean? This objection remains.

R. Papa said again to the same: To him who said that the land was divided to the ascendants it is to be understood why the daughters of Z'lophchod sued for their father's share; but according to him who says "to those who entered the land," for what did they sue? There was no share for them, as Z'lophchod was dead and he had no share. They sued that the share of their deceased father might be given to their grandfather Chipher, and that they might take their shares in succession. (He said again:) It is comprehended by him who says "the

ascendants," etc., why the children of Joseph cried [Joshua, xvii. 14], "Why hast thou given me but one lot and one portion of inheritance?" But to him who says "to those who entered," why did they cry—each of them took his share? They cried concerning the minor children, which were numerous. Said Abayi: From all this is to be inferred that all who entered the land of Israel had a share; and if not, they protested. And lest one say that he whose protest had effect is written, and he whose protest had no effect is not written, then the protest of the children of Joseph was of no effect and nevertheless written down. This is beside the purpose of the verse, which is aimed to convey good advice to mankind; in effect, that one shall take care not to be afflicted by a covetous eye. And this is what Joshua said to the children of Joseph [ibid. 15], "If thou art a numerous people, then get thee up to the wood country," which means, "Go and hide thyself in the forest, that no covetous eye may afflict thee"; and they answered: We are the descendants of Joseph, whom a covetous eye cannot afflict. As it is written, etc. [see Middle Gate, p. 213].

The text says that the shares of the spies Joshua and Caleb inherited. Whence is this deduced? Said Ula: It is written [Numbers, xiv. 38]: "But Joshua the son of Nun and Caleb . . . remained alive." What is meant by "remained alive"? Shall we assume it is meant literally? To this there is another verse [ibid. xxvi. 65], "save Caleb and Joshua." We must then conclude that the first-cited verse means that they lived with their shares. Farther on they murmured, and the congregation of Kora'h had no share? But did not a Boraitha state that the shares of the spies, the murmurers, and the congregation of Kora'h, Joshua and Caleb inherited? This presents no difficulty. The Tana of our Boraitha compares the murmuring to the spies, while the other master does not, as we have learned in the following Boraitha: It is written [ibid. xxvii. 3], "Our father died in the wilderness." Z'lophchod is meant. "But he was not of the company" means "the spies"; "of those who gathered themselves" means "the murmurers in the company of Kora'h," literally. Hence one compares the murmurers to the spies, and one does not.

Said R. Papa to Abayi: And to him who does not so compare them, did then Joshua and Caleb inherit almost the whole

land of Israel (as the murmuring ones were very numerous)? And he answered: He means to say the murmurers who were among the company of Kora'h.*

"*As a first-born he inherited a double share.*" But why? At the time when Z'lophchod died the land was not as yet prepared for apportionment (as it was still in the possession of the nations), and it is said above that a first-born does not inherit a double share in that which is not yet in existence. Said R. Jehudah in the name of Samuel: The Mishna was meant to say "in their personal property."

Rabba opposes R. Jehudah's statement that the daughters of Z'lophchod took four shares, as it is written [Joshua, xvii. 5], "Ten portions of Menasseh." Therefore said Rabba: The land of Israel was considered prepared for division, since the Lord himself promised to give it as an inheritance to Israel. An objection was raised from the following: R. Hidqua said: "I had a colleague, Simeon the Shqmuni, who was one of the disciples of R. Aqiba. He used to say thus: Moses our master was aware that the daughters of Z'lophchod were heiresses; but he did not know whether they were entitled to the share of the first-born, and the passage about the inheritance would be written through Moses, even if the case of the daughters of Z'lophchod had not happened, but they were favored by heaven that this passage should be written through them. The same was the case with the wood-gatherer. Moses our master was aware that for the crime he committed there is a capital punishment, but he did not know by which of them he should be executed; and the passage would have been written through Moses, even if the case of the wood-gatherer had not happened. But as he was guilty, it was written through him; and this is what is meant by the reward of virtue, while the chastisement for sin is dealt out through a sinner. (See Sabbath, 1st ed., p. 55.) Now, if it be borne in mind that the land of Israel was prepared for division, why was Moses doubtful? He was doubtful in the following: It is written [Ex. vi. 8]: "And I will give it you for an heritage." Does this mean "an heritage from the parents"? Hence a first-born has to take a double share; or does it mean, "I give it to you—you shall bequeath it to your children" (as the decree was, that the persons ascending from

* The text continues a discussion about the same matter, explaining the supposed contradiction of the passages, which is of no importance, and is therefore omitted.

Egypt were to die in the desert), and the decision was both that the land was a heritage from the parents and yet not for themselves, but to bequeath to their children? And this is what is written [ibid. xv. 17]: "Bring them, and plant them." It was not said "*us*," and this was a prophecy, wherein they themselves did not know they were prophesying.

It is written [Num. xxviii. 2]: "And they stood before Moses and before Elazar the priest, and before the princes and all the congregation." Is it possible that when Moses did not answer them they were going to complain before the princes? Therefore this verse must be reversed. So said R. Jashia. Abba Hanan in the name of R. Elazar said: All of them were in the college when they came to make their complaint. And the point of their differing is: Whether in presence of the master the disciple must be honored or not. According to one, he may; and therefore he maintains that before they came before Moses they asked the princes, and he who said that this verse must be reversed, maintains that all were of the opinion that in presence of the master the disciple must not be honored with any question. There is a Boraitha that the Halakha prevails that he may be honored. But another Boraitha states: He may not. And it presents no difficulty. In case the master himself honors the disciple, it may be done; and in case he does not, it may not.

There is a Boraitha that the daughters of Z'lophchod were wise, understood lecturing, and were also upright. They were wise, as their protest was to the point. As R. Samuel b. R. Itz'hak said: At the time when Moses our master was sitting and lecturing about the law of Yeboom [Deut. xxv. 57], "If brothers dwell together," they said to him: If we are considered as a son, then let us inherit; and if we are not considered at all, then let our uncle marry our mother. And therefore [Num. xxvii. 5]: "And Moses brought the cause before the Lord." They understood lecturing, as they said: If he should have a son, we would not say a word. But there is a Boraitha that they said: If there should be a daughter. How is this to be understood? Said R. Jeremiah: Ignore the Boraitha. Abayi, however, said: "It is not necessary to ignore it. As they said: If there should be a daughter from a son, we would not say a word. They were upright, in that they each only married him

who was respectable and fit for them. R. Eliezer b. Jacob taught: Even the youngest of them was not less than forty years of age when she married. Is that so? Did not R. Hisda say: If a woman marries at less than twenty years of age she bears children until sixty. After twenty she bears until forty; but when she marries after forty, she does not then bear children? Because they were upright, a miracle happened to them, as to Jochebed, the mother of Moses. As it is written [Ex. ii. 1]: "And there went a man of the house of Levi, and took a daughter of Levi." Is it possible that a woman of one hundred and thirty years of age should be named daughter? As R. Hama b. Hanina said: This meant Jochebed, whose mother was pregnant while on the road to Egypt, and she was born before the walls (when they arrived in Egypt). As it is written [Num. xxvi. 59]: "Jochebed the daughter of Levi, whom (her mother) bore to Levi in Egypt." And why is she named daughter? Said R. Jehudah b. Zebidah: Infer from this that signs of youth returned to her. The wrinkles disappeared, the complexion became improved, and her beauty returned to her. But why is it written "he took"? It ought to read, "he remarried." Said R. Jehudah b. Zebidah: Learn from this that he did with her as if he were marrying for the first time: he placed her under a canopy. Aaron and Miriam sang before her and the angels said: "The mother of the children shall rejoice."

Farther on the Scripture mentions the daughters of Z'lophchod according to their age, and here according to their wisdom.* And this is a support to R. Ami, who said: In the college the most scholarly has preference to age; at a banquet, however, age is considered. Said R. Ashi: Even in college, only *he* who excels in wisdom; and also concerning a banquet, only *he* who is of advanced age is considered (but if one has little wisdom and little more age than the others it does not matter).

In the school of R. Ishmael it was taught: All the daughters of Z'lophchod were equal in wisdom (and that they are mentioned in the Scripture differently means nothing).

R. Jehudah in the name of Samuel said: It was permitted to them to marry any one of any tribe, as it is written [Num. xxxvi. 6]: "To those who are pleasing in their eyes may they

* [Num. xxvii. 1:] Mahlah, Noah, Chaglah, Milcah, and Thirsah, while on the occasion of their marriage, Mahlah, Thirsah, Chaglah, Milcah, and Noah are written.

become wives." But what is to be said of that which is written farther on: "Only to the family of their tribe," etc.? This is to be considered as a good advice—that they should marry respectable men only who were fit for them, and not as a positive commandment.

Rabba objected: It is written [Lev. xxii. 3]: "Say unto them . . . in your generations." (How is this to be understood?) Say unto them, who were at the mountain of Sinai; and to "your generations" means that the same law shall apply to "all their generations." But why should it be mentioned, "the parents and their children"? Because there were some commandments for the parents only, and some applying to children only. And what are the commandments to parents only? The law [Num. xxxvi. 8]: "And every daughter that inheriteth any possession," etc. And what are the commandments to the children? Many, as *e.g.*, heave-offering, tithe, and all others imposed upon the land of Israel.

We see, then, that the cited verse 8 prohibited marriage to other tribes at that time only? Rabba himself answered his objection: The daughters of Z'lophchod were not included in the commandments to the parents.

The masters say: "The commandments belong to the fathers, but not to the sons. But whence is this deduced? From [ibid., verse 6]: 'This is the thing,' which means, 'This thing shall be customary only in their generation.' So said Rabba." Said Rabba the minor (Zuti) to R. Ashi: According to this, should Lev. xvii. 3, in which the same expression is used, also be "for their generation" only? And he answered: There it is different, as verse 7 reads plainly: "A statute forever shall this be unto them throughout their generations."

There is a Mishna in Tract Taanith, p. 80: "Never were any more joyous festivals in Israel than the 15th of Ahab and the Day of Atonement," etc. Why is the 15th of Ahab a festival? Said R. Jehudah in the name of Samuel: In their days the tribes were allowed to intermarry.

(Here is repeated from Taanith, pp. 91, 92, q. v.)

The rabbis taught: There were seven men who encompassed the whole world since its creation until now: namely, Mesushelach has seen Adam the first, Shem has seen Mesushelach, Jacob has seen Shem, Amram has seen Jacob, Achiah the Shiloni has

seen Amram; Elijah the prophet has seen Achiah, and the latter (Elijah) is still alive. But how can you say Achiah had seen Amram? Is it not written [Num. xxvi. 65]: "There was not left of them one man save Caleb and Joshua"? Said R. Hamnuna: The tribe of Levi was excluded from the decree that all should die in the desert. As it is written [ibid., xiv. 29]: "In this wilderness shall your carcasses fall, and all that were numbered of you, according to your whole number from twenty years," etc., excluding the tribe of Levi, of which the number was from thirty years. But did not the same happen to other tribes? Is there not a Boraitha that Jair and Machir, the sons of Manasseh were born in the time of Jacob, and did not die until after the entering into the land of Israel? Said R. A'hab. Jacob: In that decree, they who were less than twenty, and more than sixty years old, were not included.*

The schoolmen propounded a question: How was the land of Israel divided? Was it divided into twelve parts for twelve tribes (and for each tribe as a whole), or was it divided severally? Come and hear! [Num. xxvi. 56]: "According as they are many or few" (hence it was divided among the tribes and not severally). And there is also a Boraitha: "In the future the land of Israel will be divided among thirteen tribes," while in the past it was divided only among twelve; and it was also divided by money (the explanation will be given farther on); and it was also divided only "by lot" and by the Urim v'tumim, as it is written [ibid., 56]: "by the decision of the lot." How so? Elazar was attired in the Urim v'tumim. Joshua and all Israel were standing by, and an urn containing the names of the tribes, and another, and the names of the boundaries of the land, were placed there; and Elazar, influenced by the Divine Spirit, would say thus: "Zebulon will now come out from the urn, and with him the boundary of Akhu." And then one of the tribe of Zebulon would put his hand into the urn and draw the name of his tribe, and then put his hand into another urn and draw Akhu. And then again Elazar, influenced by the Divine Spirit, would say: Now Naphtali will come, and with him the boundary Ginousar. And so it was with each tribe. However, the division in the world to come will not be equal to the division of

* In the text it is deduced by analogies of expression, and omitted as of no importance.

land in this world, as in this world, usually, the lot of one is a field of grain, and of another, one of fruits; but in the world to come, every one will have a share in the mountains, valleys, and plains. As it is written [Ezek. xlviii. 31]: "The gates of Reuben, one," etc., which means that every one will have equal land and shares, and the Holy One, blessed be He, Himself will assign the shares. As it is written [ibid., 29]: "And these are their allotted division, said the Lord Eternal." We see, then, that the Boraitha states that in the past the division was twelve parts to the twelve tribes. Hence it was divided among the tribes and not severally. Infer from this that so it is.

The master said: The land of Israel will be divided among thirteen tribes. Who will be the thirteenth? Said R. Hisda: The prince of Israel will be the thirteenth. As it is written [ibid., 19]: "And the laborer of the city (*i.e.*, the prince who bears the yoke of the whole city), whom men of all the tribes will serve." * Said R. Papa to Abayi: But why not say that to the prince would be given a city or the like, but not a thirteenth share of all the land? † And he answered: This could not be borne in mind. As it is written [ibid., 21]: "And the residue shall belong to the prince, on the one side and on the other of the holy oblation, and of the possession of the city," etc. (Hence we see that a share was given to him by all tribes.)

The text says farther on: "It was divided by money." What does it mean? Shall we assume that he who had good land would pay to him who had inferior? Does the Boraitha treat of fools, who take money instead of good land? Therefore it must be said that money was paid by those who had shares near to Jerusalem to those who took their shares far from Jerusalem (nearness to Jerusalem being preferable, as it was nearer to the Temple and farther from the land of the natives, therefore in less danger than if near to them). And on this point the following Tanaim differ. R. Eliezer said that they were rewarded with money, and R. Joshua maintains that this reward was in land, as, *e.g.*, compared with where a saah can be sown nearer to Jerusalem they took five saahs.

* Leeser's translation does not correspond.

† The text has "Rungur." The Aruch explains this as two words of the Persian language: "Run" means "day," and "gur" means "hirer"; and accordingly Rashbam construes "day-hirer," which does not fit very well. We have therefore translated in accordance with R. Gershom.

It says farther on: "It was divided only by lots." There is a Boraitha, "except Joshua and Caleb." What does it mean? That they did not take any land at all? Is it possible? It is said above that they took the shares of the spies, etc. Hence they took what did not belong to them. So much the more what did belong to them. It means they did not take by lots, but by the decree of heaven. As it is written [Joshua, xix. 50]: "By the order of the Lord did they give him the city which he had asked—Timnath Serah on the mountain of Ephraim." And Caleb—as it is written [Judges, i. 20]: "And they gave Hebron unto Caleb as Moses had spoken." But was not Hebron one of the cities of refuge? It means the suburbs and villages around the city.

MISHNA IV.: A son and daughter are equal concerning inheritance. However, a son takes two shares of the estate of his father, but not of the estate of his mother; and the daughters are fed from the estate of their father, but not from that of their mother.

GEMARA: What does the Mishna mean by its statement that they are equal concerning inheritance? Shall we say that they inherit together? Is it not said above that the son and all his descendants have preference over the daughter? Said R. Na'hman b. Itz'hak: It means to say that they are equal concerning an estate which is not yet fit for division. But have we not learned also this: That the daughters of Z'lophchod took three shares from the estate of their father, and when Z'lophchod died the land was not yet fit for division? And, secondly, what does the expression "however" mean? Said R. Papa: It means to say that they are equal in taking the share of a first-born. It means that when a first-born died childless they took his share. But this also was already stated concerning Z'lophchod; because he was a first-born, a double share belonged to him, which his daughters inherited, and in reference to him also we do not know what the expression "however" means. Therefore said R. Ashi: It means to say that the son and daughter are equal; in case one has bequeathed to him or to her all his estate, his will must be executed. Is this in accordance with R. Johanan b. Beroka? This is said farther on by him: If one has bequeathed to them who are legal heirs, his words must be listened to? And even if one should say that our Mishna is in

accordance with R. Johanan, and the succeeding Mishna is in accordance with them who differ with R. Johanan, is it not a rule that in such a case the Halakha does not prevail with the anonymous Mishna? And still, what means the word "however"? Therefore said Mar b. R. Ashi: It means that the son and daughter are equal in all cases concerning inheritance, be it the estate of father or mother. However, there is a difference between them, that the son takes two shares from the estate of the father, but does not from the estate of his mother."

The rabbis taught: It is written [Deut. xxi. 17]: "To give him a double portion," which means a double portion as against one brother. But perhaps it means a double portion from all the estate, and should be discussed thus: His share, when he has five brothers, should be equal to that when he has only one. As in the latter case he takes two shares from the whole estate, so it should be with the former. On the other hand, it can be discussed thus: His portion, when he has five brothers, should be equal to that when he has only one brother, in this respect, that as in the latter case he takes twice as much as his brother, so it should be in the former case, that he takes twice as much as all of them. Therefore it is written [ibid., 16] "Among his sons, what he hath." We see, then, that the Torah treats of the inheritance as among all one's sons; hence we have to take the second supposition, and not the first. It is also written [I Chron. v. 1]: "And the sons of Reuben, the first-born of Israel, for he was the first-born; but when he defiled his father's bed, his birthright was given unto the sons of Joseph the son of Israel, so that the genealogy is not to be reckoned after the first birth." And it is also written [ibid., 11]: "For Judah became the mightiest of his brothers, and the prince descended from him; while the first birthright belonged to Joseph."

Now the case of the first-born is mentioned concerning Joseph, and also concerning generations; as in the case of Joseph, it was only twice as much as each of the brothers. As it is written [Gen. xlviii. 22]: "Moreover, I have given unto thee one portion above thy brothers." So also is it with the case mentioned as to generations, that the first-born should have only one portion more than his brothers. It is written farther on: "Which I took out of the hand of the Emorite with my sword and with my bow." Did he indeed take it with sword

and bow? Is it not written [Ps. xlv. 7]: "For not in my bow will I trust, and my sword shall not help me." ? Therefore we must explain that "with his sword" he means prayer, and "with my bow" supplication.

To what purpose was it necessary to cite all the verses? Lest one say that the cited verse in the above Boraitha is needed for R. Johanan's above theory; therefore the other cited verse, etc.

Said R. Papa to Abayi: How is it inferred from the last cited verse that Jacob gave Joseph twice as much as to all his brothers? Perhaps he presented to him only a like estate? And he answered: To thy question the Scripture says [Gen. xlviii. 5]: "Ephraim and Manasseh shall be unto me as Reuben and Simeon. (Hence we see that he had twice as much as his brothers, who each were counted as one tribe, and he for two.)

R. Helbo questioned R. Samuel b. Na'hmeni: What is the reason that Jacob took away the privilege of the first-born from Reuben and gave it to Joseph? You ask for the reason. Does not the Scripture state the reason: "When he defiled his father's bed"? I mean to say: Why did he give it to Joseph? And he rejoined: I will tell you a parable to which this case is similar: There was one who had raised an orphan in his house. At a later period the orphan became rich, and thought, I will recompense my benefactor (because Joseph supported his father in the years of famine, therefore he recompensed him). Said R. Helbo to him: And how would it be if Reuben had not sinned: then Jacob would have given nothing to Joseph? Thereto I shall tell you what R. Jonathan your master said concerning this: The first-born had to come from Rachel. As it is written [ibid., 37]: "These are the generations of Jacob. Joseph." But Leah was preferred by virtue of her prayers. Because of the very chastity of Rachel, the Holy One, blessed be He, returned it to her. And what were Rachel's virtues? As it is written [ibid., 12]: "And Jacob told Rachel that he was her father's brother, and that he was Rebekah's son." The brother of her father? Was he not the son of her father's sister? It was thus: He asked her whether she would marry him, and she said, Yea, but my father is very shrewd, and you cannot persuade him. And to the question: What does it mean? she answered: I have a sister who is older than myself, and my father will not give me

to you while she is not married. Then he said: I am his brother in shrewdness. She then asked him: Is it, then, allowed to the upright to be shrewd? And he answered: Yea; as it is written [II Sam. xxii. 27]: "With the pure thou wilt show thyself pure, and with the perverse thou wilt wage a contest." And then he furnished her with some signs, that when she should be brought to him he would ask her for these signs, that he might be sure that she was not exchanged for Leah. Thereafter, when Leah was brought to him instead of Rachel, the latter thought, Now Leah will be ashamed, and confided to her the signs. And this is what is written [Gen. xxix. 25]: "And it came to pass that in the morning, behold, it was Leah," from which it is to be inferred that until the morning he did not know that she was Leah, because of the signs which Leah received from Rachel.

Abba Halipha Qruyah questioned R. Hyya b. Abba: Of Jacob's children who came to Egypt in sum you find seventy; however, if you will number them in detail, you will find only sixty-nine. And he answered: There was a twin with Dinah. As it is written [ibid., xli. 15]: "With Dinah his daughter." According to your theory there was a twin with Benjamin also, as the same expression was used? He said then: A valuable pearl was in my hand, and you were about to abstract it. So said R. Hama b. Haninah: This was Jochebed, whose mother was pregnant, and bore her before the walls (above, p. 263).

R. Helbo questioned again R. Samuel b. Na'hmeni: It is written [Gen. xxx. 25]: "And it came to pass, when Rachel had borne Joseph," etc. Why when Joseph was born? And he answered: Because Jacob our father saw that the descendants of Esau would become submissive to the descendants of Joseph only. As it is written [Obadiah, i. 18]: "And the house of Jacob shall be a fire, and the house of Joseph a flame, and the house of Esau a stubble." Helbo objected to him from [I Sam. xxx. 17]: "And David smote them from the twilight even unto the evening of next day," etc. Hence we see that they were submissive also to David, who was a descendant of Judah, and not of Joseph. Answered Samuel: The one who made you read the prophets did not do so with the Hagiographa, in which it is written [I Chron. xii. 21] * "And as he was going over to

* In the Hebrew Bible it is verse 21; in Leeser's, verse 20, because he put together verses 5 and 6.

Ziklag . . . captains of the thousands that belonged to Manasseh." Hence they were submissive to the descendants of Joseph. R. Joseph objected from [ibid., iv. 42 and 43]: "And some of them, even of the sons of Simeon, five hundred men, went to mount Seir, having at their head Pelatyah and Nearyah and Rephayah, and Uzziel, the sons of Yishi. And they smote the rest of the Amalekites that were escaped, and dwelt there unto this day." Said Rabba b. Shila: Yishi was a descendant of Manasseh. As it is written [ibid., v. 24]: And these were the heads of their family divisions: namely, Ephraim and Yishi."

The rabbis taught: "The first-born takes a double share in the shoulders, in two cheeks and the maw, in the consecrated things, and also in the improvement of the estate which was improved after the father's death. How so? If the father left them a cow which was hired to others, or she was pasturing on the meadow and she brought forth offspring, the first-born takes a double share. If, however, the heirs build houses or plant orchards, the first-born does not take a double share."

Let us see how was the case with the shoulders, etc. If already in the father's hand, it is self-evident; and if not when still alive, then it was not yet in existence; and there is a rule that a first-born does not take a double share in that which is fit, but not yet in existence? The Boraitha treats of a case where the priest has acquaintance among people who usually give such a gift to him only, and the cattle were slaughtered while the father was still alive. And the Tana of the Boraitha holds that the above gifts are considered separated immediately after slaughtering, although they were not as yet taken off. It states farther on: If the father left them a cow, etc. Let us see: It teaches that the first-born takes a double share, even when it was under the control of others. Is it not self-evident that so much the more does the rule apply when it was pasturing on the meadow under proper control? It comes to teach us that the case "hired out to others" should be equal to pasturing in the meadow in this respect, that the heirs not needing to feed it, the improvement came of itself; but not when the heirs fed it, as then the improvement would be considered as made by the heirs, of which no double share is given. And this Boraitha is in accordance with Rabbi of the following Boraitha: A first-born.

does not take a double share in the improvement of an estate which was improved after the father's death. Rabbi, however, said: I say that he takes, provided the improvements came by themselves, but not if improved by the heirs.

When they inherited a promissory note, the first-born took a double share; and if there was left a promissory note from the father, the first-born had to pay a double share. If, however, he says, "I will not pay double and also not take a double share," he may do so. What is the reason of the rabbis? It is written [Deut. xxi. 17]: "To give him a double portion." We see that the Scripture considers this a gift; and a gift is not considered unless it comes to one's hand. The reason of Rabbi is, because it is written "a double portion." We see, then, that the Scripture equals this to an ordinary share; and as concerning an ordinary share it is considered belonging to the heir even before it reaches his hand, the same is the case with the double share.

Said R. Papa: In case the father left a small tree, and pending the time of inheritance it became large; or unmanured earth, which has improved by itself, all agree that a double share is given. In what they differ is, in a case where the father dies when the seeds are as yet growing, and at the time of dividing the inheritance had been made into sheaves; or date-trees were as yet blooming, and at the time of dividing bore dates. According to one, it is to be considered an improvement by itself; and according to the other, it is considered changed to another article, of which a double share is not to be given.

Rabba b. Hana in the name of R. Hyya said: If one has acted in accordance with the decision of Rabbi, the act is valid; and the same is when he has acted in accordance with the decision of the sages. And the reason is because R. Hyya was doubtful whether the Halakha prevails with Rabbi when he differs with an individual, or it is so even when he differs with a majority (as in this case a majority differs with him). Hence it cannot be considered a wrong act if one has acted according to one of the decisions. Said R. Na'hman in the name of Rabb: It is prohibited to act in accordance with Rabbi [as he holds that the Halakha prevails with Rabbi against an individual only]. R. Na'hman, however, himself maintains that it is permitted to act in accordance with Rabbi [as he holds that the Halakha pre-

vails with Rabbi even against a majority]. Said Rabha: It is prohibited to act in accordance with Rabbi to start with; however, if one did so, his act is valid [and his reason is, that in such a case where Rabbi differs with the majority, the college has to teach in accordance with the majority to start with, but it cannot compel the one who acted in accordance with Rabbi to ignore his act].

It was taught: R. Na'hman taught in the Mechilta and Siphre, it is written [Deut. xxi. 17]: "Of all that is found in his possession," means to exclude the improvement which was made by the heirs after the father's death, but not that which improved by itself. And this is in accordance with Rabbi. Rami b. Hama, however, taught in the above-mentioned books that it excludes that which improved by itself, and so much the more that which was improved by the heirs. And this is in accordance with the sages.

R. Jehudah said in the name of Samuel: A first-born does not take a double share in a loan. According to whom is it? It cannot be in accordance with the rabbis, as they exclude him even from an improvement which is under the heirs' control; so much less of a thing which is not under their control. It must then be said that this is in accordance with Rabbi. But then the Boraitha which states: "If they inherit a promissory note, the first-born takes a double share in the loan, as well as in the interest," will not be in accordance with both the rabbis and Rabbi. It may be that Samuel's statement is in accordance with the sages; and nevertheless he has to teach this, lest one say, because he holds the promissory note in his hand, it is to be considered as already collected, he comes to teach us that it is not so.

"A message was sent from Palestine, that he takes a double share in the loan, but not in the interest." According to whom is this? It cannot be in accordance with the rabbis, for the reason stated above; and also not in accordance with Rabbi, who states in a Boraitha that he takes a double share in the loan, as well as in the interest? It is in accordance with the sages; but the Palestinians hold that a note is considered as already collected.

Said R. A'ha b. Rabh to Rabhina: Amimar happened to be in our city, and lectured: "A first-born takes a double share

in a loan, but not in the interest thereof. And Rabbina answered: The Nahardeans are in accordance with their theory elsewhere (both Amimar and R. Na'hman were from Nahardea), as in such a case Rabba said that if the heirs recovered real estate on a loan of their father a double share is given, but not if they collected money. R. Na'hman, however, holds the reverse: A double share is given if money is collected, but not on real estate. Said Abayi to Rabba: There is a difficulty concerning your decision, and also concerning the decision of R. Na'hman. Concerning your decision, the reason of which is to be supposed that their father left to them not *this* money now collected, as he left a promissory note only; but why should it not be the same with the estate? Did, then, their father leave real estate to them? Moreover, you, master, said that the reason given by the Palestinians concerning the case of a certain old woman (stated farther on) seems to you a right one, and this certainly contradicts your present decision. And concerning R. Na'hman's there is also the same difficulty, as his reason must be that there is no double share from the collected estate, because they did not inherit it from their father. Why should it not be the same with money, as the collected money was not of the inheritance of their father. Moreover, did not R. Na'hman say in the name of Rabba b. Abuhu, that if orphans have recovered real estate for a debt to their father, and there was a creditor to whom their father was indebted, the creditor might take away the estate which they recovered? (Hence he (R. Na'hman) considers the recovered estate as if left by the deceased—why, then, should there not be given a double share?) Answered Rabba: There is no difficulty concerning my statement, nor concerning R. Na'hman's, as we both have pointed out only the reason of the Palestinians by which, according to my theory, a double share is given from real estate, but not for money; and to R. Na'hman's it is the reverse. But our own opinion is, that neither from real estate nor from money is a double share given.

What was the case of the old woman, mentioned above? There was one who wrote in his will: "My estate shall be given to my old grandmother, but after her death it shall belong to *my* heirs." The deceased had a married daughter, who died while her husband and the deceased grandmother were still

alive; and her husband, after the death of the old woman, demanded the estate of his father-in-law, which was in the hand of his grandmother. And R. Huna's decision was: His claim is right, as the will states, "After her, my heirs shall inherit it," which is to be explained, "My heirs, and the heirs of my heirs." R. Anan's decision, however, was: His claim is not to be considered, as the will states, "to *my* heirs," and he was not his heir, but the heir of his daughter. And the Palestinians sent a message: The Halakha prevails with R. Anan, but not for his reason, as, according to his reason, even should his daughter leave a son, he would also not inherit; and this is not so, as the reason why the husband could not inherit is, that the law that the husband inherits from his wife holds good only when she left real estate, but not such an estate as was not as yet in her hands, but to come, which is not the case with a son, who inherits this also.

But shall we assume that R. Huna holds that one may inherit even an estate which was not as yet in the hands of his wife? Said R. Elazar: This case was discussed by great men, and the final decision, with its reason, will be rendered by a small man like my humble self. Every one who says "after thee" is to be considered as if he were to say "from to-day" (*i.e.*, the above will states "after her," which means the estate shall belong to "my heirs from to-day, but they are not to use the products so long as the old woman is alive"). Rabba, however, said: It seems to me that the reason given by the Palestinians is good as, according to that will, if the old woman should sell the estate, the sale would be valid.

R. Papa said: The Halakha prevails that a husband does not inherit a property which was to come in the future to his wife, and the same is the case with a first-born. He—the first-born—also does not take a double share in a recovered loan, in real estate or money; and, furthermore, if the first-born owes money to his father, the share which belongs to a first-born is to be divided, half to himself and the other half to his brothers. (The reason is, according to Rashbam, because this share is considered doubtful money, as it is not certain that the first-born is to be considered an occupant with respect to it, the supposition being that he has mortgaged all his estate for this debt to his father for the purpose that, in case of his father's death, he should take a double share. And there is a rule that doubtful

money is to be divided. And according to Gershom, the reason is because this loan is not to be compared with the loan of a stranger, as he who is an heir is also an occupant with respect to this debt, and this gives him title to a half of the share in question.)

Said R. Huna in the name of R. Assi: If the first-born protests when his brothers come to improve the estate left by their father, saying: "They shall delay improvement until after division," this protest must be considered in case they have not listened to him, and he takes a double share in the improvement also. Said Rabba: The decision given by R. Assi seems to me right in case, *e.g.*, they inherited vines, and the improvement was by gathering the grapes from the vines; or they inherited olives, and took them off from the trees: but if they made wine or oil thereof, the protest is not to be considered. R. Joseph, however, maintains: Also in the latter case, it is to be considered. Why? They inherited grapes, and now it is wine! As R. Uqba b. Hama said elsewhere: It means he shall receive a double share of the value of the grapes. The same is the case here. *I.e.*, if it happened that the vine was of less value than the grapes, he might claim his double share in the grapes, as he has protested that wine be not made of them. And where did Uqba say this? In reference to the statement of R. Jehudah in the name of Samuel, that if a first-born and his brother have inherited vines or olives, and gathered them, the first-born takes a double share of them, even when they were pressed. Pressed! Were they not first grapes, and now wine? Mar Uqba b. Hama explained that it means that the first-born receives his full double share of the value of the grapes, as explained above.

R. Assi said: If, at the dividing, the first-born took an equal share with his other brother, it is to be considered that he has relinquished his right. R. Papa in the name of Rabha said: He has relinquished his right in the divided estate only. R. Papi in the name of Rabha, however, said: It is to be considered that he has relinquished his right on all the estates. The reason of the former is because he holds that the first-born has nothing until the estate is divided. Therefore he can relinquish his right only in the divided ones. And the latter holds that as soon as the father dies the double share belongs to the first-born, even before division. And therefore, as he has relinquished his right

in the divided estate, so has he done with all others. Both statements, however, were not said by Rabha plainly, but were inferred from the following act: There was a first-born who sold all the estate belonging to him and his brother. The orphans of his brother were going to eat dates of the estate belonging to their father, which was in the possession of the buyers, who struck them. Their relatives said to the buyers: It is not enough for you that you have bought their estate without the consent of the father and the orphans, you dare to strike them. And the case came before Rabha, who decided that the act of the first-born was null and void. R. Papi explained that it means he did nothing with the share belonging to the ordinary brother, but concerning his own share, the sale was valid; and R. Papa explained the decision of Rabha, that the whole sale was null and void, because the first-born had nothing in the estate before it was divided.

A message was sent from Palestine: If a first-born sold out before division, he did nothing. Hence they hold that the first-born had nothing before the division. The Halakha, however, prevails that he has. Mar Zutra of Drishba had divided a basket of pepper with his brothers, and took an equal share, though he was a first-born; and when the case came before R. Ashi, he decided that as he relinquished his right concerning the pepper, it was also relinquished on all other property.

MISHNA V.: If one said in his will, "My son so and so, who is a first-born, shall not take a double share," or, "My son so and so shall not inherit at all with his brothers," he said nothing, as this provision is against the law in the Scripture. If, however, he has divided all his goods in his verbal will, and to some of his heirs he has bequeathed more and to some less, also equalizing the first-born, his will is valid, provided he has not mentioned in his will the word "inheritance." But if he said "because of inheritance," it is not to be considered. If there was a written will in which, in the beginning, middle, or end, was mentioned "a gift," all that it contains is to be listened to.

GEMARA: Shall we assume that our Mishna is not in accordance with R. Jehudah, who said in Tract Kedushin that a condition against the law in the Scripture, if in money matters, may be listened to? This Mishna can be even in accordance with him, as in that case the woman was aware of the law, but

relinquished her right. In our case, however, no one has relinquished.

R. Joseph said: "If one said in his will, 'My son so and so is *my* first-born,' he takes a double share. If, however, he said, 'My son so and so is a first-born,' he does not, as perhaps it was meant he was a first-born to his mother." There was one who came before Rabba b. b. Hana as a witness that he was certain so and so was a first-born. And to the question: Whence do you know it? he answered: Because his father called him "the first-born fool." And he said: This is no evidence, as people used to name a first-born to his mother first-born fool (*i.e.*, a first-born without right).

It happened that another came before R. Hanina as a witness for a first-born, and to the question: Whence do you know it? he answered: His father used to say, "Go to Sh'kh'at my son, who is a first-born, whose spittle cures eyes." But perhaps he meant a first-born to his mother? There is a tradition that a first-born of the father cures, and a first-born to his mother does not.

R. Ami said: If born *αμνητος*, and after perforation found to be a male, he does not take a double share, as it is written [Deut. xxi. 15], "first-born son," which means a son when born. R. Na'hman b. Itz'hak said that also the law of *ibid*, *ibid*. 18 does not apply to him. Amimar said: Such is not considered an heir at all, so that his share is not to be reckoned, and does not diminish the double share for the first-born. R. Shezby said: He must also not be circumcised on the eighth day. And R. Shrabyah said: The law [Lev. xii. 2] does also not apply to such (as in all the cited verses it reads a son or a male child). Said Rabha: There is a Boraitha in accordance with R. Ami: It is written a son, but not *αμνητος*; a first-born, but not a doubtful one. What does the latter part mean to exclude? That which Rabha lectured: If two wives of one have born two sons in a secret place which was dark, and it is not known who was born first, they may write a power of attorney each to the other (*i.e.*, if I am the first-born, I authorize you to take the double share for me; and if you are, then take it for yourself. And then one of them collects the double share and divides it with the other. Said R. Papa to Rabha: But did not Rabbin send a message: I have questioned all my masters about the law

in this case, and could get no answer from any of them; but it was said in the name of R. Janai that if they were recognized, and afterward they were mixed up again, then the stated power of attorney is to be written, but not otherwise. Then Rabha took an interpreter and announced in college: That which I said in my first lecture was an error, as in the name of R. Janai was said thus: That if they were already recognized and afterward mixed, then the above-mentioned power of attorney should be given to each by the other, etc.

The inhabitants of a village situated in a meadow sent the following question to Samuel: Master, teach us where it was certain to the people that so and so, from the children of so and so, was a first-born. Their father, however, said that another was the first-born. How is the law? And his answer was: They should write the above-mentioned power, one to the other.

According to whom was Samuel's decision? If he holds in accordance with R. Jehudah, let him say so; and if in accordance with the rabbis, let him say so? He was in doubt according to whom the Halakha prevails. And wherein is their differing? The following Boraitha: It is written [ibid., ibid. 17]: "Shall he acknowledge," which means, he shall introduce him to others (which is superfluous, this being already written in the previous verse). From this said R. Jehudah: One is to be trusted if he testifies, "This is my first-born son." And as he is trusted concerning a first-born, so is he also to be trusted to testify, "This is a son of a divorced woman," and of lost priesthood. The sages, however, say that he is not trusted. Said R. Na'hman b. Itz'hak to Rabha: According to R. Jehudah's theory, the above-cited verse is right; but according to the rabbis, to what purpose is it written? That in case of a doubt the father's acknowledgment is needed (but in a case of certainty to the people that one was a first-born, the father is not trusted in denying it). But to what does such a law apply? If concerning a double share, even if he was not a first-born, has the father not a right to bequeath him a double share in the manner of a gift? It means, in case the father acquired estates after acknowledgment (*i.e.*, if he is to be trusted, the acknowledged first-born takes a double share; and if not, he does not). But according to R. Meier, who said that one may grant a thing

not yet in existence, to what purpose is the above verse written? If property came to him while he was struggling with death.

The rabbis taught: If one was known to the people as a first-born, and his father said of another, that he was the first-born, he is to be trusted; and if one was known to the people as not a first-born, his father, however, testifying that he is, he is not to be trusted. The first part is in accordance with R. Jehudah, and the latter with the rabbis. R. Johanan said: If he has testified, "He is my son," and thereafter said, "He is my bondsman," he is not to be trusted. If, however, he testified, "He is my bondsman," and thereafter, "He is my son," he is to be trusted; as the first testimony is to be considered as if he should say, "He serves me like a bondsman." The reverse is the case when at the house of taxes. If he said before the officers, "He is my son," and afterwards, "my bondsman," he is to be trusted, as the first statement was to avoid the payment of taxes for his slave; but if he said before the officers, "He is my bondsman," and thereafter, "my son," he is not to be trusted. An objection was raised from the following: If he has served him like a son, and he acknowledged him as such, and thereafter he said, "he is my bondsman," he is not to be trusted; and the same is the case if he has served him like a bondsman, and was acknowledged by him as such, and thereafter he said, "He is my son": he is not to be trusted. (Hence this contradicts R. Johanan.) Said R. Na'hman b. Itz'hak: The Boraitha treats of when he was called "the slave who costs me a hundred zuz," and such a thing a father would not say of his son.

R. Abba sent a message to R. Joseph b. Hama: If one says, "You have stolen my slave," and the defendant says, "I have not," and to the question, "What, then, is he doing with you?" the defendant answers, "They sold him to me," or "gave him to me as a present; and if you wish, take an oath that it was not so, and then you can take him." And if the plaintiff did so (although, according to the law, the plaintiff had no right to take him with an oath, and for the defendant no other evidence or oath is necessary, if he would not say so), the defendant has no right to retract from his previous words.

What news came he to teach us? This we have already learned in a Mishna (Sanh. III., 2)? He comes to teach that

the differing of R. Meier and the sages is in a case equal to our case, and the Halakha prevails in accordance with the sages.

The same R. Abba sent a message to the same R. Joseph: The Halakha prevails that a creditor may collect from bondsmen belonging to orphans for their father's debt. R. Na'hman, however, said: He must not.

The former sent another message to the same: The Halakha prevails that to a second-cousin a third-cousin may be a witness (according to the law, relatives must not be witnesses, and Abba comes to teach that a third to a second-cousin, which means a great-grandson to a grandson, is not considered a relative in this respect). Rabha, however, said: The third-cousin is competent as a witness even to the first-cousin. Mar. b. R. Ashi had accepted a grandfather as a witness: the Halakha, however, does not prevail with him. The same sent another message to the same: If one can witness about an estate, and he became blind, he is no longer competent as a witness in the case. Samuel, however, maintains that he is, as it is still possible for him to mark the boundaries; but concerning a garment, he is not. R. Shesheth, however, maintains that even in case of a garment he is still competent, as he may mark the width and the length of the garment; but not in a piece of metal. R. Papa, however, maintains that even in such a case he is still competent, as he may be aware of the weight.

An objection was raised: If one were cognizant of a case before he became a son-in-law to one of the parties, and the case came before the court after he became a son-in-law; or he was cognizant of the case when he was still in good health, and afterward became dumb, blind, or insane, he is not competent as a witness. But if he was cognizant of the case before becoming a son-in-law, and thereafter married a daughter, but she died before the case came before the court; or he was in good health when he became cognizant of the case, and also when it came before the court, but in the time between he became dumb, blind, etc., and cured, he is fit to be a witness. This is the rule: If in the beginning or the end of the case he was not competent, his testimony is not to be considered; but if he was competent both at the beginning and the end, but not in the time between, his testimony holds good. This opposes

the statements of all the Amoraim as above, and the objection remains.

R. Abba sent another message to R. Joseph b. Hama: If one say, "Of one child among the others," he is to be trusted. R. Johanan, however, says: He is not. What does this mean? Said Abayi: If one says, "This child shall inherit all my estates," he is to be listened to in accordance with R. Johanan b. Beroka. R. Johanan, however, says: He is not to be listened to, in accordance with the rabbis. Rabha, however, opposed: Does the message say he shall or shall not "inherit"? It says "trusted." Therefore he explained it thus: "If one testifies to one child among his children that *he* is the first-born, he is to be trusted, in accordance with R. Jehudah. R. Johanan, however, says: He is not to be trusted, in accordance with the rabbis. The same sent another message to the same. If one said in his will, "My wife shall take an equal share in my estates with one of my sons," he is to be listened to. Said Rabha: It holds good only concerning the estate in possession when the will was made, but not concerning the estate bought thereafter, and also that she takes an equal share with one of his children at the time of dividing (*i.e.*, if his children increased in number after the will was made, she takes her share accordingly, but not according to the number of children at the time the will was made). The same sent another message to the same: If one holds in his hands a promissory note, saying, "Nothing was paid," but the borrower say, "The half is paid," and witnesses testify that the whole amount is paid, the borrower has to take an oath that he paid the half, and then the lender may collect the other half from unencumbered, but not from encumbered estate, as the people by whom the estate is encumbered may claim, "We rely upon the witnesses that the whole amount is paid." And even according to R. Aqiba (Middle Gate, p. 5), the borrower may be considered as one who returns a lost thing—that is, if there are no witnesses; but if there are, R. Aqiba also admits that a half must be paid, as it is to be supposed that the borrower has admitted the half when he has seen that there are witnesses, and he did not know whether they were for or against him, and therefore he admitted a half. Mar. b. R. Ashi opposed: Even in accordance with R. Simeon b. Elazar, who said that the admission is to be considered, as an admission in part, to which an oath is

given biblically, it is only when there are no witnesses who support him; but not in this case, where witnesses support him: he is certainly considered as if he returned a lost thing. Mar Zutra in the name of R. Simeon b. Ashi lectured: The Halakha prevails in accordance with all messages that were sent by R. Abba to R. Joseph b. Hama. Said Rabhina to R. Ashi: But does not R. Na'hman oppose one of the above messages (and there is a rule that the Halakha prevails with R. Na'hman concerning money matters)? And he answered: We read the above message: It must not be collected; and so also said R. Na'hman. If so, what does Mar Zutra mean to exclude by his statement that the Halakha prevails with all the messages? It cannot mean Rabha's above statement, as he does not oppose, but explain; and also not Mar b. R. Ashi's, who said that a grandfather is competent as a witness. It is already said there that the Halakha does not prevail with him. And should we say that it means to exclude Samuel's, R. Shesheth's, and R. Papa's concerning witnesses who were not competent at the time the cases came before the court, they also were already objected? Therefore, we must say he came to exclude R. Johanan's statement, and the opposition of Mar b. R. Ashi as above.

"If it was mentioned in the beginning," etc. How is this to be illustrated? When R. Dimi came from Palestine, he said in the name of R. Johanan: "There shall be given such and such a field to so and so, who shall inherit it"—this is considered as if "gift" were written in the beginning. "So and so shall inherit such and such a field, and it shall be given to him"—this is a gift in the end. "He shall inherit, and it shall be given to him to inherit"—this is considered "gift" in the middle. This, however, is if there were one man and one field—i.e., "Such and such a field shall be given to A, and he shall inherit"; but if it was written, "The field on the east side shall be given to A, and he shall also inherit such on the west side," that concerning which inheritance is mentioned is not to be considered, as it is against the biblical law. The same is the case where there was one field and two persons, as, e.g., "A shall inherit a half of such and such, and the other half be given to B." R. Elazar, however, maintains: The law holds good even in the latter cases, but not when there are two fields and two persons. When Rabbin came from Palestine,

he said: "If one wrote, 'The field on the east side shall be given to A, and B shall inherit that on the west side'—according to R. Johanan, title is acquired, and according to R. Elazar it is not. Said Abayi to him: Your saying is right concerning R. Elazar, as he said above that when there are two fields and two persons the will is not to be considered; but it contradicts R. Johanan's above statement. And he answered: R. Dimi and I differ in the statement which was made in the name of R. Johanan. Resh Lakish, however, maintains that title is not acquired unless it is stated plainly, 'A and B shall inherit such and such fields which I have presented to them as a gift.' Then they should inherit (*i.e.*, as this will speaks about two persons, "gift" must be mentioned twice, so that it should constitute a gift for each of them). However, in this case the Amoraim still differ. R. Hamnuna maintains that the will in question holds good only as to one person and one field, but not as to one person and two fields, or *vice versa*. R. Na'hman, however, said that it holds good even as to one person and two fields, or *vice versa*; but not as to two persons and two fields; and R. Shesheth maintains that it holds good even in the latter case.

Come and hear an objection from the following: "My estates shall belong to you, and after you so and so shall inherit, and after him so and so shall inherit. If the first heir dies, title is given to the second; if the second dies, title is given to the third; but if the second dies while the first is still alive, the estate must be turned over to the heirs of the first one." Now, is not the case in that Boraitha equal to two fields and two men, and nevertheless it states that title is given? And lest one say that the Boraitha also treats of a case in which the persons mentioned are all direct heirs of the testator, and it is in accordance with R. Johanan b. Beroka's statement said above, then how is to be understood the latter part: "If the second dies, title is given to the third"? Did not R. A'ha b. R. Ivia send a message that in accordance with R. Johanan b. Beroka, if one says, "My estates shall belong to you, and after you to so and so," if the first was a direct heir, the second has nothing in the estate, as the expression is not to be considered as a "gift," but as an "inheritance"? And there is no interruption concerning an inheritance (*i.e.*, an inheritance cannot be halved so that a half of the inheritance shall belong to the direct heir and the other

half to the second, and also cannot be interrupted by the death of the regular heir, but is to be inherited by his heirs). Hence the Boraitha is an objection to the statements of all the Amoraim mentioned above, and so it remains.

Shall we then assume that it also objects to Resh Lakish's statement (*i.e.*, that the Halakha does not prevail with him)? How can this be imagined? Did not Rabha say that the Halakha prevails with Resh Lakish in certain three things, one of which being his statement made above? This presents no difficulty. The Boraitha cited speaks of when it was said in one speech (*i.e.*, there was no interruption between the words, "My estate shall belong to you, and after you," etc. It is therefore to be supposed that at the time he gave title to the first he also gave it to the second; and therefore all of them acquire title). But Resh Lakish treats of when it was said *with interruption* (*i.e.*, the statement of Resh Lakish that if there were two men and two fields title is not given, means that he said first, "This field shall be given to them," and after deliberating he said again, "shall inherit such a field," etc. Then the word "given" cannot be considered, in case of this other, and therefore title is not given). The Halakha prevails that all that is said in one speech is valid, except as to idolatry (*i.e.*, if one said this shall be for the idol, and without any interruption he said for something else, the thing in question is prohibited: because of the rigor as to idolatry, the first word which was spoken is considered). And the same is the case concerning betrothing—the first word is considered and the following is not, although it was in one speech.

MISHNA VI.: If one says: "A (who is a stranger to him) shall inherit my estate," and he has a daughter, or, "my daughter shall inherit," though he has a son, he said nothing, as the provision is against the biblical law. R. Johanan b. Beroka, however, maintains that if he has bequeathed to such persons as are fit to be his heirs, his will must be listened to; but if the persons are not fit to be his heirs, it is not to be considered.

GEMARA: From the expression of the Mishna, to a stranger instead of his daughter, or to the daughter instead of a son, it is understood if it was one daughter among others, or one son among others, he may be listened to. How, then, as to the latter part? R. Johanan b. Beroka said: If the persons

were fit to be his heirs, etc. Is this not the same as what the first Tana said? And lest one say that R. Johanan holds that even in the former case his will is valid, this cannot be, as the following Boraitha states: R. Ishmael the son of R. Johanan said: My father and the sages do not differ as to when one has bequeathed to a stranger instead of his daughter, or to his daughter instead of his son—he is not to be listened to; and wherein they do differ is, if he had bequeathed to one son or to one daughter among others, where according to my father his will is valid, and according to the sages it is not. (Hence there is a difficulty in understanding the expression of the Mishna?) If you wish, it may be said that because R. Ishmael found it necessary to say that they do not differ, there must be one who said that they do; and this was the first Tana. And if you wish, it may be said that the whole Mishna is in accordance with R. Johanan b. Beroka. But it is not complete, and should read thus: If one said: “A shall inherit my estate instead of my daughter,” or “My daughter instead of my son,” he said nothing. If, however, “My daughter so and so shall inherit my estate instead of my other daughters,” or “my son instead of my other sons,” he may be listened to; as R. Johanan b. Beroka declares that if he has bequeathed all his estate to him who is one of his direct heirs, his will is valid.

Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Johanan. And so also said Rabha. And he added: What is the reason of R. Johanan b. Beroka? [Deut. xxi. 16]: “Then shall it be, when he divideth as inheritance among his sons what he hath,” means that the Torah gave permission to the father to bequeath his estate to whichever of his sons he pleased. Said Abayi to him: This may be inferred from “that he shall not institute the son of the beloved as the first-born before,” etc. We see that this is said only about the first-born, but not about the other sons. Nay, the latter is needed in addition to what we have learned in the following Boraitha: Aba Hanan in the name of R. Eliezer said: To what purpose is it written, “that he shall not institute,” etc.? Because from the beginning of the verse it is deduced that permission is given to a father to bequeath his estate to whom he pleases. And one may discuss thus: An ordinary son has the privilege to take his share in the estate which is not yet fit for division as if it

were already fit, and nevertheless his father has the permission to ignore him; a first-born, who has no such privilege, so much the more he could be ignored. Therefore it is written, "He shall not institute," etc. But let the Scripture read, "he shall not institute," *only*. Why the first half of the verse? Because one may discuss thus: a first-born, who has not the privilege to take his double share from that which is not yet fit, has nevertheless the privilege that he cannot be ignored by his father. An ordinary son, who has the privilege, so much the more he should not be ignored. Therefore the beginning of the verse, from which we infer that the father is permitted to bequeath his estates to whom he pleases, was necessary.

Said R. Zrika in the name of R. Ami, quoting R. Hanina, who said so in the name of Rabbi: The Halakha prevails in accordance with R. Johanan b. Beroka: Said R. Abba to him: He did not say so, but he decided so in a case (which came before him.) And what is the difference? One holds preference is to be given to a statement (*i.e.*, if he states that so the Halakha prevails, it is a teaching forever; but if he was only acting so, it may be said that it was only according to the circumstances and we cannot take it for a rule forever). And the other holds that the preference may be given to an act.

The rabbis taught: A Halakha must not be taken for granted from a discussion or from an act, as one has no right to act unless he is told to do so. If he questioned his master and he told him such and such a Halakha is to be practised, then he may go and act so, provided he does not compare one case to another. But do we not compare one thing to the other in the laws of the Torah? Said R. Ashi: It means to say that he must not compare one thing to the other in the law of dietary (*i.e.*, an animal which is fit for eating biblically, if it has such a sickness that it cannot live twelve months, it must not be used). In Tract Chulin the diseases are enumerated, but such diseases as are not enumerated there are discussed whether in connection with lawful use or otherwise. And it is said that in such cases no comparison is to be taken in consideration unless known by tradition. As we have learned in a Boraitha, one must not say, concerning *Trepheth* (sickness which makes the animal illegal): This is similar to this. And one should not be surprised, as, if one cuts a piece of the animal from one side, it

may remain alive; and from another side, and it dies immediately.

R. Assi questioned R. Johanan: "If you, master, declare a Halakha to us, saying that such is the law, may we practise accordingly? And he answered: You shall not practise unless I tell you that such is for practice. Said Rabha to R. Papa and to R. Huna b. R. Joshua: If it should happen that my written resolution in a judgment should come to your hands, and you should see some objection concerning it, you shall not tear it before seeing me; for if I should have some reason to approve it I will tell you, and if not I will retract from it. But if the same should happen after my death, you shall not tear it, and at the same time you shall not take it for an example for other cases. You shall not tear it, because, if I were alive, probably I would approve it by a good reason; and shall not take it for an example, as a judge has to act only according to his conviction and to that which he sees with his own eyes.

Rabha questioned: How is it when one bequeaths his estates to one son among others, while he is still in good health? Shall we assume that R. Johanan b. Beroka's statement is concerning a sick person only, to whom the above-cited passage may apply, but not concerning one who is in good health (when it is not usual for one to divide his estate), or it does not matter, and one may bequeath his estate when he pleases? Said R. Mesharshia to him: Come and hear the following: R. Nathan said to Rabbi: You have taught the following Mishna: If one has not written in the marriage contract, "Male children borne of you by me shall inherit the amount mentioned in your marriage contract in addition to their share among their other brothers," he is nevertheless responsible in this respect, as this stipulation is made by the Beth Din (court). And Rabbi answered him: It is to be read in that Mishna, instead of "inherits," they shall "take" (which means a gift, and to this all agree that the father has a right). Thereafter, however, Rabbi said: My youth made me presume to contradict Nathan the Babylonian, as I see now—from the law that male children cannot collect their mother's marriage contract from encumbered estate—that Nathan, who declared the expression of the Mishna to be "inherited" was right, as if the expression were as I declared, why, then, should they not collect from encumbered estates also?

(Hence we see that one even in good health has the right to bequeath, etc., as the Mishna treats of one entering into marriage.) And who is the one who holds that one may give the preference to one of his sons among others, if not R. Johanan b. Beroka? Hence there is no difference if he does it while sick or in good health. Infer from this that so it is.

Said R. Papa to Abayi: Let us see. According to both, no matter if the expression in the Mishna is "inherit" or "take," why should this hold good? Is there not a rule that one cannot grant to some one a thing which is not as yet in his hands? And even according to R. Meir, maintains that one *may* do so, it is when the thing is in existence, but not as yet in his hands. Here, however, concerning the marriage contract the male children are not at all in existence, and in such a case even R. Meir admits that one cannot. And if the answer to this question should be: When the court made a stipulation, it is different. Say then that only in a case where the stipulation of Beth Din holds, one can write so, even when he is in good health, but not otherwise? And Abayi answered: After all, it may be inferred that the Halakha prevails in accordance with R. Johanan b. Beroka, from the expression "inherit," as it could state "take" to which there is no opposition; and the choosing of the expression "inherit" shows that it agrees with R. Johanan. Thereafter, however, said Abayi: "What I said above is incorrect, as there is another Mishna: If one has not written in the marriage contract, 'The female children whom you will bear by me shall remain in my house after my death, and shall be fed from my estates until they shall marry,' he is nevertheless responsible, as this is a stipulation of the Beth Din." Now we see that the two statements which ought to be written in the marriage contract are in one case because of inheritance and in the other because of a gift; and in such a case even the opponents of R. Johanan admit that it is lawful. Said R. Nihumi, according to others R. Hananiah b. Minumi, to Abayi: But how do you know that one Beth Din has enacted both the stipulations mentioned above? Perhaps they were enacted by two different Beth Dins?

R. Jehudah in the name of Samuel said: If one bequeath all his estates to his wife, it is to be considered that he makes her a guardian only. It is also certain that if he did so to his elder

son, he is considered a guardian only. But how is it if he has bequeathed all his estates to his younger son? It was taught: R. H'nlai b. Aidi in the name of Samuel said that the same is the case even when his younger son was in his cradle.

It is certain that if one allot in his will an estate to a son and a stranger, the son is considered a guardian and the stranger acquires title to that which is bequeathed to him as a gift. The same is the case if to his wife and a stranger. It is also certain that when he had bequeathed his estates to his bride who was betrothed (and yet not married), or to his divorced wife, that it is a gift and they acquire title. The schoolmen, however, were doubtful when he did so to his daughter if there were sons, or to his wife if he left brothers; and also to his wife, who had no children, but stepsons. Shall we assume that he appointed any one of them as guardian only, for the purpose that she should be respected by the heirs as long as she lived, or he made them a gift and they acquire title to the estate. Said Rabhina in the name of Rabha: The women mentioned above do not acquire title, as they are considered guardians; except the bride and also his childless wife if she is together with her stepsons. and therefore acquire title). R. Avira, however, said in the name of the same authority that all the above-mentioned women acquire title except his childless wife, if he left brothers; and also his childless wife if she is together with her stepsons.

(All that is said above treats of a will by a sick man?) Rabha questioned: How is it if this was done by one while in good health? Shall we assume that the above verse applies only to a sick man, whose last will must be respected, or the same is the case with one in good health, as for this purpose he so acted that his words should be respected from that day? Come and hear: If one writes the products of his estates to his wife, and thereafter he dies, she may collect her marriage contract from the estate itself. If he writes her a part of the estate—a half, a third, or a quarter—she may collect her marriage contract from the remainder. If, however, he had presented to her all his estates, and thereafter a creditor came holding a promissory note from the deceased, according to R. Eliezer the deed of gift shall be annulled and she shall remain by her marriage contract. The sages, however, maintain, on the contrary: The marriage contract shall be annulled and she shall remain by the

deed of gift (as it may be supposed that she has relinquished her right in the marriage contract because of the gift she has received). Should, however, evidence be brought that the gift was not lawful, she remains shorn on both sides of the head. R. Jehudah the baker told that such a case happened with his sister's daughter, who was a bride; and the case came before the sages, and they decided that her marriage contract should be annulled and she should remain by her deed of gift. And thereafter the latter, for some reason, was also annulled, and she remained shorn on both sides of the head. We see, then, that if it were not for the creditor with his note, title would be given to her. Now, how was the case? Shall we assume that it was by a will from a sick man? Is it not said above that she is considered a guardian only? We must then say that it was by one in good health. Hence Rabha's question can be decided affirmatively. Nay, it may treat of a will by a sick man; and, according to R. Avira, it can apply to all the women mentioned above, and according to Rabhina's explanation it may apply to a bride and a divorced wife. Said R. Joseph b. Minumi in the name of R. Na'hman: The Halakha prevails that the marriage contract shall be annulled as the sages declare. Shall we assume that R. Na'hman does not hold the theory of supposition? Have we not learned in the following: If one's son went to the sea countries, and was thereafter reported dead, and he in consequence bequeathed all his estates to some one else, the gift is valid, even if his son were alive and returned. R. Simeon b. Menasia, however, maintains that the gift is null and void, as if he were aware that his son was still alive he would not do so; and R. Na'hman said that the Halakha prevails with the latter. (Hence we see that R. Na'hman holds the theory of supposition.) Yea, his decision that the marriage contract should be annulled is also because of a supposition—that for the pleasure she has in announcing that her husband presented to her all his estates she has relinquished the right to her marriage contract.

There is a Mishna (Peah, III., 10): "If one has bequeathed all his estates to his sons, but has left to his wife a small portion of ground, she loses her marriage contract." How is this to be understood—because he gave her a parcel of ground, she lost her marriage contract? Said Rabh: It means when he made the ceremony of a *sudarium*, to give title to his sons with

her garment (*i.e.*, as she has given her garment for the purpose of dividing all his estate among his sons, it is to be supposed that she agreed to this act without any objection concerning her marriage contract). Samuel, however, maintains that it is sufficient if he did so in her presence and she kept silent (as if this were against her will she would protest). R. Jose b. Hanina, however, maintains: It speaks of when he said to her, "Take this ground instead of your marriage contract." And the Boraitha teaches that concerning a marriage contract it is more loosely constructed than for other creditors, as the latter do not lose their right unless they say plainly, "We relinquish our right," while concerning a marriage contract it is sufficient that she does not protest. There is an objection from a Mishna in Khethuboth: R. Jose said: "If she has accepted, although he wrote nothing, she has lost the right of her marriage contract." From which it is to be inferred that according to the first Tana the accepting is not sufficient unless he writes. Hence he requires both writing and accepting. And lest one say that all of the Mishna in question is in accordance with R. Jose (*i.e.*, if he wrote her a small parcel of ground, she loses her right). And R. Jose adds that the same is the case if she accepted, although it was not written. This cannot hold good, as there is a Boraitha in addition to that Mishna: Said R. Jehudah: All this holds good when she was present and had accepted; but if she accepted and was not present, she lost nothing of her right in the marriage contract. Hence this Mishna is an objection to all the Amoraim mentioned above, and the objection remains.

Said Rabha to R. Na'hman: In the case in question we have heard the opinions of Rabh, Samuel, and R. Jose. Now I would like to know what is the opinion of you, master. And he answered: I am of the opinion that as soon as he made his wife a sharer with his sons (*i.e.*, at the time when he bequeathed his estates to his sons and set aside a piece of ground for her), she lost her marriage contract. (Provided she had not protested, as R. Na'hman holds with Samuel that if she kept silent it was sufficient.—Rashbam.) And so also it was taught by R. Joseph b. Minumi, in the name of R. Na'hman. Rabha questioned: How is it in a similar case when one is in good health? Shall we say only when he was sick, and she was aware that he had no other estates, therefore she relinquished? But when he was

still in good health she might think, "Why should I relinquish my right—he may in the future buy some other estates?" Or, on the other hand, having seen that he divided all his estates, she renounced her hope and relinquished? This question remains undecided.

There was one who wrote in his will, a half of my estate to one daughter, and the other half to another, and a third of the products to my wife. At that time R. Na'hman happened to be in Sura (where this will was made), and R. Hisda questioned him: How should such a case be decided? And he answered: Thus said Samuel: Even if he left to her the products of one tree only, she lost her right in the marriage contract. Said R. Hisda to him: Samuel's decision was when he gave her title to that which is attached to the ground; but in our case he left for her only fruit which was already gathered. And he rejoined: Then you speak of movable property. In such a case she certainly lost nothing. There was another man who said in his will: A third to one daughter, a third to another, and a third to my wife. It happened that one of the daughters died while her father was still alive (*i.e.*, as a father inherits from his daughter the deceased's share reverted to him, and this is similar, as he might buy some other estate after the division of his previous one), and R. Papa was about to decide that his wife had only the third bequeathed to her, but nothing in the third left from her daughter, for the reason that as soon as he has made her a sharer with his daughters the marriage contract was considered null. Said R. Kahana to him: Why should this case be different from the case that after making his will he bought other estate? Would she not have a right to it because of her marriage contract, as she has relinquished her right only for the sake of her daughters, when there was no other estate, but not in the estate he bought afterwards? The same is the case here: the inheritance of his daughter is to be considered as other estate bought.

There was another who divided all his estate but one tree among his wife and children, and Rabhina was about to say that the widow had a right to this tree only, if the amount of her marriage contract exceeded the value of the estate she received. Said R. Yimar to him: If she relinquished her right at the time the division took place, then she has no right even to this tree; and, on the other hand, if she has a right to this

tree, which means that she did not relinquish her right, then, by the same right by which she collects the excess from this tree, she may do so from the others which are in possession of the heirs.

R. Huna said: From all said above, it is to be inferred that in the case of a sick person who has bequeathed all his estate to a stranger, it is to be investigated if the latter is in some way fit to be called a direct heir. Then he takes it as an inheritance; and if not, he takes it as a gift. Said R. Na'hman to him: Why quibble? Say plainly the Halakha prevails in accordance with R. Johanan b. Beroka, as your decision is in accordance with him. However, perhaps you refer to a case which happened while one was dying and was questioned: To whom do you bequeath your estate—probably to so and so? and he answered: To whom else? And hence your statement that if the legatee is in some way fit to be an heir he takes it as an inheritance; and if not, he takes it as a gift? And he (Huna) answered: Yea, that is what I meant. But what is the difference whether he takes it as an inheritance or a gift? R. Ada b. Ahbha in the presence of Rabha said: If because of inheritance, then the widow of the deceased must be fed from the estate until she gets the amount belonging to her according to her marriage contract, which is not the case when he takes it as a gift. Said Rabha to him: Shall such a case make the position of the widow worse? In the case of an inheritance biblically, it is said that the widow must be fed from the estate; in the case of a gift, which is only a rabbinical enactment (as in reality one cannot present anything after death, but the sages enacted that the will of a sick person shall be considered as written and presented), shall she not have her right of support? Therefore Rabha explained: R. Huna's above statement agrees with the message which was sent by R. Aha b. Ivia: In accordance with the decision of R. Johanan b. Beroka (above, p. 285), an inheritance has no interruption, and goes direct to the heirs of the inheritor. Said Rabha to R. Na'hman: But the testator himself has controverted this with his saying, "after you, so and so shall inherit." He said so because he meant that he might do so. But the law dictates that there shall be no interruption; hence this stipulation is against the biblical law, and must therefore not be considered.

There was a man who said in his will: My estates shall belong to A and after A to B. A, however, was a legitimate heir, and when he died, B came and demanded the estate. And R. Elish in the presence of Rabha was about to decide that B's claim was a right one. Said Rabha to him: Judges who are arbitrators (*i.e.*, who do not decide according to the strict law, but mediate between the parties) judge so. This case, however, was the same as that concerning which R. Aha b. Ivia sent his message (that inheritance has no interruption), and he became ashamed. Rabha then applied to him [Is. lx. 22]: "I the Lord will hasten it in its time" (*i.e.*, Elish was ashamed that were it not for Rabha he would have acted against the law). And Rabha comforted him, in that Providence would not leave such an upright man to act wrongly, and therefore it so happened that he (Rabha) was present. Hence he had no need to fear the justice of his decisions in other cases.

MISHNA VII.: If one bequeathed his estates to strangers, leaving his children without anything, his act is valid; but he is condemned in the eyes of the sages. R. Simeon b. Gamaliel, however, maintains that if his children were not going in the right way he might be mentioned among the good men.

GEMARA: The schoolmen propounded a question: Do the rabbis differ with R. Simeon or not? Come and hear: Joseph b. Joezer had a son with bad habits; and he had also a measure of dinars. And because of his son, he consecrated the dinars to the Temple. The son went and married the daughter of Gadil, the master of the crowns for King Janai; and when his wife had borne a child, he bought a fish for her, and found in it a pearl. Said his wife to him: Do not carry it to the court of the king, as they will appraise it cheaply and will take it from you. Take it, rather, to the treasurer of the sanctuary; but do not mention any price for it, as if you should do so, you will have no right to change it thereafter, as there is a rule that concerning a sanctuary the upset price is considered final, and one has no longer right to retract, as after delivery to a commoner. He did so, and it was appraised by the treasurer at thirteen measures of dinars. The treasurer then said to him: We have now in the treasury only seven measures of dinars, as the taxes are not yet collected. And he answered: Let the remaining six measures be consecrated to heaven. And the treasurer re-

corded in his book: Joseph b. Ioezer brought to the sanctuary one measure, while his son has brought six. According to others, they wrote: Joseph brought to the sanctuary one measure, and his son took from it six measures. Now, as they wrote Joseph brought in, it is to be inferred that he acted rightly. But perhaps, on the contrary, as according to others they recorded "his son took out seven," it may be said that they considered the act of the father unlawful. Therefore from this Boraitha nothing is to be inferred. However, how should this question be decided? Come and hear: Samuel said to R. Jehudah: Do not transfer an inheritance from any one, even from a bad son to a good one; further, nor from a son to a daughter.

The rabbis taught: It happened in the case of one whose children had evil habits, that he bequeathed all his estates to Jonathan b. Uziel; and the latter sold a third of them, consecrated a third, and the remaining third he returned to the deceased's sons. And Shamaï the Elder came to rebuke him for having so done with estates bequeathed to him, contrary to the will. And he answered him: Shamaï, if you have the right to make null that which I have sold and that which I have consecrated, then you have also a right to take away the property which I have returned to the children. But as you have no right to do the former, you have no right to exclaim against my latter act (*i.e.*, if you consider me the owner of the estates bequeathed to me, then I may do with them what I please; and if I am not the owner, then also what I have consecrated should be annulled; and as you cannot annul the consecration, because the estate was bequeathed to me without any condition, consequently the estates are mine, and you cannot take away the property from the children.) And Shamaï exclaimed: The son of Uziel has vanquished me! the son of Uziel has vanquished me! But what was his opinion before he came to rebuke him? He did so because of what happened in the city of Beth Horon. There was one of whom his father vowed that he should not derive any benefit from him; and when he made a banquet for the marriage festival of his son, he said to his neighbor: I make you a present of this courtyard and all that is prepared for the banquet, but only to the end that my father should be able to come and eat with us at that banquet. And his neighbor answered: If all this is mine, I consecrate it to heaven. And the

donor rejoined: I have not given you my property to be consecrated to heaven. Rejoined the neighbor: Then you have given all this to the end that your father and you shall eat and drink and be reconciled, and the sin shall rest on my head. And the sages decided that a gift which cannot be consecrated by the benefactor is not to be considered a gift at all.*

MISHNA VIII.: If one says: "This is my son," he is to be trusted; but, "my brother," he is not to be trusted. He may, nevertheless, share with him the inheritance of his father (when there are only two; but if there are three, the third, who does not recognize him as his brother, is not bound to share with him, and so he receives a half of the share of the brother who does recognize him). If the doubtful man dies, the estate must be turned over to him from whom it was taken. If, however, the deceased left other estates besides those he inherited with his brother, all the brothers share equally (because in the case of that one who testified that he is a brother to all, he has no right to the inheritance without the other brother).

GEMARA: The Mishna states: "'This is my son,' he is to be trusted." To what purpose is it stated? Said R. Jehudah in the name of Samuel: For the purpose that he may inherit from him, and to acquit his wife of Yeboom. But was it necessary for the Mishna to state that he might inherit from him? Is it not self-evident (*i.e.*, if its testimony was because of inheritance only, he could give it as a present)? It was necessary to state that he is to be trusted to acquit his wife of Yeboom. But this also we have learned elsewhere: If one says while dying: "I have children," he is to be trusted (and his wife is acquitted of Yeboom). If, however, he says: "I have brothers somewhere," and he was childless, he is not to be trusted (the intent being that his wife should be prohibited from remarrying). That Boraitha speaks of when the people were not aware of any brothers, and our Mishna came to teach that even when people were aware that one had brothers he is to be trusted if he testifies that such a person was his son.

R. Joseph in the name of R. Jehudah, quoting Samuel, said: Why was it said: One is trusted in testifying that he has a son; because if one testify that he has divorced his wife, he is to be trusted? And Joseph himself exclaimed: Lord of Abraham!

* In the text is repeated here from Tract Sukka, p. 36, which see.

He sustains a thing which we have learned in a Mishna by a thing which was not learned at all. Therefore, if this was taught, it must be thus: R. Jehudah in the name of Samuel said: Why is one trusted to testify, "This is my son" (and with this to acquit his wife of Yeboom)? because, if he likes, he can divorce her. Said R. Joseph again: Now, when we come to the conclusion that the theory of "because" may be used, we may infer that if one testify he has divorced his wife, he is to be trusted; because, if he wishes to make her free, he may give her a divorce then. When R. Itz'hak b. Joseph came from Palestine, he said in the name of Johanan: A husband is not trusted to testify that he has divorced his wife. R. Shesheth, when he heard this, made a gesture implying: Now the "because" of R. Joseph is gone. Is that so? Did not Hyya b. Abin say in the name of R. Johanan: The husband is trusted? This presents no difficulty. If his testimony is of a time long past, he is not to be trusted; and if of a short period of time (*e.g.*, a day or two before, so that this testimony should be used for the future), he is to be trusted. The difference is in case she was suspected of adultery a month before his testimony: If he is trusted, then she committed no adultery; and if not, the suspicion must be investigated.*

The schoolmen propounded a question: Should one's testimony for the time past, in which he is not to be trusted, be considered for the future (*e.g.*, if he testified in January that he had divorced in December, which does not hold good in case of the suspicion stated above, does it hold good for the time after the testimony took place? And the question is: Can one's testimony be divided—that for the past he should not be trusted, and for the future he should)? R. Mary and R. Zebid: According to one we may divide, and according to the other we may not. But why should this case be different from the following case stated by Rabha: If one testifies that his wife has committed adultery with so and so, if he has another witness, the man can be put to death in accordance with the law that two witnesses have to testify to a crime—we conjoin his testimony to the stranger's and they are considered two witnesses; but his wife cannot be executed, as it is unlawful that

* The commentators try to explain at length with illustrations, which we omit as of no importance.

a husband should be a witness against his wife (hence we see that the testimony is divided: for one it is considered, and for the other it is not)? It may be said: Concerning two we do divide, but not concerning one person.

There was one who, while dying, was questioned concerning his wife (*i.e.*, he was childless, and they questioned him if his wife was divorced from him, so that she might remarry after his death or she remained liable to Yeboom)? And he answered: She is fit to marry even the high priest * (*i.e.*, I have divorced her). Said Rabha: We may trust him, as it is said above by Hyya b. Aba in the name of R. Johanan: A husband is to be trusted in testifying that he has divorced his wife. Said Abayi to him: But did not R. Itz'hak b. Joseph in the name of R. Johanan say: He is not to be trusted? And Rabha rejoined: But have we not explained above, that one speaks of the past, and the other of the future? Rejoined Abayi: Shall we rely upon an explanation in such a rigorous law as marriage is? Then said Rabha to R. Nathan b. Ami (before whom the case came: Investigate this matter (as probably Abayi is right). There was another, of whom it was known to the people that he had no brothers, and so, also, he testified while dying. However, it was murmured by some that he had brothers in some other country. And R. Joseph decided: There is no risk in allowing his widow to remarry, as he not only said so while dying, but it was known to the majority. Said Abayi to him: But is it not murmured that there are witnesses in the sea-country that he has brothers? (Answered R. Joseph:) But at present there are no witnesses, and in a similar case, R. Hanina said elsewhere: Should we prohibit a woman from marrying because some say that there are witnesses in the north? Rejoined Abayi: If Hanina had decided leniently concerning a woman in captivity, whose prohibition to marry a priest is rabbinical only, should we compare our case, which is biblical, if the childless deceased left brothers? And Rabha said to Nathan b. Ami, who had charge of this case: Investigate this matter.

“ ‘*This is my brother, he is not.*’ But let us see what the

* The commentators find difficulty in explaining the meaning of this expression. It seems to us, however, very simple. He meant: I divorced her before having intercourse with her, and she is still a virgin, whom a high priest may marry.

other brothers say. If they admit that the one in question is their brother, why should he share with one only? We must then say that they deny it. Then how is the latter part, "If he had estates from other sources, the brothers have to share," to be understood? They do not deny that he was their brother. It means when the others say, "We do not know whether he is a brother or not."

"It must be turned over to him," etc. Rabha questioned: How is it if the same estate were improved of itself—e.g., if it were a young tree, and it grows up, etc., there is no question of the improvement being through the labor of the deceased, as this is similar to the case in which one got estates from other sources; but the question is: If the improvement was of itself? This question remains undecided.

MISHNA IX.: If one dies, and a *διαθηχη* was tied to his body, it is not to be considered at all. If, however, while sick he had submitted it to some one, be he his direct heir or not, it must be listened to.

GEMARA: The rabbis taught: What is to be considered a *διαθηχη*? (Repeated here from Middle Gate, p. 40, from the quotation "Wills" to the end of the paragraph. See there.)

Rabba b. R. Huna was sitting in the balcony of Rabh, and declared the following in the name of Johanan: If a sick person said to witnesses: "Write, and give a mana to so and so," and before they did so he dies, it must not be listened to, for the reason that probably the deceased had in mind to give title in the case by a deed only; and as such a deed cannot be written after death, nothing can be done. Said R. Elazar to the disciples who were also sitting there: Bear in mind this Halakha, as it is for practice. R. Shezbi, however, said: The reverse was the case: R. Elazar declared the Halakha, and R. Johanan told them to bear it in mind, etc. Said R. Na'hman b. Itz'hak: It seems to me that R. Shezbi is right, as, if R. Elazar declared the Halakha, it was necessary for R. Johanan to approve it; but if Johanan declared it, was it then necessary for Elazar to give his approval to what his master said? And secondly, from the following, it is to be inferred that Elazar had declared the above, namely: Rabin sent a message in the name of R. Abuhu: It shall be known to you that R. Elazar sent a message to the sages in exile, in the name of our master (Rabh): If a sick person said,

Write, giving a *mana* to so and so, and it was not done until he had died, nothing is to be done (for the reason said above). (R. Jehudah in the name of Samuel, however, said: They may write and give.*) But R. Johanan said (though the Halakha so prevails): It must, nevertheless, be investigated. What shall be investigated? When R. Dimi came from Palestine, he said the following two things: (a) A will which is written at a later period abolishes a will written previously (if title was not given by a ceremony of a *sudarium*). (b) If a sick person said, "Write, giving a *mana* to so and so," and died, it must be investigated, whether with the expression "write" the testator meant to strengthen the act. In that case it may be done; and if not, it must not. R. Aba b. Mamel opposed from the following: If one in good health said to witnesses, "Write, giving a *mana* to so and so," and suddenly died, nothing is to be done. From which it is to be inferred that if this were said by a sick person it would be listened to? He himself answered thereafter: If the expression "write" was only to confirm the act, then it may be listened to. But how can we know what he meant? As R. Hisda said elsewhere: If written, and confirmed by the ceremony of a *sudarium*, no retraction can take place. So also in our case. If it was said by the sick person, "Give to him, and also write," then the last expression may be considered as a confirmation of this act; and it may be so done.

It was taught: R. Jehudah in the name of Samuel said: The Halakha prevails, they may write and give; and so also said Rabha in the name of R. Na'hman.

MISHNA X.: If one wishes to bequeath his estate to his children (*i.e.*, it speaks of one who remarries and does not wish that the children by his first wife should lose their share in his estate after his death), he must write: I bequeath my estate to them from to-day and after my death (*i.e.*, the estate belongs to them thenceforward, but not the products until after his death). So is the decree of R. Jehudah. R. Jose, however, maintains: It is not necessary to write "from to-day."

If one wrote: "I bequeath my estate to my son from to-day, and after my death," he has no longer any right to sell his estate, because it is bequeathed to his son; and his son, also, has

* Transferred from 152a.

no right to sell it because it is still under the control of his father. If, notwithstanding this, the father has sold, the products thereof are sold until he dies. If the son, however, sold, the buyer has nothing therein until the father dies.

GEMARA: But how if he has written "from to-day and after my death"? Have we not learned in a Mishna: If one wrote in a divorce, "from to-day and after my death," it is considered a doubtful divorce, so that after his death his widow cannot marry his brother, but must perform the obligation of Halitzah. (This is no objection) as there we are doubtful as to the explanation of his words. Does he mean by the words, "after my death," to be a condition (*i.e.*, if I die she shall be divorced from to-day), or as a retraction (*i.e.*, the last words retract the former), and therefore she cannot marry. Perhaps the divorce was valid, and it is prohibited to her to marry a brother-in-law. But she is under the obligation of Halitzah. Perhaps the divorce was invalid. In our case, however, it is to be explained, the body of the estate is bequeathed "from to-day," but the products, "after my death."

"*R. Jose . . . It is not necessary,*" etc. Rabba b. Abuhu became sick. R. Huna and R. Na'hman came to make him a sick call. Said R. Huna to R. Na'hman: Question him whether the Halakha prevails with R. Jose. And he answered: I am not aware of the reason of his statement. To what purpose, then, should I ask if the Halakha so prevails? Rejoined R. Huna: I will tell you the reason later, and meanwhile you may question him with whom the Halakha prevails. And he did so. And Rabba answered: So said Rabh: The Halakha prevails with R. Jose. When they went out from him, said R. Huna: The reason of R. Jose's statement is because the date of the deed testifies to whom from that day the estate belongs. And so also we have learned plainly in a Boraitha.

Rabha questioned R. Na'hman: According to R. Jehudah, who requires that there shall be written "from to-day," etc., how is it, if this was made with the ceremony of a sudarium? (Shall we assume that as the above ceremony was already performed title is acquired, and nothing further is to be added; or, even then, it must be written in the deed "from to-day," etc.?) And he answered: In such a case it is not necessary. R. Papa, however, maintains that there is a difference in the

tenor of the deed. If it was written: We have secured the ceremony of a sudarium, which he agreed to and made, then nothing is needed to be added. If, however, it was written: He agreed, and we performed the ceremony, then it is necessary to write, "from to-day," etc. (and the reason is, that the latter expression may be explained as intimating that he agreed that possession should come after death, and thereto we have joined the ceremony of a sudarium). R. Hanina of Sura opposed: Are there such things as we do not know, and we must rely upon the scribes? The scribes of Rabha and of Abayi were questioned, and it was found that they were aware of the difference mentioned above. R. Huna b. R. Joshua, however, said: There is no difference between the two versions mentioned above; as to either of them, nothing is to be added. But if "sudarium" was not mentioned in the deed at all, and there was a memorandum: *e.g.*, "The undersigned testify that a memorandum was made by so and so," etc., then, according to R. Jehudah, "from to-day," etc., is needed. Said R. Kahana: I repeated this discussion before R. Zebid of Nahardea, and he told me: You have learned this so. We, however, have learned it as follows: Said Rabha in the name of R. Na'hman: If a sudarium is mentioned, no matter what version was used, nothing is needed to be added; but in respect to a memorandum (illustrated above) R. Jehudah and R. Jose differ.

"*I bequeath my estates to my son,*" etc. It was taught: If the son sold out and then died while the father was still alive, according to R. Johanan the buyer has nothing in it; and according to Resh Lakish, title is given to the buyer after the father's death. The reason of their difference is, because the former holds that the sale of the products ought to be held similar to the sale of the body; and as the products could not be sold by the son, as he had nothing in them so long as the father was alive, so he could not sell the body. And the latter holds that the body is not subordinate to the products; as the body belonged to the son, the sale is valid.

R. Johanan objected to Resh Lakish from the Boraitha stated above, p. 289, which says: The estate must be turned over to the heirs of the first; and according to you, it ought to be to the heirs of the testator. And he answered: It was already ex-

plained by R. Hoshua in Babylon that there was a difference when the testator said plainly "and after you." And so also it was answered by Rabh, to a contradiction made before him by Rabha b. R. Huna. But have we not learned in a Boraitha that the estate must be turned over to the heirs of the testator? In the resolution of this case, Tanaim differ: "My estates are bequeathed to you, and after you to B; A sells out, and consumes the amount. B has a right to recover it from the buyers after the death of A. So is the decree of Rabbi. R. Simeon b. Gamaliel maintains B has a right only to what remained from A." A contradiction was made from the following: My estate is bequeathed to you, and after you to B; A may sell and consume it. So is the decree of Rabbi. R. Simeon b. Gamaliel, however, maintains that A has a right to the products only. Hence Rabbi and R. Simeon contradict themselves in the two Boraithas. This presents no difficulty. The statement of Rabbi in the later Boraitha is concerning the products only; and the statement in the first Boraitha is concerning the body. There is also no contradiction in R. Simeon's statements, as his statement in the last Boraitha means that so is the law to start with; and his statement in the former means, if it were already done.

Said Abayi: Who is called a crafty villain? He who advises A to sell the estate (bequeathed to him for his life only), relying upon R. Simeon b. Gamaliel's decision. Said R. Johanan: The Halakha prevails with R. Simeon b. Gamaliel. He, however, admits that if A gives the same as a present to C, when he is dying, he has done nothing. And what is the reason? Said Abayi: Because C ought to acquire title to it only after the death of A. But at that time B had already acquired title, as it was bequeathed to him after A's death. But did Abayi say so? Was it not taught: To a gift presented by one who is dying, at what time is title given? According to Abayi, with the death; and according to Rabha, after death. Hence C ought to have the preference, according to Abayi's last statement, as to B it is bequeathed after death? Abayi has retracted from his last statement. But do you know where he has retracted from the last statement? Perhaps he has retracted from the first. Yet it cannot be borne in mind that there is a Mishna which states as follows: If one should say:

"This shall be your divorce if I should die"; or, "It shall be yours if I should not recover from this sickness"; or, "After my death," he said nothing. (Hence this Mishna is a direct contradiction to Abayi's statement that title is given *with* the death. If it were so, the divorce would be valid when he said: This shall be your divorce when I die. And therefore it must be supposed that he retracted from the later statement.)

Said R. Zera in the name of R. Johanan: The Halakha prevails with R. Simeon, even in case in the estate in question there were included bondsmen, and they were freed. Is this not self-evident? Lest one say that the testator may claim: "I did not bequeath to you my estate, you shall transgress * with them," it came to teach us that it does not matter. And R. Joseph said in the name of the same authority: Even if he had made of them shrouds for a corpse. Is this not self-evident? Lest one say that the testator may claim: "I did not give it to you for the purpose that you should make from it things from which it is prohibited to derive any benefit," he came to say it does not matter.

R. Na'hman b. R. Hisda lectured: If one said: "This citron is given to you as a gift, and after you to B," and A became seized of it, and performed his duty as owner on the first day of Tabernacles, it depends upon the difference between R. Simeon and Rabbi whether it was done lawfully. R. Na'hman b. Itz'hak opposed: The above Tanaim differ in the case whether the sale of the products be considered the same as the sale of the body (explained above), or not? But in our case, if it was not presented to him to the end that as owner he should perform the duty of that day, for what, then, was it given to him? Therefore it must be said that all agree that A, who did as owner his duty of that day, acted lawfully. But if he has consumed or sold it, it depends upon the difference between the Tanaim mentioned above whether the sale is valid, or A has to pay for it.

There was a woman who had a tree on the estate of R. Bibbi b. Abayi; and each time she went to gather the products of the tree, it made him angry. She then sold it to R. Bibbi for his life, with the condition that after his death it should be

* The ancient Hebrew as well as the Roman law prohibits the freeing of a slave without good reason; and also the deriving of benefit from shrouds, or anything else belonging to a corpse.

turned over to her or her heirs. He, however, transferred it to his minor son (to the end that the tree should remain his for a long time, as according to the law a minor acquires but cannot give title, and this act was according to R. Simeon b. Gamaliel). Said R. Huna b. R. Jehoshua: Because you are weak you speak weak words.* Even Simeon b. Gamaliel admits that his statement holds good only when he transferred it to some one else; but not if to himself.

Rabha said in the name of R. Na'hman: If A said to B, "I give you this ox as a present, with the stipulation that you shall return it to me," and B consecrated it and afterward returned it, the ox is consecrated, and B has fulfilled his duty. Said Rabha to R. Na'hman: But, after all, what has he returned to him? The ox being consecrated, he cannot derive any benefit from it. Rejoined R. Na'hman: But did B depreciate the value of the ox? Has he not returned it as he got it? R. Ashi, however, said: It must be investigated how the stipulation reads. If "You shall return it," then he acted correctly, as he did return it. But if "You shall return it *to me*," which means it shall be fit for me, but if he has consecrated it, it is no more fit for him. Consequently it cannot be considered returned.

R. Jehudah said in the name of Samuel: If A has bequeathed his estate to B, and B says "I do not want it," he nevertheless acquires title, even if he still protests he does not want it. R. Johanan, however, says: He does not. Said R. Abba b. Mamel: And they do not differ. If B protests at the very time the deed of gift was given to him, he does not acquire title; but if he first kept silent, and afterward protested, title is acquired.

The rabbis taught: If a sick person said, "Give two hundred zuz to A, three hundred to B, and four hundred to C," it must not be understood that he who is mentioned first in this deed acquires title to that amount; and, therefore, if a creditor comes with a promissory note of the deceased, it may be collected from all of them. If, however, it reads, "Two hundred zuz to A, and after him three hundred to B, and after him four hundred to C," then the one who is mentioned first in

* The commentators' explanation of this is that Abayi was of the family of Eli, who according to tradition were short-lived. Therefore the word "weak."

the document acquires title to that amount; and the promissory note must be collected from the last. And if the money he receives does not suffice, it must be collected from the one mentioned before him; and if his does not suffice, it must be collected from the first.

The rabbis taught: If a sick person said, "Give two hundred zuz to my first-born son so and so, who is worthy to have them," he may take them, and also the double share belonging to a first-born. If, however, the sick person said, "Give him such an amount for his first-born privilege, the son has the preference to choose which is better for him—the amount bequeathed or the double share prescribed for him. The same is the case if the sick person said, "Give two hundred zuz to my wife, who is worthy of them." She takes them and also what belongs to her according to her marriage contract. If, however, he said, "Give them to her for her marriage contract," she has the choice of taking them or that which belonged to her according to her marriage contract. If a sick person said, "Give two hundred zuz to my creditor B, who is worthy of them," he may take them, and also collect what the deceased owes him. But if he said, "Give them to him for my debt," then he takes it for the debt.

How is the last sentence to be understood—because he said he is worthy of them, he shall take both the two hundred zuz and his debt? Why not explain, as he had a right to them because of my debt? Said R. Na'hman: Huna told me that this Boraitha is in accordance with R. Aqiba, who is particular concerning the version as it is said (Chap. IV., Mishna 2): R. Aqiba admits, etc. From which we see that he gives his attention to a superfluous word. The same is it with the case in our Boraitha—that the words, "as he is worthy of them," are superfluous; and according to R. Aqiba they are said because he wants to add them to his debt.

The rabbis taught: If a sick man said, "I have a mana with so and so," the witnesses may write this, although they are not aware that such is the case. And therefore, when his heirs come to collect from the debtor, it is for them to bring evidence. So is the decree of R. Meir. The sages, however, maintain that the witnesses must not write unless they are aware that so it is. And therefore, the heirs may collect this debt without any

other evidence. Said R. Na'hman: Huna told me: The Boraitha must be so understood. R. Meir said: They must not write; and the sages: They may. And even R. Meir said so because he feared that the court, before which the case of "collection" should come, would err, and approve the deed without any investigation, if the witnesses who signed the deed testified only to what the deceased said, or they were aware that the contents were true. And the sages maintain: Usually a court does not err, and can be relied upon to give proper attention to this matter. Said R. Dimi of Nahardea: The Halakha prevails that it must not be feared the court will err. But why should this differ from the following case stated by Rabba: The ceremony of Halitza must not be made by the court, unless they know the persons? And the same is the case with a denial (of a woman, betrothed in childhood, who on arriving at majority denies the marriage before the court; and according to the law she may remarry without any other act). And therefore the witnesses who were present may write a testimony of this act, although they themselves did not know the persons. And the reason why the court must not perform the ceremony of Halitza, unless they know the persons, is because it is to be feared that the court before which she may come to remarry will not investigate whether she is the same person who had to take Halitza. (Hence we see that error by the court is to be feared?) This is no objection. A court usually does not investigate the act of a former court; but the acts of witnesses, it does.

MISHNA XI.: The father has a right to pluck the products of trees which are found on the estate bequeathed to his son, after his own death, and may present them to whom he pleases. If, however, the plucked fruit remains after his death, they belong to his heirs.

GEMARA: The plucked fruit only, but not that which is attached to the trees, although ready to be plucked (*i.e.*, such belongs to the son, to whom the estate is bequeathed after his father's death)? Have we not learned in a Boraitha that in case the fruit was ripe, under the control of the bequeather, it belongs to the buyer if he sold it before his death? Said Ula: This presents no difficulty. Our Mishna treats of when he bequeathed to his son, and it may be supposed that his last will

was that from that remaining on the tree his son should derive benefit; and the Boraitha speaks of when he has bequeathed his estate to a stranger.

MISHNA XII.: If he left grown-up and minor sons, the grown ones have no right to derive any benefit on account of the minors, nor have the minors a right to same on account of the older brothers (e.g., the older ones have no right to dress themselves at the expense of the inheritance before the division, nor should the minors be supported from the inheritance); but they must divide the inheritance equally. If the older ones have married at the expense of the inheritance, the same amount must be added to the shares of the minors. However, the latter have no right to claim for any addition if their older brothers have married while their father was still alive, as the amount expended for their marriages is considered a gift from their father.*

The very same is the case with grown-up and minor daughters. All of them must receive an equal share. However, in one respect preference is given to daughters who were left together with grown-up sons. The daughters must be fed from the inheritance at the charge of the sons, which is not the case with minor daughters who were left together with grown-up ones.

GEMARA: Rabha said: In the case of the oldest brother who has dressed himself at the expense of the house before division, his act is lawful (and nothing is to be deducted from his share). But does not our Mishna state: "Grown-up ones have no right to derive any benefit," etc. Our Mishna speaks of when they are idle, and do nothing for the benefit of the house. If idlers! Is it not self-evident? Lest one say that, nevertheless, they would be pleased that their brother should be nicely dressed, it comes to teach that it is not so.

"*Grown-up and minor daughters*," etc. R. Abuhu b. Genibh sent a message to Rabha: Let the master teach us: How is it if a woman has borrowed money, consumed it, and thereafter she married without paying her debt, and brought estates with her at marriage? Must her husband pay her debt, or not? Shall we assume that the husband is considered a buyer of the estates brought, consequently he has not to pay, as the law

* So is it explained in the Gemara by R. Jehudah.

dictates that a loan made without a deed cannot be collected from a buyer; or is he considered an heir, and must pay his wife's debts, even when contracted without any deed? And Rabha answered: This we have learned in our Mishna: If the grown-up daughters have married, the minors may do the same. Is this not to be interpreted that if the grown-up daughters have borrowed money from the estate also belonging to the minors, the minors shall do the same by collecting the debts from their sisters' husbands? Nay! The Mishna means to say that they take the same amount from the inheritance as their sisters did. But this is not so. As R. Hyya taught plainly: If the older ones have married at the charge of the inheritance, the minors may collect the amount from their husbands? (Hence we see that the husband is considered an heir, and must pay?) This cannot be taken for support, as a law made in connection with an inheritance for the purpose of marriage is considered as public and known to the people, and also in the light of a deed which is to be collected from encumbered estates.

Said R. Papa to Rabha: Why did you try to decide the question from R. Hyya's Boraitha? Was the same not decided by Rabbin's letter: If one dies leaving a widow and a daughter, the widow must be supported from the deceased's estate. If the daughter has married or dies, the widow is still to be supported from the estate. Said R. Jehudah the son of R. Jose's sister: Such a case came before me, and it was decided that a widow must still be supported from the estate. Now, if the husband is considered an heir, it is correct that his widow should be supported from his estate; but if he is considered a buyer, why should she be supported from his estate? Does not a Mishna state that for the support of a widow and daughters, encumbered estate must not be taken away? Said Abayi: What news has Rabbin sent in his message? Have we not learned this in a Mishna: "The following is not to be returned in the jubilee year: The double share taken by a first-born and the inheritance of a woman taken by her husband"? Hence we see that the husband is considered an heir? Said Rabha to him: And even after he has sent the message, do we then know that it is in accordance with the law? Did not R. Jose b. Hanina say (Middle Gate, p. 255) that the husband takes away

from the buyer? Therefore said R. Ashi: The rabbis have enacted that in some respects the husband should be considered as an heir, and in some respects as a buyer; and have so done on his account. Concerning the jubilee year, it is better for him that he should be considered an heir, for the purpose that he should not be compelled to return the inheritance of his wife, and concerning the case of R. Jose b. Hanina (stated above) he is to be considered as a buyer, that he should not suffer any damage; and in the case of Rabbin they have considered him as an heir, to the end that the widow should not suffer any damage. But why did the sages consider him as a buyer in the case of R. Jose b. Hanina? Do not the buyers (from whom he takes away the property) suffer? Therein they themselves cause that they should suffer, as they ought not to have bought goods from a married woman, who lives with her husband, without his consent.

CHAPTER IX.

RULES AND REGULATIONS CONCERNING THE SUPPORT OF UNMARRIED DAUGHTERS AFTER THE DEATH OF THEIR FATHER, IF AMONG THE CHILDREN WERE AN HERMAPHRODITE OR AN ANDROGYN. MAY OR MAY NOT ONE BEQUEATH HIS ESTATE TO STRANGERS IF HE HAS CHILDREN? DOES THE SECOND WILL ABOLISH THE FIRST? IF A SICK PERSON RECOVERS AFTER MAKING A GIFT WHILE SICK, MAY HE RETRACT OR NOT? IF SUDDEN DEATH OCCUR TO MANY PERSONS, AND IT IS NOT KNOWN WHO DIED FIRST, AND EACH OF THE HEIRS CLAIMS FOR HIS BENEFIT.

MISHNA I.: If one dies, and leave sons and daughters, if the inheritance is of great worth, then the sons inherit, and the daughters must be supported from it; and if a moderate one, the daughters must be supported, and the sons may go a-begging. Admon, however, said: Because I am a male shall I suffer? Said Rabban Gamaliel: It seems to me that Admon is right.

GEMARA: What is to be considered great worth? Said R. Jehudah in the name of Rabh: It shall be sufficient for all of them to be supported for twelve months. And he (Jehudah) added: When I told the Halakha before Samuel, he said: Such is the decree of R. Gamaliel b. Rabbi. The sages, however, maintain: It shall suffice to support all of them until the daughters become of age. So also it was taught by Rabbin, according to others by Rabba b. b. Hana, when he came from Palestiné, in the name of R. Johanan: If the inheritance suffices to support all of them until the daughters become of age, it is considered of great worth; and if less, it is considered moderate. How is this to be understood? If it does not suffice to support all of them, shall the daughters take the entire inheritance, leaving nothing for the sons? Therefore said Rabha: There must be deducted from the inheritance the amount which will suffice for the daughters until they become of age; and the remainder shall be given to the sons.

It is certain that if for some reason the estates become less

in value after the father's death, and do not suffice for the support of the daughters until they become of age, and also for the sons' support, both have already acquired title, and must be satisfied with that which falls to their lot (*i.e.*, the daughters have no right to claim that they shall be supported until of age from the share of their brothers). But how is it if the estate increased in value after death? Shall we assume that the increase belongs to the heirs, and therefore the sons may have the benefit of it? Or, as they had nothing in it when their father died, they are considered entirely cut off from this inheritance, and have nothing to do with the increase? Come and hear what R. Assi said in the name of R. Johanan: If orphans hastened and sold out from this inheritance before the daughters summoned them, the sale is valid, and the daughters have no right to take it away from the buyers, according to the rule that it cannot be collected from encumbered estate for the support of the daughters. (Hence we see the sons are considered heirs, notwithstanding that the estate was not of great worth.) Consequently they have a share in the increase.

R. Jeremiah was sitting before R. Abuhu, and questioned him as follows: If the estates were of great worth, but there was a promissory note in the hands of a creditor, which ought to be collected from the estates, should the estates, because of the note, be considered moderate, so that the support should be for the daughters and the sons should go a-begging? Or, until collected, should all of them be supported, without taking into consideration that after collecting nothing might remain for the support of the daughters? And should you decide that the promissory note, although not yet collected, diminishes the value of the estates, for the reason that the amount due will be collected in any event, even should the creditor die, how is it if the deceased left a step-daughter whom he has to support, according to the marriage contract of his wife, until she shall become of age, and the amount of her support diminishes the estate from being of great worth, and stamps it moderate? How, then, should the inheritance be considered, should the step-daughter die, and then, the obligation being gone, the estates remain of great worth. There is still another question. If the deceased left a widow and a daughter, and the estates left could support only one of them, who

has the preference? And R. Abuhu answered: Go to-day, and come to-morrow. And when he came he said to him: Of all the questions, I can decide the last one. As R. Aba said in the name of R. Assi: The sages have enacted that when there is a widow with a daughter she shall have similar treatment to that of a sister who remains with her brother. As in the latter case, if the estate is moderate she must be supported, although her brothers remain beggars, so also the widow as against a daughter—the widow must be supported and the daughter may go a-begging.

“Admon, however, said: Because I am a male,” etc. How is this to be understood? Said Rabha: He means to say: Because I am a male, and ought to inherit all the estates where the inheritance is of great worth, leaving for my sister only the support for her livelihood until of age, shall I remain a beggar when there is a moderate estate?

MISHNA II.: If one leave sons, daughters, and an hermaphrodite (if it is doubtful whether male or female), and the inheritance is of great worth, the males may count same among the females; but when the inheritance is moderate, the females may count same among the males.

If one say: “If my pregnant wife should bear a male, he shall take a mana,” and she bears a male, the mana is to be given to him; “If a female, she shall take two hundred zuz,” she takes two hundred. If a male a mana, and a female two hundred zuz, and she had born a male and a female? The male takes one hundred and the female two hundred zuz. But if she bears an hermaphrodite, he takes nothing. If, however, he said: “What she shall bear shall take,” then he takes accordingly. And the same is the case if there were no heirs but he—he inherits all.

GEMARA: The Mishna states: They count same among the daughters, which means he shall be treated like them. But does not the later part state: If she bears an hermaphrodite, he takes nothing? Said Abayi: It means that the males counted him among the females; but the latter have the right not to accept him, and he remains without any support. Rabha, however, maintains: They pass him and he must be similarly supported. And the latter part of our Mishna is in accordance with Rabban Simeon b. Gamaliel of the following Mishna: If

she bears an hermaphrodite or an androgyn, which is at times a male and at times a female, R. Simeon b. Gamaliel said: No sanctity rests upon them. (The cited Mishna treats: If one made a vow for the offspring of a gravid cow—if a male, it shall be a burnt-offering; and if a female, a peace-offering.)

An objection was raised from the following: "An hermaphrodite inherits like a son, and is supported like a daughter." And this can be correct only according to Rabha: That he is considered an heir, like a son, in a moderate inheritance; and is supported, like a daughter, in one of great worth. But according to Abayi, who said above that he takes nothing, how do you find that he shall be supported like a daughter? Even according to your theory, how do you explain Rabha's statement, that as an heir, like a son, he takes something of a moderate inheritance? In such a case the sons take nothing; hence he means to say that he is *considered* an heir like a son—to be a beggar. So also you can explain the Mishna: He is in condition to have support like a daughter, but, nevertheless, he does not get any.

"If one says: *If my pregnant wife shall bear a male,*" etc. Shall we assume that a daughter is better to him than a son (as the Mishna says, "If a male one hundred, and a daughter two hundred")? Concerning inheritance, a male is better to him, as he bears his name; and concerning a gift, a daughter is better to him, as it is more difficult for her to make a living than for a male. Samuel, however, maintains that the Mishna treats of when his wife was pregnant with her first child; and it is in accordance with R. Hisda, who said elsewhere: If the first child is a female, it is a good sign for future sons, according to some because she will educate the sons; and according to some, that she should not be afflicted by a covetous eye. Said R. Hisda: As for me, I always give preference to females over males. And if you wish, it may be said that our Mishna is in accordance with R. Jehudah in the following Boraitha: It is a meritorious act for one to support his daughters, and so much the more his sons who occupy themselves with the Torah. So is the decree of R. Meir. R. Jehudah, however, said: It is a meritorious act to support the sons, and so much the more to support the daughters, because of their humiliation (if they should have to beg).

There was one who said to his wife: I bequeath my estate to the child with which you are pregnant. Said R. Huna: This means that he designed to give title to an embryo, and an embryo cannot acquire title. R. Na'hman objected to R. Huna from our Mishna, which states: If my wife shall bear a male, he shall take a mana, etc. And he answered him: I do not know who has taught our Mishna (*i.e.*, I do not find our Mishna to be in accordance with the majority, nor a single one of the sages). But let R. Na'hman say that the Mishna treats of when the bequeather said: I bequeath the estate to the child after my wife has borne it? R. Huna is in accordance with his principle that the child does not acquire title even after birth. (As it was taught:) R. Na'hman said: If one bequeaths to an embryo, title is not given; but if he said, "after he is born," title is given. R. Huna, however, maintains that even then title is not given. But R. Shesheth is of the opinion that in either case title is given. And he added: I deduce my statement from the following Boraitha: "If a proselyte supposed to be childless dies, and Israelites have robbed his estate, and thereafter they hear that he has a son, or that his wife is pregnant, they are obliged to return it. If, however, they have returned it, and thereafter they hear that the son is dead, or that his wife has had a miscarriage, and they again take the estate, he who made a hazakah in the second instance has acquired title, but he who made the same in the first instance has not." Now, if it be remembered that an embryo does not acquire title, why should title not be given to them who made a hazakah in the first instance? Said Abayi: There is a difference with an inheritance which came of itself: In such a case the embryo acquires title. Rabha, however, said: Even in case an inheritance came by itself, the embryo does not acquire title; and the reason why title is not given to them who made a hazakah in the first instance is because they were still uncertain whether the property taken would remain with them, as there was still a doubt whether children were left. But in the second instance they were sure of their ground.

Come and hear another objection: "A child of one day inherits and bequeaths (*e.g.*, if his father dies when he was even one day old, he inherits from his father; and if at birth the estate of his deceased father came to him, and he dies when he was

one day old, his relatives inherit from him). We see, then—only when he was one day old, but not when in embryo. This was explained by Rabh Shesheth: He inherits the estate of his mother, to bequeath to his brothers on his father's side. And this can be only when he was alive one day after his mother; but not when he was in embryo, as he died before his mother. And a son does not inherit from his mother, when once in his grave, so that his brothers on his father's side could inherit from him.

Shall we assume that in case the mother dies while pregnant the embryo dies first? Perhaps she dies first? There happened such a case, and the embryo moved convulsively, thrice. Said Mar b. R. Ashi: Such a movement was without any life, such as the movement of the tail of a lizard. Mar b. R. Joseph in the name of Rabha said: The cited Boraitha means to say that a child of one day diminishes the share of a first-born. *E.g.*, a first-born takes a double share—*i.e.*, twice as much as each of his other brothers. But if there were added a male child of one day, the estate must be divided into five parts, if there are four brothers, of which the first-born takes a double share. And if this child dies afterwards, his share is to be divided equally among the four brothers. This is only when he was old one day, but not when an embryo; because [it is written, Deut. xxi. 15], “and they *bear* him children.” As the same said also on the same authority: A son who was born after the death of his father does not diminish the share of the first-born, as it reads in the verse just cited “bear *him*”; but when born after his death, it was not born to him.

All that was said here was taught in the city of Sura. In Pumbeditha, however, it was taught as follows: Mar b. R. Joseph said in the name of Rabha: A first-born who was born after the death of his father does not take a double share. As it is written [ibid., 17]: “Shall he acknowledge,” and when he is dead he cannot acknowledge. The Halakha prevails in accordance with all the versions said by Mar b. R. Joseph in the name of Rabha.

R. Itz'hak in the name of R. Johanan said: He who bequeaths to an embryo, title is not acquired. And should you object to this statement from our Mishna, which states: “If one bequeaths a mana to the embryo, he takes it after he is born,”

I may tell you that this is said only of a father, whose mind is near to his son; but it cannot be done by a stranger. Said Samuel to R. Hana of Bagdad: You may bring to me ten persons, and I will teach in their presence that title is given if one bequeaths to an embryo. The Halakha, however, prevails that title is not given.

There was one who said to his wife: I bequeath my estate to the children who shall be born of you by me. And his elder son came and said: What becomes of me? And the father answered: You will take a share as one of the brothers. Now, the children which are to be born can certainly not acquire any title; but the question is, does the elder son, when he came to share with his brothers born thereafter, take a double share, as his father bequeathed to him a part of his estate when his brothers were not yet in existence? Or does he share with them equally? According to R. Abbin, R. Miicha, and R. Jeremiah, he is entitled to a double share; and according to R. Abuhu, Hanina b. Papi, and R. Itz'hak of Naf'ha, he is not. Said R. Abuhu to R. Jeremiah: With whom should the Halakha prevail—with us or with you? And he answered: Certainly with us, as we are older than you; and not with you, who are still young scholars. And R. Abuhu rejoined: Does this depend upon age? It depends upon reason, and our reason is better than yours. And what is it? questioned R. Jeremiah again. And he answered: Go to R. Abbin, and ask him, as I have already explained to him the reason at the college; and he shook his head in sign of assent. He went to him, and he told him: Because this case is similar to that of one who says: "You and this ass shall acquire title to this article," would title be given to him? Is this not to explain: You shall acquire title as the ass? The same is the case if one says: You shall share with the children, which are not yet in existence even in pregnancy. Hence title is not acquired in either case. It was taught: If one says: "Acquire title to this as the ass," certainly title is not given; but if he says: "Acquire title, you and the ass," according to R. Na'hman title is given to a half. And R. Huna said: This man said nothing. R. Shesheth, however, said: He has acquired title to the whole of it. Said R. Mordecai to R. Ashi: R. Ivia raised an objection from a Mishna in Tract Kiduchin: It happened with

five women, among them two sisters, that one presented to them a basket with dry figs, saying: You are all betrothed to me with this basket. And one of the women accepted the basket for them all. And when the case came before the sages, they said: The sisters are not betrothed. Hence—only the sisters? But the strangers were. Why? Is this not similar to the case: You and the ass shall acquire (*i.e.*, as the sisters could not under any circumstances be betrothed to one person, the other women must also be treated similarly)? And he answered: That is what R. Huna dreamt—that R. Ivia was going to raise a question (and now I see that R. Huna's dream was true). However, the objection does not hold good, as that Boraitha was explained: In case the man has added: All of you who are fit to be my wives.

There was one who said to his wife: My estate shall be for you and your children. And R. Joseph decided: One half of the estate belongs to her, and the other half to her children. And he added: I deduce my decision from the following Boraitha: Rabbi said: It is written [Lev. xxiv. 9]: "And it shall belong to Aaron and to his sons," meaning a half shall be for Aaron and a half for his sons. Said Abayi to him: What comparison is this? Aaron was fit to receive a share; and therefore the Merciful One mentioned him, that he should take a half. But in this case a woman is not fit to be an heir at all, when there are male children. Would it not be sufficient that she should take an equal share with her children? Is that so? Did not such a case happen in Nahardea, and Samuel collected for the woman a half; and also in Tiberias, and Johanan collected for her a half? Furthermore, when R. Itz'hak b. Joseph came from Palestine, he told: It happened that the government had taxed the citizens of the city and those who had real estate for the manufacture of a crown for the ruler, and Rabbi decided a half should be collected from the citizens, and the other from the owners of real estate. But what comparison is that with what was told by R. Itz'hak? As to that one, it is known that in previous orders from the government they applied only to the rich citizens, and those who possessed real estate only assisted them, with the consent of the government. But the order in question was written: Both the rich, and real-estate owners are taxed. Therefore Rabbi's decision.

R. Zera objected from the following: If one said: I intend to bring a meal-offering, of one hundred tenths of an ephah—to bring it in two vessels—he may bring sixty in one vessel and forty in the other. However, if he brought fifty and fifty, in two vessels, he has fulfilled his duty. We see, then, that only when he does so it is valid; but the law prescribes that he must bring sixty in one and forty in the other. Hence we see that equal halves is not to be understood when he says in two parts? Nay, this cannot be compared. We are witnesses that he intended to bring a great offering; and the expression “in two vessels” was because he was aware that it could not be put into one. Therefore there must be put in one vessel as much as it can contain, and the remainder in the other one.

(Says the Gemara:) The Halakha prevails in accordance with R. Joseph in the three cases: the case of a field, mentioned in the eighth chapter (p. 254), in the case of a sudarium mentioned in the preceding chapter (p. 253), and in this case of the half. There was one who had sent home pieces of silk, without any order to which member of his household they belonged, and R. Ami decided: Those which are fit for the sons, they shall use; and those which are fit for the daughters, shall be used by them. This law, however, holds good only in case he had no daughters-in-law; but if such a case should happen when there are daughters-in-law, and his own daughters are married, it is to be supposed that he sent them to the daughters-in-law. If, however, his own daughters were unmarried, he would not neglect his daughters, and it is to be supposed that he sent them for them.

There was one who said in his will: My *sons* shall inherit my estate. However, he had only one son, and some daughters. And the question arose: By the expression “sons” in the plural, does he mean the one son only, excluding the daughters, or does he mean to include them? Said Rabba: There is a verse in Num. xxvi. 8, “And the *sons* of Pallu: Eliab.” And R. Joseph said: There is another verse in I Chron. ii. 8, “And the *sons* of Ethan: Azaryah.” There was another, who said: “My estate shall belong to my sons,” and he had only one son and a grandson. And the question arose: Whether people are used to call grandsons also sons? R. Hbiba said:

They are. And Mar b. Ashi maintains: They are not. And there is a Boraitha in accordance with the latter, namely: If one vowed not to derive any benefit from his sons, he may derive it from the grandsons.

MISHNA III.: If one left grown-up and minor sons, and the former improved the estate, the improvement shall be divided equally. If, however, they said: "Observe in what condition the estate was left by our father, and it shall be known that we are going to improve it for our own sake," they have a right to take the benefit for themselves. The same is the case with a widow. If she had improved it without any remark, the improvement belongs to all the heirs. But if she remarked, "Seeing in what condition my husband left," etc., the benefit belongs to her.

GEMARA: Said R. Hbiba, son of R. Joseph b. Rabha in the name of his grandfather: The Mishna means to say that they have improved the estate, not at their own expense, but at that of the estate (*i.e.*, they went only to the trouble of hiring laborers for improving, but at the expense of the estate). But if they had expended from their own, then the benefit belongs to them without any remarks. Is that so? Did not R. Hanina say: If their father left them only covered wells (which are usually higher for watering fields), the improvement is for all? We see, then, that although the wells required much trouble to preserve them from pollution, and they should be always covered, the improvement is nevertheless for all? This case is different. It requires only that they shall be watched; and this can be done by minors also.

"Observe in what condition," etc. R. Saphra's father left money, and R. Saphra took it for business purposes. His brothers summoned him before Rabha (demanding a share from the profits). Said Rabha to them: R. Saphra is a great man, and would not leave his study to trouble himself for the sake of others.

"If she had improved it," etc. But what has a woman to do with the estate of orphans? (The law dictates as to whether she shall take what belongs to her according to her marriage contract, and depart; or shall take upon herself the trouble of the orphans, and be supported from the estate. But she has no right to any profit.) Said R. Jeremiah: It treats in case

the woman were an heir (*i.e.*, if the will reads: She shall share equally with the orphans).^{*} But if so, it is self-evident. Lest one say: As it is not usual for a woman to occupy herself with business, therefore it should be considered as she remarked—she is doing it for herself, it comes to teach us that it is not so.

"In what condition my husband left it," etc. Is this not self-evident? Lest one say: Because of the pleasure she takes in thinking that people praise her for troubling herself for the orphans' sake, she relinquishes the benefit in spite of her previous remark, it comes to teach us that it is not so.

R. Hanina said: If one has made the wedding of his son in one of his houses, the son acquires title to the house: provided the son was of age, married a virgin, and she was his first wife, and this wedding was the first of his house. It is certain that when the father has separated for this wedding a house with an attic, the son acquires title to the house, but not to the attic. But how is it if on the house was a balcony? or there were two houses, one inside of the other? Is title given to both, or only to that in which the wedding took place? These questions remain undecided. An objection was raised: If the father had separated for his son a house and furniture, the son acquires title to the furniture, but not to the house? This Boraitha treats of when the treasurer of his father was still in the house. So said R. Jeremiah. And the Nahardean said: Even when there was left his pigeon-coop. And both R. Jehudah and R. Papi said: It suffices if his father left there a vessel with roasted fish (*i.e.*, this shows that he has not relinquished his right to the house). Mar Zutra left his sandals in the wedding house which he separated for his son, and R. Ashi a bottle of oil (for the purpose said above). Said Mar Zutra: The following three things the rabbis enacted as laws,[†] without giving any reason: The case just mentioned; and that which was said above in the name of Samuel: If one has be-

^{*} The commentators Rashbam, Tospath, and Bach discuss at length how the widow is an heir also, illustrating, *e.g.*, if one has married the daughter of his brother, who has no other children besides her, and the brother has inherited the estate of their father, and thereafter both brothers die, then the widow of the one brother is also an heir to the estate of her grandfather, which belonged to her father, who had no heirs except her. There are also some other illustrations, but all are complicated. We give the last, which is simple.

[†] Gershom explains *Sinaitic* laws, with which Rashbam does not agree.

queathed all his estates to his wife, she is considered a guardian only; and also that which was said by Rabh. If A said to B: You owe me a mana, give it to C, and all the three were present, title is given to C.

MISHNA IV.: Brothers partners in business. If one of them was taken by the government to work for it, the damage caused by his absence, and also the profit for the business during that time, must be counted to the partnership. If, however, he becomes sick, and has to be cured, it is at his own expense.

GEMARA: The rabbis taught: If the government had appointed one of the brothers as a collector, or a military purveyor, if this was because of the duty of the house, it must be counted for all of them, but if it was because of his personal fitness, then it is for himself. Is this not self-evident, because the duty of the house must be counted for all? It treats of when he was a genius. Lest one say: In such a case it must not be counted for the house, because he was taken on account of his genius, it comes to teach us that it is not so.

The rabbis taught: If one of the brothers took two hundred zuz, to begin the study of the Torah, or to learn a trade, they may say to him: If you are with us, you have to be supported; but not otherwise. But why not support him, by deducting what his labor was worth to the house? This may be a support to R. Huna's statement, who said elsewhere: The blessing of the house increases when there are more people (*i.e.*, because the expenses of the house do not decrease when there is one person less). But, after all, let them support him even in his absence for the profits, owing to his share after deducting his labor and the expenses. Yea, this in reality they have to do.

"If, however, he becomes sick," etc. Rabbin sent a message in the name of R. Ilah: The Mishna means to say: In case he himself causes his sickness; but if he was occasionally sick, the cure must be at the expense of the house. What does it mean: "Caused by himself"? As R. Hanina says: All sickness comes from Providence, except cold. As it is written [Prov. xxii. 5]: "Thorns * and snares are in the way of the perverse man; he that doth guard his soul will keep far from them."

* The term in Hebrew is "zinim," and "zinha" means cold; and so it is taken by the Talmud. The basis of Leeser's translation is unknown.

MISHNA V.: If, while the father of the house was still alive, he sent through some of the brothers presents to weddings of his friends, and after his death some of the brothers married and the presents were returned to them by the same friends, it is to be counted to the income of the house; as the wedding presents may be replevined by the court. If, however, one presents to his friends pitchers of wine or oil, it is not to be replevined by the court, as this is reckoned a bestowing of favors only.

GEMARA: There is a contradiction from the following: "If the father sent, through one of his sons, a present to the wedding of his friend, and told him to remain there during the wedding, then, when this present returns to the son's wedding, it belongs to him only. If, however, a wedding present was sent to the father, the returning must be at the expense of the house." Hence we see that the son may preserve the returning present for himself; and this contradicts our Mishna. Said R. Assi in the name of R. Johanan: Our Mishna also treats: When the wedding present was first sent to the father. But does not the Mishna state: Through some of the brothers? Read *to* some of the brothers. But the Mishna states farther on: If it was returned? It means: If this came to be returned by the brothers, it must be returned at the expense of the house. R. Assi himself, however, said: It presents no difficulty (there is no necessity for such a complicated explanation of the Mishna, as it can be explained thus). Our Mishna treats: When the father sent the present through one of his sons, without designating that the returns should belong to him, then the returns belong to the house. And the Boraitha treats: When the father has nominated one of his sons to deliver the present, so that the returning should belong to him. Samuel, however, said: The law is to be practised in accordance with the Boraitha. And our Mishna treats: In case the son through whom the present was sent dies childless, and his brother came to marry his wife, who according to the law is also his heir. However, this present he does not inherit from him; because there is a rule that this brother does not inherit property which was not yet in the deceased's possession, but has to come to him in the future. (Says the Gemara:) From Samuel's statement is to be inferred that the one who has re-

ceived the present is obliged to return, even if the donator were dead. Why, then, let him say: Give me my friend who presented it to me, and I shall enjoy myself and give him a present, as he did to me. But as this cannot be, I am not obliged to anything. As we have learned in the following Boraitha: At those places where it is customary to return the presents which the bride has given to her groom at the time of betrothal, and she dies before marriage, they must be returned. At the place where it is not customary, they must not. And R. Joseph b. Abba in the name of Mar Uqba, quoting Samuel, said: Even at those places where it is customary to return, it is only in case the bride dies; but when the groom, it must not be returned, for the reason that she may say: Give me my husband, and I will enjoy myself with him, as for that purpose he gave them to me. Hence he may say also: Give me my friend, and I will enjoy with him. Said R. Joseph: It speaks of when his friend was at the wedding and had enjoyed himself with him all the seven days of the wedding, and the groom suddenly dies before the present was returned to him.

Shall we assume that in the above-mentioned claim of the bride, "Give me my husband," etc., the Tanaim of the following Boraitha differ: If one has betrothed a woman, and dies before marriage (and the marriage contract was already written), a virgin collects two hundred and a widow one hundred zuz. Concerning the presents given at the betrothal, however, it is to be practised as is customary at that place. So is the decree of R. Nathan. R. Jehudah the Prince, however, said: In reality, it was decided that in the place where it is customary to return, it must be returned; and where it is not customary it must not. Now does not R. Jehudah repeat what was said by the first Tana? It must then be assumed that the point of the difference is: If the bride may claim: "Give me my husband," etc., and the Boraitha is not complete and should read thus: If one betroths a woman, a virgin collects two hundred and a widow one hundred zuz, provided he has withdrawn from the contract. But if she dies, if it was in a place where it was customary to return, it must be done so; and if where it was not, it must not. But all this is in case she dies. But if he dies, there is to be no return, as she may claim: Give me my husband, etc. And to this R. Jehudah the Prince came to say:

Even in the latter case it must be done according to the custom of that place, as such a claim is not to be considered? Nay! All agree that the claim in question is to be considered; and there is no difference between them in case he dies. But in case she dies, they differ. And the point of their difference is: Whether the presents with which she was betrothed should be considered lost forever. According to R. Nathan, they are not so considered; and according to R. Jehudah, they are. But does not the Boraitha state that where it is customary to return, it must be so done? This means presents which were given by him aside from the betrothal. And the Tanaim of this Boraitha are in accordance with the Tanaim of the following: If one has betrothed his bride with a talent (a coin—according to some one hundred and twenty manas, and to others sixty, and according to Rashbam twenty-five), a virgin collects two hundred zuz besides the talent, and a widow one hundred. So is the decree of R. Meir. R. Jehudah, however, maintains: A virgin two hundred, and a widow one hundred of the talent; and the remainder must be returned. But R. Jose said: If he has betrothed her with twenty, he may give her thirty halves; and if with thirty, he may give her twenty halves. Let us see of what kind of case this Boraitha speaks. In case *she* dies, there is no longer any marriage contract; and if he dies, why should she return the remainder? Is it not said above that all agree that the betrothal money must not be returned, as the claim: "Give me my husband," etc., is to be considered? And if you should say: It speaks in case she had sinned; then if intentionally, has she still a right to her marriage contract? And if unintentionally, he may marry her if he be a commoner. It must be then said that it speaks of when the groom was a priest, and she was *forced* to sin (and in such a case a commoner may, and a priest may not marry her). And the point of their difference is, that R. Meir holds the money of betrothal to be lost forever, and R. Jehudah holds that it is not; and to R. Jose it was doubtful whether yes or no. And therefore he maintains that, according to the rule, doubtful money is to be divided. If he has betrothed her with twenty selas (eighty zuz), she has to return to him forty zuz. However, he has to complete the amount belonging to a widow as a marriage contract, which is one hundred zuz; therefore he gives her thirty half-selas, which

are sixty zuz, and this completes the mana to which she is entitled. And if he betrothed her with thirty selas, she has to return to him fifteen, and he must give her twenty half-selas more. Said R. Joseph b. Minumi in the name of R. Na'hman: Babylon is the place where it is customary to return. And by Babylon he meant the city of Nahardea. But how is it with the other cities in Babylon? Both Rabba and R. Joseph say: The betrothal money is not to be returned; but the presents are. Said R. Papa: The Halakha prevails, whether he or she dies, or he has retracted, the presents only are to be returned, but not the betrothal money. And in case *she* has retracted, the betrothal money also. Amimar, however, maintains that even in the latter case the money must not be returned, for the reason that one may say that he is then allowed to be betrothed to her sister (*i.e.*, if one should see the betrothal money returned, he might think the betrothal cancelled, and he might marry her sister, which is biblically prohibited so long as she is alive). But according to R. Ashi: This is not to be feared, as the divorce in her hands testifies that the betrothal was not cancelled. (Said the Gemara:) R. Ashi's statement is not to be taken into consideration at all; as one may be aware that she has returned the betrothal money, and not be aware that she took a divorce.

"*May be replevined,*" etc. The rabbis taught: The following five things were said about wedding presents: (a) They may be collected by the court; (b) they are returned at the time when the donator marries; (c) they are not considered usurious (*i.e.*, if the return was of a greater value than presented); (d) the Sabbatic year does not release them; (e) a first-born has no double share in them. They are collected by the court, because they are considered a loan. They are not usurious, because they were not presented with this intention. The Sabbatic year does not release them, because the verse Deut. xv. 2 does not apply to them. And the first-born does not take a double share in them, because they are not as yet in existence, and he is not entitled to that which will be an inheritance in the future.

R. Kahana said: The following is the rule: If one came into the city, and heard that his comrade, who was at his wedding, marries, he must come and make a present. The same is the

case if he heard the voice of the drum which announced the marriage of his comrade; but if it was not drummed, the groom ought to let him know. However, if he failed to do so, although he may be away, he nevertheless must pay. In such a case, however, he may deduct for the meal of which he has not partaken. And how much may he deduct? Said Abayi: The inhabitants of the city of Ganna used to deduct one zuz. However, this depends upon the value at which one would appraise the respect and honor of attendance at the wedding banquet. The rabbis taught: If one has married publicly, and thereafter, by returning the presents, he wishes to be married privately, he has a right to say: As you did with me publicly, I will do with you; but not when privately. The same is the case if one has married a virgin, and the other marries a widow; or, if one has married a second wife, and his comrade marries his first wife, the former may say: As you have done with me, I will do with you. The same is the case if to him it was done once, and his comrade demands from him he shall do twice.

The rabbis taught: Who is like unto a wealthy man who is known to be rich by his many cattle and estates? The one who is a master in Haggadah (as he lectures everywhere, and becomes known to all). Who is like unto a broker who does business at his home only and is not well known to the community? The one who occupies himself with pilpulistic (dialectology, one who is a master in dialectics). Who is like unto one who makes his living by selling things which are to be measured—who gathers his money little by little, which finally becomes a considerable amount? The one who gathers the decisions of the rabbis, little by little, and finally possesses a great deal of wisdom. However, all are dependent to the owner of wheat, which is the Gemara, as only by the studying of it are we able to understand the Mishnayoth and the Boraithas.

R. Zera in the name of Rabh said: It is written [Prov. xv. 15]: "All the days of the afflicted are evil." It means: The masters of Gemara (because they must find out how to decide the laws from the Mishnayoth, which always need an explanation). "But he that is of a cheerful heart," etc., means: the one who is a master in Mishnayoth. Rabba, however, maintains the reverse. He who is a master in Mishnayoth cannot come to any conclusion about Halakha; but he who is a master in

Gemara knows how to decide Halakhas. And this is what R. Mesharshia said in his name: It is written [Eccl. x. 9]: "He that moves stones will be hurt through them," meaning the masters of the Mishna. "He that cleaveth wood will be endangered thereby," means the masters of Gemara (because they do not always succeed in finding out the correct decisions). R. Hanina said: "All the days of the afflicted," etc., means him who has a bad wife. "But he who is of a cheerful heart," etc., means him who has a good wife. R. Janai said: "All the days of the afflicted," etc., means one who is effeminate. "And he that is of a cheerful heart," etc., means him who is hardened to the ways of the world. R. Johanan said: By the first is meant him whose nature is merciful, and who takes to heart everything which happens to his fellow-men; and by the second is meant him who is callous. R. Jehoshua b. Levi said: The first means him who is a pedant; and the second, him whose mind is worldly.*

MISHNA VI.: If one sends presents to the house of his betrothed's father, to the value of one hundred manas, and has partaken of the betrothal meal, even for one dinar, they are not to be returned. If, however, he did not partake, they may be returned in case of retraction. If the presents were given for the purpose that the bride should bring them, after her marriage, to her husband's house, they are to be returned. But if such is to be used while she is yet in her father's house, they are not.

GEMARA: Said Rabha: It means if he has partaken of no less than the value of a dinar; but if less, he has a right to demand a return. Is this not self-evident? The Mishna states a dinar? Lest one say this statement is only general, but not particular, he came to say that this is to be taken literally. Here in the Mishna it is eating. But how is it if he drank, or his substitute had partaken? Also, how is it if they had sent to him? Come and hear. R. Jehudah in the name of Samuel said: It happened with one who had sent to his betrothed's father one hundred *carrums* containing pitchers of wine and oil, and vessels of silver and gold, and silk garments; and while he was joyful over the act, he rode on his horse to the gate of

* The second explanation to this verse by the same authority will be in Chapter XI. of Tract Sanhedrin as the proper place.

his betrothed's father, where they gave him a goblet of a warm beverage which he drank while sitting on the horse. Thereafter he died before marriage. And R. Aha, the mayor of that city, brought this case up before the sages in the college of Usha, and they decided: Such presents as may become spoiled before marriage are not to be returned, but such as are in good condition may. Hence we see even if one has not eaten, but drunk, it is the same. Infer from this also that the value of what he had drunk was less than a dinar (as a goblet of warm beverage cannot amount to a dinar). Said R. Ashi: Who can assure us that the goblet to which they treated him was not worth a thousand zuz, as perhaps they had ground a pearl* of that value in the goblet? But infer from this that if they had sent to his house, it is the same as if he had partaken of it at the house of his betrothed's father? Nay! Perhaps at the gate of his betrothed's father is the same as if he had partaken of it *inside* the house. The schoolmen questioned: How is it when the presents have improved—*e.g.*, if he had made presents in cattle and they brought offspring? Shall we say, because they have to be returned to him, they are to be considered under his control, and belong to him; or, because if they should be lost, payment for them would be demanded, they are considered under the control of his betrothed's father? This question remains undecided.

Rabha questioned: The presents which are usually spoiled during the time from the betrothal to marriage—how is it if they were in good condition; must they be returned, or not? Come and hear the Boraitha cited above: "R. Aha, the mayor of that city, brought the matter up before the sages of Usha, who decided: If they are liable to be spoiled, they are not to be returned." Does it not mean although they are in good condition? Nay, it may mean if they *were* spoiled. Come, then, and hear the last part of our Mishna: "But if they be used while she is yet in her father's house they are not?" This was explained by Rabha to be nets and veils. R. Jehudah in the name of Rabh said: It happened with one who sent to the house of his betrothed's father, wine, oil, and garments of flax; all of them new of that year at the time of Pentecost.

* In ancient times they used to grind pearls and diamonds in medicine.

But what news came he to tell us? If you wish, he tells us the great value of the land of Israel; and if you wish, it may be said that he came to teach us: If one claims that he had done so at such a time, his claim is to be considered. The same said again in the name of the same authority: It happened with one, that he was told that his betrothed wife could not smell. He went after her into a ruined building to test her, and said: I perceive a smell of radishes (*i.e.*, he kept in his pockets some for the purpose of testing her, whether she would smell them), and she answered him sarcastically: If one should furnish me with the dates of Jericho, I would eat them with the radishes I smell. Thereupon the ruined building fell and she died. And the sages decided: Because her husband entered the ruin only for the purpose of testing, he has no right to inherit from her.

"But if they be used while in her father's house," etc. Rabbin the elder was sitting before R. Papa and said: This is only in case death occurred to one of them; but if *he* had retracted, the presents are to be returned, but not what he had expended for the banquets. If, however, *she* had retracted, even the value of a bundle of herbs is to be returned. Said R. Huna b. R. Jehoshua: The value of the meat used at the banquets must be appraised at the cheapest price. How cheap should it be? A third of the existing price.

MISHNA VII.: If a sick person had bequeathed all his estates to strangers, leaving some ground for himself, his gift is considered valid. If, however, he left nothing, it is invalid.

GEMARA: Who is the Tana who holds that we may act in accordance with the supposed intention of the bequeather (as the Mishna states, "If he left nothing for himself it is invalid," which means, if the sick person becomes cured, he may retract: because if he could know that he would remain alive, he would not do so)? Said R. Na'hman: It is according to Simeon b. Menasia of the previous chapter (p. 291). R. She-sheth, however, maintains: This is in accordance with R. Simeon of Shizuri of Tract Gittin (Chapter VI., Mishna 6), who said: Also who is dangerously sick. Who is the Tana of what the rabbis taught in the following Tosephtha: If one was sick in bed, and he was questioned to whom he bequeathed his estates, and he said: "I thought that I had a son, but now that I am

convinced I have not, I bequeath my estates to so and so"; or, "I thought that my wife was pregnant, but now that I know she is not, I bequeath them to so and so"; and thereafter it became known that he left a son, or that his wife was pregnant, this bequeathing counts nothing—shall we assume that it is in accordance with R. Simeon b. Menasia and not with the rabbis? Nay! It may be even in accordance with the rabbis, as when he said: "I thought," etc., it is different. Why was it supposed previously that this should not be in accordance with the rabbis? Lest one say that the sick person said it only to mention his sorrow, but he did not think that it should not be bequeathed if he did have a son, it comes to teach us that it is not so. R. Zera in the name of Rabh said: Whence do we deduce that a gift of a sick person must be *biblically* considered? Because it is written [Num. xxvii. 8]: "Then shall he cause to pass unto his daughter" (*i.e.*, it should be written as elsewhere: You shall give the estates), it comes to teach that there is another case which we have to pass, and this is the gift of a sick person. R. Na'hman in the name of Rabba b. Abuhu, however, maintains from [ibid., verse 9]: "Shall ye give his inheritance unto his brothers" (which is also superfluous, as it should read: If no daughter, then to the brothers), which teaches that there is another gift which is to be considered valid, and that is, of a sick person. R. Menasia b. Jeremiah said: It is deduced from [II Kings, xx. 1]: "Give thy charge to thy house," etc., from which we see that concerning a sick person it is sufficient when he charges without any writing. And Rami b. Ezekiel said: From the following [II Samuel, xvii. 23]: "And Achithophel . . . and gave his charge to his household," etc., we see that charging is sufficient without any writing.

The rabbis taught: The following three things has Achithophel charged his sons: You shall not quarrel with each other; you shall not rebel against the kingdom of David; and if the Day of Pentecost be a clear one, you may begin to sow wheat. Mar Zutra, however, said: It was taught that he said: If it should be cloudy. Nahardeans said in the name of R. Jacob: Not exactly clear, and not exactly cloudy; as, if it should be a little cloudy, with a north wind blowing, it is also considered clear. Said R. Abba to R. Ashi: We, however, do not rely

upon the cited Boraitha, but on what is said by R. Itz'hak b. Abdimi in Tract Yoma (p. 29, lines 14, 15, etc.).

[There is a Boraitha by Abba Shaul: If the Day of Pentecost be clear, it is a good sign for the whole year. R. Zebid said: If the first day of the new year is a warm one, the whole year will be warm; and if cold, the whole year will be so. And to what purpose was it said? Concerning the prayer of the high priest on the Day of Atonement (that he should pray accordingly).] Rabha, however, in the name of R. Na'hman said: The gift of a sick person is rabbinical. And it was so enacted that a sick person should not become exhausted, being aware that, because he is sick and cannot write down or sign his will, he can do nothing with his property. But did, indeed, R. Na'hman say so? Did he not say: Although Samuel decided: If one sold a promissory note to his neighbor, and thereafter relinquished his right in it, his act is valid; and even his heir may do so? He (Samuel) nevertheless admits that if he gave this note to some one as a gift, he has no longer right to relinquish his debt, even if he becomes cured. Now, this would be correct if the gift of a sick person were biblical; but if it is rabbinical, why should he not be able to relinquish it when cured? It is true it is not biblical, but the rabbis have enacted that this law should be equal to a biblical one.

Rabha in the name of R. Na'hman said: If a sick person said: "A shall reside in such a house," or, "B shall consume the products of such and such a tree," he said nothing, unless he said: "Give such and such a house to A, that he may reside there"; "Give such and such a tree to B, and he shall consume its products." Is it meant to say that R. Na'hman holds that a sick person who verbally wills has no more right than one who is in good health—*i.e.*, if one who is in good health should say: "He shall reside there," it would not be considered a gift even if it were done with the ceremony of a sudarium; then it would contradict another saying of Rabha's in the name of R. Na'hman: If a sick person said: "The loan made by me to A shall be given to B," he is to be listened to, which is not the case with one in good health, as title cannot be given to a loan which is made with the intention that the borrower shall expend it. (Hence we see that a sick person has more right than one in good health.) Said R. Papa: The reason of this law is,

because an heir inherits it, it is considered as if it were under the control of the borrower. And farther on it is said that the gift of a sick person is considered as an inheritance. R. Aha b. R. Aiqua, however, said: To transfer a loan is lawful, even for him who is in good health in case it were made in the presence of all three, as is said above by R. Huna.

The schoolmen propounded a question: If the sick person bequeaths a tree to A and the products of it to B, should it be considered as if he reserved it for himself, in such a case it being said above that he cannot retract when cured, or is it not so considered? And should you decide that it is not so considered when he bequeaths the products to another, how is it if he said: I bequeath the tree to A, except the products. Is this considered as if he reserved some of the ground for himself, or not? Said Rabha in the name of R. Na'hman: Even if it should be decided, the products to another, it cannot be counted that he reserved some of the ground for himself, it is to be counted as if he left the products to himself, for the reason that if one left to himself, he does it with a good eye. Said R. Abba to R. Ashi: We taught R. Na'hman's statement as to what was said above (p. 153) by Resh Lakish concerning a house and an attic; and in accordance with R. Zebid's explanation there.

R. Joseph b. Minumi in the name of R. Na'hman said: A sick person who has bequeathed all of his estates to strangers, it must be investigated how was the case (*i.e.*, if he had divided them at one time). *E.g.*, of my property such and such shall belong to A, and such and such to B, etc.—as he could not do otherwise if he had made up his mind to divide his estates in such a manner as if he were to die of his sickness, so the last ones are not considered as if he would reserve some of his estates for himself—all of them acquire title after his death. But in case of cure he may retract from all of them, even from the first, but if he so does after deliberating (*i.e.*, “Such and such shall be to A,” then stops, and some time thereafter adds: “Such and such to B,” etc.), in case he was cured of this sickness he may retract only from the last one, as he left nothing for himself—for it is to be supposed that if he knew he would be cured he would not give away the last of his estate so that he should remain a beggar—but not from the previous one.

But why should not we suppose, even in the latter case, that his intention was concerning all of them, in case he should die, and the deliberation was as to who was more worthy to be his inheritor? Usually a sick person who expects to die makes up his mind for all his estates before he mentions any name.

R. Aha b. Minumi in the name of R. Na'hman said: If a sick person has bequeathed all his estates to strangers, and thereafter is cured, he cannot retract, as it may be feared, perhaps, he has estates in another country. But does not our Mishna state: In case he left nothing for himself, he may? And according to this theory, how can such a case occur? Said R. Hama: It may occur, if he said: *All* my estates, wherever they may be found. Mar b. R. Ashi said: Our Mishna means to say: In case it was clear to the people that he had no estates elsewhere.

The schoolmen propounded a question: Should a retraction in part be considered a retraction of all, or not (*e.g.*, if he first bequeaths all his estates to A, and thereafter he bequeaths a part of same to B, which, according to the law, he may do, the question arises whether A has still the right to what was bequeathed to him at first, or the retraction of a part annuls the first entirely)? Come and hear: "If one bequeaths all his estates to A, and thereafter a part of them to B, B acquires title, but A does not." Is it not to be assumed that it means in case he dies? Nay! It means in case he was cured. And so it seems to be from the latter part stated in the same Boraitha: "If he wrote, 'A part of my estate shall belong to A and all the remainder to B,' the latter acquires title, but not the first." And this statement is correct in case he was cured; as then, bequeathing all the remainder to B, he reserved nothing for himself; but if it speaks in case he dies, why should both of them not acquire title? Said R. Yemar to R. Ashi: The same might be said even when he was cured. If you decide that a retraction in part is considered a retraction to all, it is correct that title is given to B, as the first bequeathing to A is entirely annulled with that which he has separated from it to B. But if you should decide that a retraction in part does not annul the first, let this case be considered as the case of "dividing" mentioned above, and title should not be given to any of them.

The Halakha, however, prevails: "That a retraction in part

is considered entirely." And the first case mentioned in the just cited Boraitha holds good for both, whether he dies or is cured; and the latter case holds good only when he was cured.

R. Shesheth said: The expressions, "He shall take," "shall be rewarded," "shall make a hazakah," and "shall acquire title" are to be considered a *gift*, from which he has no right to retract. A Boraitha adds: "Also the expression 'shall inherit,' to him who is fit to be his direct heir." And it is in accordance with Johanan b. Beroka.

The schoolmen questioned: How shall it be done, if he expresses himself: A is the one who shall derive benefit from my estates? Does he mean all of them shall belong to him, or that he shall derive *some* benefit from them, but not all? This remains undecided. The same propounded another question: How is it if he had sold all his estates while he was sick—may he retract when cured, or not? And in answering this question, at one time it was said by R. Jehudah in the name of Rabh: He may retract; and at another time it was said by the same in the name of the same authority: He may not. However, they do not contradict each other, as the first decision holds good in case the money obtained was still in his hands, and the second applies in case the seller had expended it by paying his debts.

The schoolmen propounded another question: If a sick person has confessed, "I owe so much to so and so," shall it be taken for granted, and his creditors acquire title to the cash or estates left; or, probably, that he said this for the purpose that, should he be cured, his children should not think that he was rich, and therefore the man whom he mentioned in his confession takes nothing? Come and hear: Aisur, the proselyte, had thirteen thousand zuz with Rabha. R. Mari was his son (whose mother Rachel, daughter of Samuel, who was in captivity, was pregnant with him from the same Aisur when he was still a heathen before marriage, and although he was born after the father had embraced Judaism, according to the law he was not considered his son concerning inheritance, and also must not be named after him, therefore Mari was named Mari b. Rachel, after his mother). Said Rabha: I do not see any lawful case which could make R. Mari inherit the money deposited with me. By inheritance he cannot, as, according to the law, he is not considered an heir. Should his father while sick make

it a gift to him, there is a rule that he who can be an heir is fit to receive the gift, but not he who is not fit to be an heir. There is also a rule that to coins title cannot be given by exchange; and if his father would present him with real estate, which is lawful, his father does not possess it; and if by transferring them from me to him in the presence of all three of us, then certainly, if he would send after me, I would not listen. Which R. Aiqua b. R. Ami opposed, saying: Why, then, let Aisur confess that the money in question belongs to Mari, and with his confession title would be given to him. While so discussing, Aisur got wind of it, and confessed. Rabha became angry, saying: They are instructing people how to make their claims good and do harm to me.

"Reserving some ground for himself," etc. But what is meant by this? Said R. Jehudah in the name of Rabh: It means real estate, or ground by which his livelihood is assured. And R. Jeremiah b. Abba maintains: The same is the case when he left movable property. Said R. Zera: See how the decisions of our elders correspond. Why is it said real estate? Because it is supposed that a sick person would think, "If I should be cured, I shall get my livelihood from this estate." The same is the case if he left movable property; he relies upon it. R. Joseph, however, opposed: I do not see such a correspondence at all. He who says "movable property" does not correspond with our Mishna, which states plainly, "ground" (real estate); and he who said "to be sufficient for his livelihood" also does not correspond with it, which states "some real estate," which cannot be explained that it should suffice for a livelihood. Said Abayi to him: Does the Mishna mean in each case when it mentions ground, that it is not changeable for movable property? Did not R. Dimi b. Joseph say in the name of R. Elazar, referring to a Mishna in Tract Gittin, in which also some ground is mentioned: Movable property is also considered a remainder in that case? There it is different. It should not state "ground" at all; but because it begins with the law of Peah, which applies to ground no matter how small it is, etc., it uses the same expression at the end. But in reality there is a difference between real estate and movable property. It was also questioned: Is this a rule—that wherever the expression, a trifle, is mentioned

in the Mishna, it does not mean a certain quantity? Is there not a Mishna in Chulin: "If five sheep give some wool, the law of the first shearing applies to it"? and to the question: What does "some wool" mean? said Rabha: No less than a litra and a half, etc. Hence we see the expression "some" means a certain quantity? There also it should not state "some wool"; but because in the beginning it states: If each sheep gives a litra and a half, it expresses in the latter case "some wool," as the quantity from every five sheep is only one litra and a half.

It is certain that if one says, "I bequeath my movable property to so and so," he acquires title to all vessels or garments which are useful, except wheat and barley. And if he says, "All my movable property," wheat and barley are also included; and even the grinder of a handmill, but not the grindstone. And if he say, "All that is movable," even the latter is included. But the question arises: If among his properties were also bondsmen, is title given to them also, as they are also considered movable property; or are slaves under the category of real estate and title is not given?

Said R. Aha b. R. Ashi to R. Ivia: Come and hear Mishna 7 in Chapter IV. of this tract, which states: If he said, "I sell the town, with all its contents," slaves are included. From which it is to be inferred that slaves are considered movable property; as if they were considered real estate they ought to be included, even if he did not mention "with all its contents." But can you infer from it that they are considered movable property? Does not the Mishna express itself "even bondsmen"; and if they should be considered movable property, why "even"? We must then say that there is a difference between movable property which must be carried and that which is self-moving. The same answer can also apply to the theory that slaves are considered real estate. (See previous vol., p. 59.)

Rabha in the name of R. Na'hman said: In five cases the act of a gift is not considered unless the bequeather writes "all my estates," and they are: A sick person, his bondsmen, his wife, his children, and the estates of a woman who has bequeathed them to some one for the purpose that her future husband should not demand them at the marriage. "A sick

person"—as our Mishna states: If he reserved nothing for himself, the bequeathing is not considered. "A slave"—as there is a Mishna which states: If one has bequeathed all of his estates to a slave, the latter becomes free. If, however, he reserved some for himself, he does not. "His wife"—as is said above: If one bequeaths all his estate to his wife, it is considered that he has appointed her as a guardian only. "To his children"—as stated above: If one bequeaths all his estate to his children, but reserves for his wife some ground, she loses the right of her marriage contract. "And the estate of a woman who desires to hide it from her future husband"—as the Master said elsewhere: In such a case she must write *all* her estates, as only then she may retract after her marriage. But if she reserved something for herself, she loses the right. And in all those cases where they reserved for themselves movable property, their acts were invalid, except in the case of a marriage contract, to which the enactment of the rabbis was made for real estate only. Amimar, however, maintains: If the movable property in question was mentioned in the marriage contract, and while bequeathing all his estate to his children he reserved it for himself, it is considered, and his wife does not lose her right in the marriage contract.

If A bequeaths his estates to B, and among them were slaves, they are included, as they are also called estate, as said above. Earth is considered estate, as there is a Mishna: Estates which one can rely upon can be acquired with money, with a bill of sale, and with hazakah. Garments are also considered estate, as the same Mishna adds: And to that which cannot be relied upon, title is given only by drawing. Coins are also considered estate, from the same Mishna, which adds: Such estates which cannot be relied upon may be obtained with that which may be relied upon.* [Here is repeated from Baba Kama (p. 236) what happened to R. Papa when he had to collect twelve thousand zuz, as evidence that coins are considered estate.] Deeds are also considered estate. As Rabba b. Itz'hak said: There are two kinds of deeds. If one said to witnesses: "Give title of this field to so and so by a ceremony of a sudarium, and

* In the Talmud, wherever it means real estate, the expression is estates which one can rely upon—which means that if they are mortgaged for a loan the lender may rely upon them, as they cannot be lost by fire, etc.

write him a deed, he may retract as to the deed," but he cannot retract as to the field itself, as title was already given. But if he said: "Give title," etc., with the stipulation, "You shall write him a deed also," he may retract from both. And R. Hyya b. Abbin in the name of R. Huna said: There are three kinds of deeds: the two just mentioned; and the third, if the seller hastened and wrote the deed. As is said above: If the seller desire to write a bill of sale, he may do so even in the absence of the buyer; as after the buyer makes a hazakah on the estate, title is given to the deed wherever it may be found. As we have learned: Estates which cannot be relied upon are obtained with that which is to be relied upon, etc. (We see, then, that deeds are considered estate.) Cattle are also so considered, as we have learned (Tract Shekalim, Chapter IV., Mishna g): "If one devote his possessions, and there are among them cattle fit for the altar, male or female," etc. Fowl are also so considered, as we have learned [ibid., h]: "If one devote his possessions, and among them . . . oils and birds," etc. Tephilin are also so considered, as we have learned: "If one devote his estates, among which tephilin were found, they must be left for him."

The schoolmen propounded a question: How is the case with the Holy Scrolls—as they must not be sold, are they considered estate or not? This remains undecided. The mother of R. Zutra b. Tubhia had transferred to Zutra her estates because she was about to marry R. Zebid. However, after marriage, Zebid divorced her. Then she came before R. Bibi b. Abayi, claiming that she retracted from her transfer, as she told R. Zutra plainly that only for the purpose of marriage had she transferred her estates to him. But he said: You transferred them on account of marriage, and you did marry. Said R. Huna b. R. Jehoshua: Because you are weak you speak weak words (see above, p. 306). Even according to him who said: "If she wishes to hide her estates from her future husband, title is given," it is only in case she does it without any remark; but in this case she said plainly to her son that she did it because of marriage. But now she is divorced.

The mother of Rami b. Hama bequeathed to him her estates on one evening, and in the morning she bequeathed them to her son R. Uqba. Rami then went to R. Shesheth,

who turned over the estates to him. And R. Uqba went to R. Na'hman's court, and he decided that the estates belonged to him (Uqba). R. Shesheth then went to R. Na'hman and questioned him: Why such a decision? If it is because she retracted from the first, this would hold good only should she be cured; but she was dead from this sickness, and her first will ought to be listened to? And he answered: So said Samuel: In such a case where a retraction holds good in case of a cure, it is the same if the retraction was made while still sick. Rejoined R. Shesheth: Samuel said so in case he has retracted and reserved the estates for himself? But did he say also that he might bequeath to another? And R. Na'hman answered: Yea! Samuel said plainly: One may do so, whether for himself or for another.

The mother of R. Amram the Pious possessed a bundle of deeds, and while dying she said: They shall be given to my son Amram. His brothers, however, came to complain before R. Na'hman, claiming that Amram had not made any drawing on the deeds; consequently he had not yet acquired title to them. To which R. Na'hman answered: The words of a dying person are considered as if written and delivered.

The sister of R. Tubi b. Matna bequeathed her estates to him on one morning, and in the evening came R. Ahadbui, who cried before her, claiming that people would say: The one brother is a scholar and the other not, and she has bequeathed to him. When the case came before R. Na'hman, he decided as he said above in Samuel's name, that the retraction held good. The sister of R. Dimi b. Joseph owned a part of a vineyard; and every time she became sick, she used to present it to him, and when cured to retract. At one time she became sick and sent to him: Come and acquire title to my estates. And he answered: I do not want them. She, however, sent again to him: Come and acquire title to them, so that, according to the law, I shall not be able to retract. He then went, reserved a part thereof for her, and then the ceremony of a sudarium was made. She again became cured, and again retracted, and came to R. Na'hman requesting that he should return to her her estates. And R. Na'hman summoned R. Dimi before the court. But he was not willing to listen, saying: To what purpose shall I go? All that was done was in

accordance with the law. She reserved of the estates for herself in case she should be cured, etc. He then sent to him: If you will not appear before the court, I shall prick you so that blood will not run (*i.e.*, put him under the ban). Then R. Na'hman examined the witnesses how was the case. And they said: The woman said thus: "Woe is me! I am dying," and then she said her will. To which R. Na'hman gave his decision: In such a case it is considered that she made the will because she was afraid she would die; and a will made in the fear of death may be retracted.

It was taught: Concerning a gift in part of a sick person, it was said before Rabha, in the name of Mar Zutra the son of R. Na'hman, who said in the name of his father: In one respect it is equal to a gift by one in good health; it means he cannot retract if cured; and in the other to a will of a sick person, as it needs not the ceremony of a sudarium. Said Rabha to them: I told you several times, "Do not put a clay-pot (see Chapter I., p. 14) on the neck of R. Na'hman." R. Na'hman said thus: It is considered a gift of one in good health and must be done with the ceremony of a sudarium. Rabha, however, objected to R. Na'hman from our Mishna, which states: If he reserved some ground for himself the gift is valid. Is it not to be assumed that no sudarium is needed? And he answered: Nay! It must be done with the ceremony of a sudarium. But does not the latter part state: If he reserved nothing, title is not given? And if it is as you say, why should it not be the same when made by a sudarium? And he answered: So said Samuel: If a sick person has bequeathed all his estates to strangers, although made with a sudarium, he may retract, because it is certain he made it in the fear of death. R. Mesharshia objected to Rabha from the following: It happened with the mother of Rukhl's sons that while sick she said: My jewelry shall be given to my daughter, and is worth twelve manas. And she died; and the sages listened to her will. (Hence we see that, although it was a part of her estate, and it was not made with the ceremony of a sudarium, it was nevertheless considered.) The case was, because she had mentioned: I am certain I shall die, therefore I bequeath this to my daughter. R. Huna b. R. Jehoshua, however, said: If the sick person has commanded while dying, a sudarium is needed; and all Bo-

raithas cited treat when the sick person has divided all his estates among different persons. And in such a case it is said above that the rabbis consider them as a gift of a sick person. The Halakha, however, prevails that for a gift of a sick person in part a sudarium is needed, even when he dies of that sickness; but if he commanded while dying, no sudarium is needed in case he dies. But if he was cured he may retract, even if it was done with a sudarium.

It was taught: A gift of a sick person, in which it was written that it was made with a sudarium—it is considered based upon two sources, and must be listened to. So declared the school of Rabh in the name of their master. Samuel, however, said: I do not know what should be done in such a case. The reason of the school of Rabh is: Because the will was made on two bases, it is equal to both—a gift of one in good health, from which he cannot retract, and to a gift of a sick person who said, "The loan I have with A, shall be given to B." And the reason of Samuel, who was doubtful in such a case, is: Perhaps the sick person made up his mind not to give title without a deed, and such cannot be written after death.

However, there is a contradiction from the following statement of Rabh's, to his one decision just mentioned, and the same is it with Samuel—namely: The message which Rabbin sent in the name of R. Abuhu (above, pp. 300-1), in which both Rabh and Samuel contradict themselves? Nay! There is no contradiction at all. Rabh it does not contradict, because in one case he speaks where it was made with a ceremony of a sudarium, and in the other where it was not. And to Samuel also there is no contradiction, as his decision in the case cited speaks when the sudarium was made to strengthen the act. (This will be explained farther on.)

R. Na'hman b. Itz'hak was sitting behind Rabha, and Rabha before R. Na'hman, who questioned him: Did Samuel indeed say that it is to be feared the sick person had perhaps made up his mind to give title by a deed only? Did not R. Jehudah say in his name: A sick person who has bequeathed all his estates to strangers, although made with a sudarium, if he was cured he may retract? Because it is known that this bequest was only because he thought he would die. R. Na'hman gestured, and Rabha remained silent. After R. Na'hman went out,

questioned R. Na'hman b. Itz'hak: Rabha, what does R. Na'hman mean by his gesture? And he answered: He means that title is given when the act was strengthened. And to the question: How is it known that the act was strengthened? Said R. Hisda: If it was written: "In addition to his gift the ceremony of a sudarium was made."

It is certain that if one bequeathed first to one, and thereafter to another, it is as R. Dimi said above: The later will abolish the first. But how is it if he wrote and gave title with a sudarium to one, and thereafter he did the same to another? According to Rabh: Title is given to the first, as in his opinion it is similar to a gift by one who is in good health. But according to Samuel title is given to the second, as in his opinion it is similar to a gift of a sick person, and it is to be feared that he had perhaps made up his mind to give title only by a deed. So it was taught in the city of Sura. In Pumbeditha, however, it was taught as follows: R. Jeremiah b. Abba said: A message was sent from the college to Samuel: Let the master teach us—how is the law if one has bequeathed his estate to strangers with a sudarium? And his answer was: After a sudarium, nothing can be done. The schoolmen, however, understood that Samuel's decision was only if it was bequeathed to another; but if he became cured and wished to retract for the sake of himself, he might do so. Said R. Hisda to them: When R. Huna came from Khuphry, he explained that Samuel meant to say it holds good in any event (*i.e.*, he cannot retract even for himself). There was one who bequeathed his estates with a sudarium while he was sick, and thereafter became cured and wanted to retract, and brought up his case in the court of R. Huna. And R. Huna said to him: "I can do nothing for you, as you acted not in accordance with those who wish to retract after cure. They usually give title with one of the two—a document or a sudarium. You, however, have done both; and such an act can by no means be abolished." There was a deed of gift in which it was written: While I live and after my death. Rabh considered this as a will upon death, because death was mentioned. And Samuel considered it as a gift by one in good health, because while "I live" was mentioned—explaining that the word death is to be interpreted from time everlasting. Said Uhla: The

sages of Nahardea decided: The Halakha prevails with Rabh. Said Rabha: If, however, it was written: "While I *still* live," title is given. And Amimar said: The Halakha does not prevail with Rabha. Said R. Ashi to him: Is this not self-evident? Have not the Nahardeans decided: The Halakha prevails with Rabh? (And he rejoined:) One might say: When "*still* alive." Rabh also admits: I came to say that it is not so. There was such a case, which came before R. Na'hman in the city of Nahardea, and he sent the plaintiff to R. Jeremiah b. Abba in the city of Shum-Tamia, saying: Nahardea is the city of Samuel, and we cannot act against him, though the Halakha prevails with Rabh. There was also such a case which came before Rabha, and he decided in accordance with his own theory. And the plaintiff was a woman, who troubled him very much, saying: His decision was not in accordance with the law. He said then to R. Papa b. R. Hanon, who was his scribe: Write her a document that she won the case; but at the bottom write a few words from a Mishna in Middle Gate: "He may hire other laborers or deceive them" (that the court to which she shall bring my judgment will understand that I do not agree with it). And she exclaimed: I see you desire to fool me—may your ship sink! Rabha's followers dipped his clothes in water, to overcome the curse of the woman. However, they did not succeed, as Rabha was punished for this.

MISHNA VIII.: If in the deed it was not mentioned that he was sick, and he claims that he was sick at the time of writing and had a right to retract, while the plaintiff claims that he was in good health, it is for him to bring evidence that he was sick. So is the decree of R. Meir. The sages, however, say: There is a rule that it is always for the plaintiff to bring evidence.

GEMARA: There was a deed of gift in which it was written that it was done while he was sick in bed; but it was not mentioned that he died from that sickness. And Rabha said: It does not matter, as in reality he did die, and his grave is evidence. Said Abayi to him: But what evidence is this that he died from that sickness? Perhaps he was then cured, retracted, and thereafter died of another sickness? And that this is to be feared we may infer from a ship which sinks, when it is seldom that the men on board are saved. And, nevertheless, we apply

to such a case both the rigorous law concerning life and the rigorous law concerning death (*i.e.*, the wives of those who were on board are not allowed to marry, as perhaps their husbands are not dead, but have drifted to the shore at another place and remain alive, and also must not partake of Terumah in case their husbands were priests, as perhaps they are dead). So much the more in our case, in which the majority of sick persons become cured. Should we not fear that, because it was not mentioned in the deed that he died from that sickness, he was cured?

Said R. Huna b. R. Jehoshua: The decision of Rabha in this case is in accordance with R. Nathan of the following Boraitha (in such a case as stated in our Mishna, it depends on circumstances): Who has to collect from whom? If he, the bequeather, has to take out of their hands, he can do so without any evidence; but if they have to collect from him, evidence must be brought. So is the decree of R. Jacob. R. Nathan, however, maintains: If the case comes on while he is in good health, it is for him to bring evidence that he was sick when the deed was written. On the other hand, they have to bring evidence that he was in good health, if the case comes on while he is sick. (Hence we see that R. Nathan's decision is according to the circumstances at the time the case is before the court; and the same is Rabha's theory.)

"*The sages, however, say,*" etc. What kind of evidence is required? According to R. Huna: Witnesses shall testify that he was in good health when the deed was written. And according to R. Hisda and Rabba b. R. Huna: The evidence should be by approval of this deed (*i.e.*, the defendant claims that he was then sick, and consequently the deed is valueless; but if they bring evidence from the court that it was approved by it, he must not be trusted, as it is to be supposed that the court would not approve it if it was not aware that he was in good health). R. Huna, who required witnesses, maintains: R. Meir and the sages differ as R. Jacob and R. Nathan do. And R. Hisda and Rabba b. R. Huna maintain: They (Meir and the rabbis) differ as to whether a deed which is admitted by the signer must be approved by the court or not. According to R. Meir, it is not necessary; and according to the rabbis, it is.

Rabha is also of the opinion that the evidence in question

must be witnesses. Said Abayi to him: What is your reason? Shall we assume that because all other documents state it was done when he was on his feet and in good health, and here it is not so mentioned, it is to be assumed that he was then sick? Why not say to the contrary, as in all documents of a sick person it is written: "It was done while he was sick in bed," and here it is not mentioned, it is to be assumed that he was then in good health? (And he answered:) Since it can be so said, and also the contrary, therefore we leave the money or the article in the hands of its possessor; and it is for the plaintiff to bring evidence.

The decision of this question is still in discussion, as R. Johanan and Resh Lakish also differ. According to the former, witnesses are required; and according to the latter, the approval of the deed.

R. Johanan objected to Resh Lakish from the following: It happened in the city of Bene Brack that one sold the estate of his father, and died; and his relatives complained that he was not of age when he died. And they came and questioned R. Aqiba whether they had a right to examine the corpse. And his answer was: First, you are not allowed to disgrace the dead; and secondly, the signs of maturity are subject to change after death. Now, according to my theory that witnesses are required, it is correct: as the buyers required evidence from the relatives, which they could not give, they asked for permission to examine the corpse. But according to your theory that the evidence should be by approval of the deed, let them, then, approve the documents, and hold the goods without any examination? And Resh Lakish answered: Do you think that his estates were still in the possession of his relatives, and the buyers were the plaintiffs? On the contrary, the estates were in the hands of the buyers; and the relatives were the plaintiffs. (Says the Gemara:) It seems to be so, as his relatives kept silence when Aqiba told them they were not allowed to examine; and if the buyers were the plaintiffs, they would certainly claim: We gave him money—let him be disgraced and disgraced. However, this cannot be taken as a support, as it can be said that therefore R. Aqiba said to them: "And secondly, signs of maturity are subject to change," because of their claim: Let him be disgraced.

(It was taught:) Resh Lakish questioned R. Johanan: There is a Mishna among the Mishnayoth of Bar Kapara: If one worked up a field and consumed the products as if he were the owner of it, and then one came and claimed, "It is mine," but the occupant showed him a document, whether bill of sale or deed of gift, and the plaintiff said, "I do not recognize such a document at all," the signatures which are on the document must be approved by the court (*i.e.*, it is sufficient that the witnesses should testify before the court that they recognize their signatures, but it is not necessary that they should testify that the sale or gift was made in their presence). If, however, the plaintiff claims: "I recognize this deed, but it was written only upon your request for a special purpose; but I never sold"; or, "I sold to you and never took any money," if the plaintiff brings evidence, then it must be done accordingly; but if there is no evidence, the deed is in force. Shall we assume that it is according to R. Meir, who said: "If one recognizes his document, the approval of it is not necessary," and not in accordance with the rabbis? And R. Johanan answered: Nay! I say that all agree such a document does not need any approval. Said Resh Lakish again: But there is a Mishna that they do differ. And he answered: That Mishna treats that the witnesses themselves impair the deed (*i.e.*, they testified that they signed it illegally). But can he, the giver of the document, be supposed to impair it? Rejoined Resh Lakish: But in your name it was said that you would approve the claim of the relatives who asked permission for the examination (cited above), as it seemed to you they were right. To which R. Johanan rejoined: This was said by Elazar, but *I* never said such a thing. Said R. Zera: If R. Johanan denies what was said by Elazar his disciple, will he also deny what was said by R. Janai his master? The same said in the name of Rabbi: If one admits that he wrote this document, it must nevertheless be approved. To which R. Johanan said, answering him: Rabbi, is this not the same as our Mishna states? The sages, however, say: It is for the plaintiff to bring evidence. And there is no other evidence but the approval of the document. And therefore (adds R. Zera), it seems that our master Joseph is right when he states in the name of R. Jehudah, quoting Samuel, that the rabbis said approval is not needed to a docu-

ment which is admitted by the signer. And he who holds that he still needs an approval is R. Meir. Also, by the expression of R. Johanan, "All agree," is meant the rabbis, as R. Meir was only a single individual who so holds. But does not the Mishna state the reverse? And also the Boraitha, does it not state in the name of the sages that it must be approved? Reverse the names in the Mishna, as well as in the Boraitha. But was it not stated above that R. Johanan is the one who requires that the evidence mentioned in the Mishna should be witnesses? This statement is also to be reversed (*i.e.*, R. Johanan said: The evidence should be with the approval of the deed). Then the objection must be reversed also—not that R. Johanan objected to Resh Lakish, but the reverse? Nay! So said R. Johanan to Resh Lakish: According to my theory that I require the evidence should be by the approval of the deed, it is correct that the buyers took possession of the estate which was sold to them by the alleged minor. But according to your theory, how can there be such a case—that the buyers should possess the estate? Where could they find witnesses who should testify that he was of age? And Resh Lakish answered him: I admit to you that the claim of the relatives ought not to be taken into consideration; for what was their claim as against the deed in which witnesses signed that "he was of age"? And there is a rule that witnesses have the preference; as it is assumed that witnesses would not testify unless they were aware of the case. Hence concerning this deed they would not sign it if they were not aware that he was of age.

It was taught: What must be the age of one who has the right to sell the estates left him by his father? Rabha in the name of R. Na'hman said: Eighteen. And R. Huna b. Hinna in the name of the same authority said: Twenty. R. Zera objected from the above case which happened in the city of Bene Brack, to whom R. Aqiba said: The signs of maturity are subject to change after death. And this can be correct in him who said eighteen, as then his relatives questioned the law if the corpse might be examined. But according to him who said twenty, of what use could the examination be? At that time the signs of maturity are already unrecognizable, as we have learned in a Mishna: If one gets to the age of twenty,

and the signs of maturity are not visible, they have to bring evidence that he has reached the age of twenty; and he, the castrate, is a legal "saris," who does not perform the ceremony of Halitzah and also cannot marry his brother's wife. Hence we see that after twenty the symptoms of maturity are already unrecognizable. The answer was: Was it not taught in addition to the Mishna by R. Samuel b. R. Itz'hak in the name of Rabh: Provided the symptoms of a "saris" were visible. Said Rabha: It seems that this explanation is right, as the Mishna states: "He, the castrate, . . . 'saris,'" from which it is to be understood that such signs were visible on the body; as if not, why should he be named "castrate"? But how is it if neither the signs of maturity nor of a "saris" were visible? How many years are needed, that he should be considered of age? Taught R. Hyya: After he reaches the majority of life (*i.e.*, thirty-six years, as life is considered seventy). It happened that such cases were brought before R. Hyya by the mothers, questioning him: What must be done, that the signs of age should appear? And he used to answer: If the lad was thin, see he should become fat; and if he was fat, he would advise that they should make him thin, as sometimes the signs came earlier because of thinness, and sometimes because of fatness.

The schoolmen propounded a question: How is he to be considered during the nineteenth year—nineteen, which is still not of age, or twenty? Rabha in the name of R. Na'hman said: The whole twentieth year, is he considered nineteen? And Rabba b. R. Shila in the name of the same authority said: As twenty. The statement of Rabha, however, was not heard from him plainly; but it was so judged from the following act: There was a lad who was between nineteen and twenty, who used to sell his father's estate, and Rabha had annulled all his acts. People who saw this thought that it was because he considered him not of age. In reality, however, Rabha did so because signs of foolishness were seen in him, as he used to free all his slaves.*

Giddle b. Menarshia sent a message to Rabha: Let the mas-

* At that time it was prohibited to free a bondsman without a good reason, according to Roman and Persian, as well as to Jewish laws.

ter teach us! How should a girl of fourteen years and one day who has a knowledge of business be considered? And he answered: If she has a knowledge of business, then her sale is valid, but not otherwise. Why was the question for a female and not for a male child? Because so was the case.

There was one lad, less than twenty, who had sold the estate of his father, and his relatives instructed him that when he should be at the court of Rabha he should eat dates and throw the pits at Rabha's person (for the purpose that Rabha should see he was a fool, and so annul his sales). He did so, and Rabha did indeed annul the sales. When the judgment was written, the buyers instructed him to go into court and say: The Book of Esther can be bought for one zuz, and the same is the price for Rabha's judgment. And he did so. Rabha then decided: His sales are valid. And when his relatives told him he was so instructed by the buyers, Rabha answered: He understands business if it is explained to him, and in such a case his acts are valid; and his previous act, that he threw the pits at me, was because he is too much of a scamp.

Said R. Huna b. R. Jehoshua: Concerning witnesses—his testimony may be considered at such an age (between nineteen and twenty). Said Mar Zutra: But only concerning movable property, and not real estate. Said R. Ashi to him: What is the reason that he is fit to be a witness for movable property—because his sales are valid? If so, let children of six and seven years be fit for this, as there is a Mishna: The purchase or sale of movable property by minors is valid. And he answered: Witnesses must be men, as it is written [Deut. xix. 17]: "Then shall both the men who have the controversy stand before the Lord," etc., which cannot be applied to children.

Said Amimar: If a lad of thirteen years and one day presented a gift to some one, his act is valid. Said R. Ashi to him: Why? Even concerning a sale where he should receive money, the rabbis enacted that it should be annulled, because he might sell too low. Shall we say, if he presents a thing without any money his act is valid? (Said Amimar to him:) And according to your theory, if such a lad bought a thing which is worth six zuz for five, should this be considered? This is certainly not so, because there is no difference whether it was worth more or less, as the rabbis annulled all sales made by such a lad who

does not understand business. And the reason is that the rabbis were aware that lads at such an age have an inclination for money; and if you should allow one to sell, he would sell all the estates of his father for a small amount. But concerning a gift it is different, as if he would not have any benefit from it, he would not do so; and therefore the rabbis enacted that his gift should be considered, so that others should also please him. R. Na'hman in the name of Samuel said: A young man before twenty may be examined for the signs of maturity concerning betrothals, divorces, the ceremony of Halitzah, and protesting against marriage, and as to selling the estates left him by his father. The Halakha, however, prevails, that between nineteen and twenty he is considered as before nineteen; and ~~it~~ prevails also in accordance with Giddle b. Menarshia, with Mar Zutra, and also with Amimar, and with all the laws which are stated by R. Na'hman in the name of Samuel.

MISHNA IX.: If one divides his estates verbally, no matter if he was in good health or dangerously sick, according to R. Elazar to real estate title is given by money, by a deed, and by a hazakah; and to movable property, title is given by drawing only. He was then told that it happened with the mother of the sons of Rukhl, who was sick and said: Give my jewelry, which is worth twelve manas, to my daughter, that the sages had listened thereto. And he answered: The sons of Rukhl ought to have been buried by their mother while they were still young (*i.e.*, they had bad habits, and therefore the sages fined them, that they should not inherit from their mother).

GEMARA: There is a Boraitha: R. Eliezer said to the sages: It happened with an inhabitant of the city of Mruni, who was in Jerusalem, that he possessed much movable property which he desired to present to different persons; and he was told that he could not give them title, unless he did so together with some real estate. He went then and bought a rock near Jerusalem, and said: The north side of the rock shall belong to A, and with it one hundred sheep and one hundred barrels; and the south to B, and with it one hundred sheep and one hundred barrels. And when he was dead, the sages approved his will. Hence we see that, though the rock could not be considered real estate, as it could not be used for anything, nevertheless title was given. And he was answered:

This is no support, as the Mrunian was in good health when he did so; but this cannot be done by a sick person.

R. Levi said: It is allowed to make the ceremony of a sudarium with a sick person even on Sabbath, lest he become exhausted; but not because the Halakha is in accordance with R. Eliezer of the following Mishna.

MISHNA X.: R. Eliezer said: If it happens that a sick person divides his estates verbally on Sabbath, it may be listened to, because it is prohibited to write; but not on week days. R. Jehoshua, however, maintains: It was said on Sabbath, *a fortiori* when it happened on week days. Similar to this is: One may acquire title for a minor, but not for adults. So is the decree of R. Eliezer. R. Jehoshua said: For a minor, and *a fortiori* for an adult.

GEMARA: Our Mishna is in accordance with R. Jehudah, as we have learned in the following Boraitha: R. Meir said: The reverse is the case. If this happened on week days, his words must be listened to, because he is allowed to write; but not on Sabbath, because he is not allowed to write. So is the decree of R. Eliezer. R. Jehoshua said, on the contrary: It was said on week days, and so much the more on Sabbath. R. Jehudah, however, said: R. Eliezer's decree was, if on Sabbath, his words must be listened to, because he is not allowed to write; but not on week days, when he is allowed to write. And R. Jehoshua's decree was to the contrary. And the same is the case as to the latter part of the Mishna.

MISHNA XI.: Suppose a house falls upon A and his father, or on any persons, that one of them has to be bequeather and the other inheritor, and it is not known who dies first, and to the estate there is a claim from the widow for her marriage contract, and from other creditors. The heirs of the father say that the son died first; and the creditors say that the father died first, and the son afterward. (*I.e.*, the creditors of the son who had a right to the estate only if he died after his father, so that with the death of his father the inheritance came to him. But if he was dead before his father, he has nothing in the estate. And this is what his brothers claim, that the creditors have no right in the estate left by their father. Concerning a marriage contract, that will be explained in the Gemara.) According to the school of Shamaï, they have to divide; and according to

the school of Hillel, the estate must be left in the hands of the present occupants.*

If it happened that the house fell on him and his wife, the heirs of the husband claim that the woman dies first, consequently her husband has inherited from her; and the heirs of his wife claim that he died first, consequently they have a right to her marriage contract and also to her own estate. They have to divide, according to the school of Shamai. But the school of Hillel say: They must leave the estate in the hands of its present occupant. And the occupants are to be considered as follows: The estates belonging to the marriage contract are to be considered as in the hands of the husband's heirs. But her own estates, which she brought with her to her husband, and which ought to go out with her by death or divorce, are to be considered in the hands of the heirs of *her* father.

If, however, the house falls on one and his mother, both schools agree that it must be divided. R. Aqiba, however, said: I hold that they (the schools) differ in the latter case also; and the school of Hillel are still of the opinion that estates must be left in the hands of the occupants. Said Ben Azai to him: We deplore that the schools differ in the former cases, and you come to add the third one, in which the rabbis testify that they have agreed.

GEMARA: The estates which were brought by the deceased woman, mentioned in the Mishna—to her husband for usage of fruit only, according to the school of Beth Hillel. Who is to be considered the occupant? According to R. Johanan: The heirs of the husband. According to R. Elazar: The heirs of the woman. R. Simeon b. Lakish, however, said in the name of Bar Kapara: Such must be divided. And the reason of this statement was taught by Bar Kapara himself, that as the claims of both parties are equal (*i.e.*, the heirs of the husband claim that all the products of this estate belonged to the deceased, as he had a right to sell them, and therefore they belong to his heirs; and the opponents claim that they were only to be used while he was alive, and therefore what was not

* The Gemara to this Mishna we transfer to Mishna 8 of the succeeding chapter, as the proper place. We also deemed it necessary to put all three Mishnas which treat of falling houses together, though in the original text they are in three separate places.

consumed by him, if his wife were alive she would certainly take with her estate; hence it belonged to her, and after her death to us), it is to be considered doubtful money, the law of which is division.

"*R. Aqiba said . . . in the hands of the occupants.*" But who are considered their occupants? R. Aila said: The heirs of the mother; and R. Zera: The heirs of the son. When R. Zera ascended to Palestine, he retracted from his statement in Babylon and accepted the system of R. Aila. Rabba, however, retained the system of R. Zera as a Halakha. Said R. Zera: From my retraction, I see that the air of the land of Israel makes one wise; as after I came here I saw that my statement while I was still in Babylon was erroneous.*

"*Said Ben Azai to him,*" etc. Said R. Simlai: Infer from this that Ben Azai was an associate disciple of R. Aqiba; as if he were a disciple only, he would have said to him, "*The master said,*" and not, "*And you (thou).*"

A message was sent from Palestine as follows: If a son has sold his share of the inheritance of his father to some one, and dies while the father was still alive, and thereafter his father died, the son of the seller has a right to take away the goods from the buyer. (Because, at the time sold, the seller has nothing as yet in his hands, and the sale was for that which would be his in the future; and as the son died before his father the goods were never his, and his son is now the heir of his grandfather, to whom the goods in question belong; hence he has a right to take them away.) And this is a complicated case in the law of money matters. But let the buyers say: Your father has sold, and you are taking away? What a claim is this! Cannot the plaintiff say: My basis is my grandfather, from whom I inherit (and my father had not any right to sell this—as explained above); and that such a claim is to be considered may be supported by [Ps. xlv. 17]: "*Instead of thy fathers shall be thy children: thou shalt appoint them as princes in all the land.*" Hence it is not at all a complicated case in money

* The commentators differ concerning the explanation of this, as well as concerning the completion of the text. Rashbam affirms that Rabba was not in the text at all. Gershom changes the question concerning the cases in the Mishna and explains them differently. We have done what we could to make the passage intelligible to the reader.

matters. And if such there be, it would be the following: A first-born who sold the share prescribed to him while his father was still alive, and died before his father, the first-born's son has a right to take away from the buyers after the death of his grandfather. Hence his father sold that to which he was entitled; and his son, whose basis is his deceased father, takes the goods away. And this is complicated, as he cannot say, "My basis is my grandfather," for the grandfather had nothing to do with the double share of the first-born son. But even this cannot be called a complicated case, as he may claim, "My basis is my grandfather, and not my father, who has never possessed the goods he sold; for now only do I take the place of my father, who was a first-born, and take his share." Hence it is in accordance with the usual law. Therefore, if in the message of Palestine was said "a complicated case," it might be the following: If one sign a document before he robbed some one, and thereafter he became a robber, who is no longer competent to be a witness, he has no right to testify to his handwriting; but others, who know his handwriting, may. Hence he is not trusted, and the others who came upon his basis are trusted. Is this not complicated? But perhaps it treats of when his handwriting was already approved by the court, while he was still righteous? Therefore it is to be assumed that they meant the following case: If one signed a document as a witness to a stranger, and thereafter he became his son-in-law, he has no right to testify to his signature; but others may testify that they recognize the writing of the son-in-law, and then it may be relied upon. Hence he is not trusted, and others are. And you cannot say that it means only when his handwriting was already approved by the court at that time, as R. Joseph b. Minumi in the name of R. Na'hman said plainly: Even in case it was not. However, even this cannot be called complicated, as it may be said that it is thus decreed by the law. A son-in-law must not witness in a case of his father-in-law, not because it is feared he may lie, but because it is prohibited, even if the son-in-law were Moses our master. Therefore we must come to the conclusion that the complication lies in the first case mentioned in the message, and the objection based on the cited verse is not to be taken into consideration, as the verse speaks of a "blessing." But how can you say that it

speaks of a blessing, and nothing is to be inferred from it? Does not our Mishna state: "If the house falls upon him and his son, or any persons," etc.? Does it not mean, by the "heirs of the father," grandsons, and "any persons," brothers of the deceased? Now, if you bear in mind that one cannot say, "I come on the basis of my grandfather," as the cited verse cannot serve as a support, then, even when the son dies first, how is it? Let the creditors say: We claim the inheritance of the father? Nay! By "the heirs of the father" is meant the deceased's brothers; and by "any persons," his uncles, brothers of his father.

"*One and his mother*," etc. R. Shesheth was questioned: Nay! A son inherits from his mother when he is already in the grave, so that his brothers from his father's side should inherit from him? (The illustration may be found above, p. 317.) Answered R. Shesheth: This we have learned in the following Boraitha: If the father was taken into captivity and died there, and at the same time his son dies in his country, or *vice versa*, and it was not known who died first, the heirs of the father and the heirs of the son (on his mother's side) may divide among themselves the inheritance. Now, if the son while in the grave could inherit from his mother, even if he dies first, let him inherit from his grandfather on his mother's side, and then his brothers on the father's side would inherit from him. Infer from this that while in the grave nothing is to be inherited. Said R. Aha b. Minumi to Abayi: This may be inferred also from our Mishna, which states that concerning one and his mother all agree that they must divide. And if the law of inheriting in the grave were in force, let him inherit from his mother while in the grave, the same to revert to his brothers on the father's side. Hence such a law does not hold good. And why not? Said Abayi: There is the same expression in the Scripture concerning the inheritance of a husband from his wife, and a son from his mother. As the first does not inherit while in the grave, so it is with the second, etc. (This has already been explained in Chapter VIII., p. 254.) (Here is repeated the whole story of Bar Sisin's estate, preceding volume, pp. 86-87.)

CHAPTER X.

HOW DEEDS SHOULD BE WRITTEN AND WHERE THE WITNESSES SHOULD SIGN. CONCERNING ERASURES OF SOME WORDS IN DEEDS. IN WHICH CASES BOTH PARTIES MUST BE PRESENT AT THE WRITING OF THE DEEDS, AND IN WHICH ONE OF THEM SUFFICES. CONCERNING A DEPOSITED DEED WHICH WAS PAID IN PART. HOW SHALL THE COURT APPROVE AN ERASED DOCUMENT? PROPERTY FOR PRIVATE USE WHICH WAS LEFT TO POOR AND RICH BROTHERS.

MISHNA I.: A simple "get" * (document) the witnesses must sign at the end of the contents. A folded one, however, the witnesses must sign outside.† But if the witnesses signed their names outside in a simple one, or inside in a folded one, both are invalid. R. Hanina b. Gamaliel, however, said: If in a folded one the signatures of the witnesses were inside, it is valid, as it can be taken apart and will constitute a simple one. Rabbon Simeon b. Gamaliel maintains: All must be done as is the custom of the country. A simple document must be signed by two, and a folding one by three witnesses. If there was only one witness to a simple and two to a folding, both are invalid.

GEMARA: Whence is this deduced? Said R. Hanina: From [Jer. xxxii. 44] "Men shall buy fields for money, and write it in deeds, and seal them, and certify it by witnesses," etc. "Write it in deeds" means a simple document; "seal" means a folding one; "certify" means by two witnesses; "by witnesses" means three. How so? We must say, then, two

* All documents were called by the Mishna "get." This term was afterwards applied to a bill of divorce. The Gemara, however, uses the term "shtar" for documents.

† In ancient times they used to write documents as follows: The scribe wrote one line, then left a blank the size of the line written, and folded it over and sewed it; then he wrote on top of the folding, and again left a blank of the same size, and folded it over the writing and sewed again, and so on; so that after the document was complete the signatures of the witnesses remained on the outside.

witnesses for a simple, and three for a folding one. But perhaps the reverse? Common sense dictates that a folding one, which is added to in folding, should be added to also in witnesses. (The discussion proceeds to deduce this from the Scriptures, which were objected to as usual, and the Gemara came to the following conclusion): The folding one is only an enactment by the rabbis; and the verse above cited was only a light support. And why this enactment? Because of the many priests who used to live in their city. (The law prescribes that a priest, having divorced his wife, it is prohibited to him to remarry her; which is not the case with a commoner.) And as the priests are usually ill-tempered, they used to divorce their wives as soon as they became angry. Therefore the rabbis enacted that the "get" should be folded and sewn several times, that it might prolong the time, in order that they should become quiet, and recede from their previous intention. This is correct concerning divorces. But why for other documents? Because all kinds of documents were then called "gets," they enacted that all should be done in one manner.

In what place should the witnesses sign a folding document? According to R. Huna: Between one folding and another (*i.e.*, in the folding space above the lines, and thereafter it was folded and sewn so that the signatures were inside). According to R. Jeremiah b. Abba: On the reverse side, and exactly opposite the writing. Said Rami b. Hama to R. Hisda: According to R. Huna, who maintains in the folding space above the lines which is thereafter also folded, it is to be assumed that it remains inside; but this is not so, as it happened that a folding document was brought before Rabbi, and he exclaimed: There is no date to it. To which R. Simeon his son answered: Perhaps the date is inserted, etc. (*post*, p. 363). Now, if it were as R. Huna said, Rabbi ought to say: There is neither date nor witnesses (as the witnesses signed inside, one could not sew it when it was folded). And R. Hisda answered: Do you think that R. Huna means between the folding inside? He meant outside. But if so, why should not forgery be feared, as one can write inside what he likes, while the witnesses have already signed outside? In the document must be written at the end, "All its contents are true," and they re-

main forever. Hence to that which is written thereafter no attention is given. But it is still to be feared that after it is written he can forge what he pleases, and then write again, "All this is true," and have it signed by other witnesses? A document must contain only one approval that "all is true," but not more. But still it is to be feared that he can erase the approval, adding what he pleases, and then write, "All is true," etc. To this it was said by R. Johanan: If there was inserted a word between the lines, and thereafter the witnesses testify it was inserted at their instance and they approve it, the document is valid; but if some words were erased, then, although approved at the end, the document is nevertheless invalid. And this was said concerning an erasure in the place of the words "all that is written is true," and the size of these words. But even according to R. Jeremiah b. Abba, who said: On the reverse, and opposite the writing (*i.e.*, where the writing finishes inside, he shall begin opposite to write his name; so that if there should be some lines more over the signature of the witness it would be considered forgery), it is also to be feared that one might forge some lines, and add one more witness, opposite the forgery, and might say: My intention was to add one witness more? And the answer was: Do you think that the witnesses have signed lengthwise, in order? No! They signed one under the other, so that no more lines after the witnesses' signatures could be added.*

R. Itz'hak b. Joseph in the name of R. Johanan said: To all the erasures which are in the document must be written at the end, "With this signature we approve them," etc.; and in the mean time they must mention the abstract of the contents in the last line. And why so? Said R. Amram: Because the last line is not taken into consideration, as it can easily be forged; as usually the witnesses do not sign so near to the writing that one line could not be inserted, and therefore if the abstract of its contents is written attention is given, but not to something new. And to the question of R. Na'hman: What is the basis of your statement? he answered: The following Boraitha: If the signatures of the witnesses were sepa-

* The text continues to discuss the different kinds of forgery possible, and gives illustrations so complicated that it would be difficult for the reader to get any idea of them. They are unimportant, and therefore omitted.

rated by a space of two lines from the writing, the document is invalid; but if by one line, it is valid. Let us, then, see what is the reason that two lines' space make the document invalid. Is it not because one can forge the two lines? But the same can be done with one line also? We must then say that if a new sentence is written on the last line it is not taken into consideration. And so it is.

The schoolmen propounded a question: How is it if there is space for one line and a half? Come and hear the following: If there is space for two lines, it is invalid; for less than two, it is valid. If there were four or five witnesses to a document and one of them was found to be a relative, or incompetent for some other reason to be a witness, the document may remain in force by the remaining witnesses. And this is a support to Hezekiyah, who said: If there was a space left, and this was filled up with the signatures of relatives as witnesses, the document is valid. And do not be surprised at such a law (why should not the signatures of the relatives who are not competent to witness in that case harm this document?), as such a law is to be found concerning a Sukka: If on the roof of the Sukka was space to the size of *three* spans uncovered, it makes the Sukka invalid; but if it was covered with illegal things, the size of *four* is needed to make it invalid.

The schoolmen questioned: In the two lines in question, is it meant with their usual space or without? Said R. Na'hman b. Itz'hak: Common sense dictates that their space is included; as if it were supposed that it meant without, of what use could be the size of one line without any space to it? (If one should come to forget this line, he would then be compelled to write it in such characters that it would be entirely different from the original and immediately recognized. Infer from this, therefore, that "with their space" is meant.)

R. Sabbathi said in the name of Hezekiyah: The space of the two lines in question means of the handwriting of the witnesses, not of the scribes; as if one wants to forge, he does not go to the scribes (and usually the handwriting of a commoner is larger than that of a scribe). And what size is meant?

Said R. Itz'hak b. Elazar: As in writing, e.g., $\left\{ \begin{array}{c} l g k z \\ k z l g \end{array} \right\}$, which makes two lines in four spaces. According to R. Hyya b. R.

Ami in the name of Ula: Two lines and three spaces. According to R. Abuhu: One line and two spaces.* Said Rabh: This was all said about the space between the contents of the document and the signature of the witness. But from the signature of the witness to the approval of the court, it does not matter how much space is left. R. Johanan, however, said: All this was said concerning the space from the contents to the signatures of the witnesses; but concerning the space from the signatures of the witnesses to the approval of the court, even if there was one line, it is invalid.†

“*R. Hanina b. Gamaliel*,” etc. Rabbi objected to the statement of R. Hanina, thus: How could one make from a folding one a simple, if their dates were entirely different? As in a simple document which is dated according to the years of the king, if the king was in his first year, it is written: On fourth day of such and such a month, in the first year of king so and so; and in a folding one they used to add one year to the kingship of the ruler (*e.g.*, when it was in the first year, they used to write in the second; and if in the second, they used to write in the third). (Rashbam says: It was the custom of the nations to add one year to the kingship of the ruler in their documents. And the rabbis enacted: In a folding one it shall be dated according to the custom of the land, for the above-mentioned reason; but not in simple documents.) Now, if you say that it can be taken apart and made a simple one, it may happen that one can borrow money with a folding one, and during this time may come into some money and pay his debt before due; and to the request for a return of the document, one may say that he lost it, and give a receipt. Then, when the document falls due, he can make it into a simple, and require his money again (as in the folding one there was added one year, hence the time due in a simple comes one year later, and he can claim that he borrowed money again for the current year)? Rabbi holds: Concerning a folding one, no payment is made upon a receipt unless the document is returned or destroyed.

* Here also are illustrations of Hebrew words, which it would be difficult for the English reader to understand, and are therefore omitted.

† We have omitted the discussion in the Gemara as to the reasons of Rabh and Johanan about the risk of forgery, with many illustrations of great complication, which would hardly be understood if translated, and are also of no importance.

But was, then, Rabbi acquainted with a folding document? Did not one come before Rabbi, who was about to annul it because it bore a later date? And Zunin said to Rabbi: So is the custom of this nation, that if the king has ruled one year they count him two; and if two, three. After he had heard it from Zunin, he enacted the law that no money should be paid upon a receipt. There was a document in which was written: In such a date of the year of Orkhon, A had borrowed money from B (but the number of the year was not written), and R. Hanina, before whom the case came, said: It must be examined when this Orkhon ascended the throne; and perhaps it was several years after, as the meaning of Orkhon is "lengthy," and he was named Orkhon because he was a good many years on the throne. Said R. Hoshea to him: So is the custom of this nation: the first year they named him Orkhon, and the second year Digon. Hence this document must be counted from the first year of the present ruler. But perhaps it was when he ascended the throne the second time, as once he abdicated and then ascended again? Said R. Jeremiah: At the second time he was named Orkhon-Digon, and not Orkhon only.

There was a folding document which came before Rabbi, and he said: There is no date to it. R. Simeon his son then said to him: Perhaps it is inserted between its folds! He took it apart, and found the date. Thereupon Rabbi scrutinized him. To which Simeon said: Not I was the writer of it, but Jehudah the Tailor. And Rabbi answered: Leave out slander. It happened at another time that R. Simeon was sitting before Rabbi, and reading for him a chapter of Psalms, and Rabbi said: How correctly and nicely it is written. To which Simeon answered: Not I, but Jehudah the Tailor, wrote it. And also to this Rabbi remarked: Leave out slander. (Questioned the Gemara:) It is correct that the first time he told him he should leave out slander, as Rabbi disliked folding documents, and was angry with the writer of it. But what slander was it if he said that the correct and nice writing was by Jehudah? This is in accordance with R. Dimi the brother of Safras, who taught: One must be careful in praising his neighbor, as very often blaming comes from praising.

R. Amram in the name of Rabh said: From the following three transgressions one is not saved day by day, namely: (a)

Thought about sin (*e.g.*, if he sees a handsome woman); (b) calculation of the effects of prayer—expectation of the granting of one's prayer as a due claim; (c) and slander. Slander! Do you mean that people slander one another every day? It means indirect slander (*e.g.*, while praising or talking of one, one indirectly comes to blame). R. Jehudah said in the name of Rabh: The majority of men are suspected of robbing (*i.e.*, in business every one looks out for himself, without taking care lest he do wrong to him who deals with him), the minority are suspected of adultery, and all of them of indirect slander.

"All must be done as is customary in the country." But does not the first Tana also hold that the customs of the country are to be observed? Said R. Ashi: At those places where a simple is customary, and one told the scribe to make it, and he made him a folding one, it is certainly invalid; and *vice versa*. The point of this difference, however, is the places where both are customary, and he ordered the scribe to make for him a simple, but he prepared a folding one. According to the first Tana: It is invalid. According to R. Simeon: It is valid, as it may be supposed that he ordered him to make for him a simple only for the scribe's sake, that he should have less trouble; but if he did not heed, and made a folding one, it must not be ignored. Said Abayi: R. Simeon b. Gamaliel, R. Simeon, and R. Elazar all are of the opinion that in such a case it must be supposed that the giver of the order did so only to show him what was better for him; but he did not intend to be particular. B. Gamaliel as just mentioned; R. Simeon with his statement that if one has deceived a woman, not to her evil, but to her good (*e.g.*, if he said to her: You are betrothed to me with this *silver* dinar, and it was a golden one), his act is valid; and R. Elazar of the following Mishna: If a woman said: Go and receive my divorce at such and such a place, and he received it at another place, it is invalid. But according to R. Elazar it is valid, as it is to be supposed that she only showed him the place where she supposed it was better for him to go, but was not particular in her words.

"If there was only one witness to a simple," etc. It is correct what the Mishna teaches us: A folding document which was signed by two witnesses only is invalid, as in all other cases two witnesses suffice. But to what purpose does it state

that one witness to a simple is invalid? Is this not self-evident, as there is no case in which one witness should be sufficient? Said Abayi: It teaches: Even if, in addition to that witness who has signed, there were another who testified the same verbally, it is nevertheless invalid. Amimar, however, had in a similar case which came before him decided that the document is in force. And to R. Ashi's objection that Abayi holds it invalid, he answered: I do not hold with him. But how would Amimar explain the above question—to what purpose is it stated in the Mishna? He would answer thus: It came to teach that as a simple document with one witness is invalid biblically, so it is with two witnesses to a folding. And as a support to Amimar there may be taken the following: The colleagues of R. Jeremiah in Palestine sent a message to him: How is it if there is one witness in writing and the other verbally—should they be conjoined for decision upon their testimony, or not? We do not question, how is it according to the first Tana, the opponent of R. Jehoshua b. Kar'ha, who maintains, in Tract Sanhedrin: Even two with two must not be conjoined under certain circumstances, and so much the less one with one. But our question is, how is it according to R. Jehoshua, who decided: If there were two witnesses in writing and two verbally, they are to be conjoined? Does he hold the same when there was one and one, or not? And R. Jeremiah answered: I am not worthy that you should send to me such a message. But as you have already done so, I may say that the opinion of your disciple is that they may be conjoined. (Said R. Ashi:) We have heard that the message was thus: The colleagues sent to R. Jeremiah: How is the law if, of two witnesses, one of them has testified before one court and the other before another—may both courts be conjoined to decide upon their testimony? We are aware that according to the first Tana, the opponent of R. Nathan: Even if they had testified at different times before one court, their testimony is not to be taken into consideration, two courts are out of the question. But according to R. Nathan, who says: "In one court their testimony may be conjoined," does he hold the same with two courts, or not? And R. Jeremiah answered them as said above. Rabhina, however, said: The message was thus: If three were sitting as a Beth Din to approve a docu-

ment, and thereafter one of them died, must they write in their approval, "We were sitting three, but one is gone"; or is it not necessary? And he answered them: I am not worthy that you should send questions to me, but as you have done so, I may say that the opinion of your disciple is that it is necessary they should write, "We all three were sitting as a Beth Din, according to the law, to approve this document, but one of us is gone, and therefore only we two sign." And for this answer R. Jeremiah was returned to the college (above, p. 71, it was written that he was driven from the college).

MISHNA II.: If in the document was written, "hundred zuz which make twenty selas," he collects only twenty selas. If, however, it was written, "hundred zuz which make thirty selas," he collects only one mana (which only makes twenty-five selas). If there was written, "silver zuz which *are*," and the preceding words were erased, then the document is good for no less than two; "silver selas which *are*," and the preceding was erased, no less than two selas; "dracontiums which *are*," it means also no less than two.

If on the top of the document was written "a mana" and on the bottom "two hundred zuz," or *vice versa*, the last one must always be taken into consideration. But if so, why is it at all necessary that the amount should be written at the top? To the end that should it happen that in the words of the bottom one letter should be erased, then we may learn it from the top one.

GEMARA: The rabbis taught: If it was written "silver," without mentioning any particular coin, the document is good for no less than one silver dinar; and if "silver dinars," or "dinars of silver," then it is no less than two silver dinars. If, however, "silver to be paid with dinars," then it is no less than two golden dinars (it being understood that he borrowed from him silver to be paid with gold dinars, and as there is a plural it is no less than two).

The master said: "Silver no less than a dinar." But perhaps it means a piece of metal? Said R. Elazar: It means it was written a silver coin, but it was not mentioned which. But if so, why should it not mean perutas? Said R. Papa: It treats of those places where the perutas were not made of silver.

The rabbis taught: If the documents read "gold," it is not less than a golden dinar; "golden dinars," or "dinars of gold," it is not less than two golden ones. If, however, it was written, "gold to be paid with dinars," he must pay in gold the value of two *silver* dinars. But why should this not be explained: He shall pay him in good gold to the value of two golden dinars? Said Abayi: The defendant has always the preference (*i.e.*, by the general name dinar is meant a silver one; of a golden dinar it must be said plainly *golden*, and as here it is mentioned to be paid with dinars, and the word *gold* is omitted, the holder of the document has to suffer). But why in the first case, where it reads "silver to be paid with dinars," you say he shall pay two golden dinars? Said R. Ashi: That Boraitha treats of when the document reads "denri," and the latter Boraitha when it was written "*denrin*"; and "denri" means gold, and "denrin" silver. And my support is from a Mishna in Tract Kinin: ". . . It happened that the price of kinin in Jerusalem increased to the extent of denri in gold. Said R. Simeon b. Gamaliel: I swear by the Temple that I go not to bed this night before their price shall decrease to denrin." Hence denrin means silver, and denri gold.

"*On the top of the document*," etc. The rabbis taught: The bottom may be learned from the top when there is only one letter erased; but not when two (*e.g.*, if it was written, "Hanan of Hanani," or "Anan of Anani"—*i.e.*, the *i* was erased). Let us see! Why not two letters? Because if there were a name of four letters, two would constitute one half of a name. The same can be said with one of two letters, as there are names which consist of two letters only; * then the one would be one half of a name. Therefore we must say that the exception of two letters is because it might happen in a name of three letters, and when two are erased the greater part of the name is missing.

There was a document in which was written "six hundred and a zuz," and R. Chrabia sent it to Abayi, questioning him: Does it mean six hundred staters and one zuz, or six hundred perutas and a zuz. And he answered: Eliminate perutas, which it is not usual to write in a document, as generally they are counted together to make from them dinars or zuz. This

* In the Bible there are many examples of names which consist of only two letters.

must therefore mean six hundred staters. But as there are staters of two zuz, and also others of the same name of half a zuz, and it was said above that the defendant has the preference, the holder of the document must suffer, and he takes only six hundred half-zuz and a zuz. Abayi said: If one desires that his signature shall be known in the court, he shall not write it at the bottom of a paper, as one can find it, but write at the top that he owes him money. And there is a Mishna: If one shows a document with his handwriting that he owes him money, he may collect from unencumbered estates.

There was a toll-master of a bridge who was a Jew, who said to Abayi: Let the master show me his signature, as it is my custom to allow the rabbis to pass without pay (I would leave it with my assistants so that if it should happen you would like to pass, they will not demand payment). Abayi showed him on the top of a piece of paper. He, however, tried to draw the paper so that the signature should come a little lower, and Abayi said to him: Do not try, as the rabbis have preceded you with their advice to sew a signature at the very top of the paper. Abayi said again: From the word "thlath," which means three, to the word "eser," which means ten, one shall not write in a promissory note at the end of the line, to prevent forgery.* But if it happened that he did so, he should repeat the word two or three times, so that one of them should occur in the middle of the line.

There was one document in which was written: "A third of a vineyard"—in Aramaic "Thiltha Beperidisa"—and the owner of this document erased the top and the bottom of the first letter of the second Hebrew word, so that from the Beth he made a Vav, which means "and," so that the document, as brought before Abayi, read: "A third and the vineyard," and claimed a third of the seller's garden and the whole vineyard. When Abayi examined the document, he asked him: Why does the Vav stand so extended in the world? He then urged him to confess, which he did.

There was another document, in which was written: The shares of Reuben and Simeon my brothers ("Achai" in He-

* "Thlath" means three, "thlathin" thirty; and so also is it with all the words from three to ten: e.g., "arba" means four, and with the suffix "in" it means forty; "eser" means ten, "eserin" means twenty.

brew) were sold to me. The buyer, however, added a Vav for the word Achai, and as the brothers had another brother by the name of Achai, he claimed that he bought the shares of all three brothers—Reuben, Simeon, and Achai. With this document he came to the court of Abayi. And there also Abayi asked him: Why is the world so narrow to the Vav? And also he was urged to confess, which he did. There was another document, which was signed by Rabha and R. Aha b. Ada. When it was brought before Rabha, he said: I recognize my handwriting, but I never signed my name in the presence of R. Aha b. Ada. He urged the holder of the document to confess, which he did. Then said Rabha to him: I understand how you might easily forge *my* name; but how could you do so with R. Aha's, whose hands are trembling? And he answered: I would put my hand on the rope-bridge, to imitate a trembling writing.

MISHNA III.: A divorce may be written by the court for a husband in the absence of his wife (because, according to the ancient law, the consent of the woman was not necessary); and an approved receipt for a marriage contract to be handed to the woman in the absence of her husband, provided the court knows them—the husband must pay the fees. A promissory note may be written for the borrower in the absence of the lender, but not for the lender unless the borrower is present; and the fee is to be paid by the borrower. A bill of sale may be written for the seller in the absence of the buyer, but not for the buyer unless the seller is present; the buyer pays the fees. Documents of betrothal and marriage must not be written unless both are present—at the expense of the groom. The same is the case with documents for hiring, and contracting fields and gardens; and the expenses are to the contractors. Documents of arbitrating, and all other acts of mediating by the court, must not be written unless both parties are present—at the expense of both.

R. Simeon b. Gamaliel, however, maintains: The latter documents must be written in two copies, one for each party.

GEMARA: What does it mean—provided the court knows them? Said R. Jehudah in the name of Rabh: They shall know exactly the name of the husband concerning a divorce, and the exact name of the woman concerning a receipt.

R. Saфра, R. Aba b. Huna, and R. Huna b. Hinna were sitting together in the presence of Abayi and were deliberating over the statement of Rabh just mentioned—concerning a divorce, the name of the husband, but not the name of his wife? and concerning a receipt, the name of the woman, though they do not know the name of the husband? Why should it not be feared that this man would furnish the divorce to another woman, whose husband bore the same name as himself? And the same is the case with the woman: she may furnish her receipt to a man whose wife bears the same name. Said Abayi to them: So said Rabh: The name of the husband and of his wife, concerning a divorce; and the same is the case with a receipt—the name of the woman and her husband. But why should it be prepared and given to the husband? Is it not to be feared that two men who bear one and the same name should reside in the same city (*e.g.*, Joseph b. Simeon), whose wives also bear the name of Rachel, and one can take a divorce and give it to the wife of the other? Said R. A'ha b. Hinna to them: So said Rabh: If two men of the same name reside in one city, they cannot divorce their wives unless both the men named and their wives are present. Still, it is to be feared that one may go to another city, name himself according to one of the inhabitants of his city, and take a divorce, and thereafter return to his city and furnish the divorce to the wife in whose husband's name the divorce was made out. Said R. Huna b. Hinna: So said Rabh: If one was known under one name thirty days in succession, there is no fear that he bears a false name, as he would be afraid to bear it for such a long time. But how is it if one requires a divorce should be prepared for him before he was known thirty days—shall he not be listened to? Said Abayi: This can be proved by somebody calling him suddenly by this name, and he answered. R. Zebid, however, maintains: A swindler knows what he is about, and is careful. And therefore it is no evidence if he answers to a sudden call.

There was a receipt approved by Jeremiah b. Abba. However, the same woman came into his court to claim her marriage contract several years later; and when her receipt was shown to her, she claimed to be not the same woman (*i.e.*, it was another woman who bore my name and signed the receipt). Said R. Jeremiah: I also was of that opinion, and I said so to

the witnesses who signed this document; but they told me you are the same but older, and therefore your voice has changed. And the case came before Abayi, who said: Although it was decided by the rabbis: If one said something in behalf of the plaintiff or the defendant, he has no right to retract from the first statement, and decide otherwise; however, with a scholar, who is not used to look in the face of a woman and to be particular as to her voice, it is different, as it must be supposed that after he was told she was the same, he himself had recognized her.

There was another similar case before the same R. Jeremiah, who said to that woman: I am sure you are the same. And also here Abayi decided: Although a rabbi is not used to look in the face of a woman, etc.; but when he says he did so, and is sure, he may be trusted.

Abayi said: It is advisable for a young scholar, who goes to betroth a woman, that he shall take with him a commoner; as otherwise they may substitute another woman, and he will not notice it.

"The husband must pay the fees," etc. Why so? Because it is written [Deut. xxiv. 1]: ". . . he may write and give," which means at his expense. In our time, however, it is not so customary, because the rabbis put the expenses to the account of the woman, in case the husband should decline to bear the expenses and postpone the divorce in a case where the woman is compelled to demand it.

"Paid by the borrower," etc. Is this not self-evident? It treats even where he takes money for business at a half profit.

"The buyer pays the fees," etc. Is this not self-evident? It treats even in case the seller sold his field because of its infertility.

"The expense of the groom," etc. Is this not self-evident? It means even if he were a scholar and the court were certain that they would be pleased to have him as a son-in-law even at their expense.

"The expenses are to the contractors," etc. Is this not self-evident? It speaks even in case it must remain for a year or two unfertilized for the sake of the estate.

"Arbitrating," etc. What kind of documents is meant? In this college it was explained: The documents of the claims

which the scribes of the court have to copy so that the parties should not change afterwards. R. Jeremiah b. Abba said: It means, in case each one chooses his arbitrator.

"*One for each party*," etc. Shall we assume that the point of their difference is, if one may be compelled not to act like a Sodomite? According to the first Tana: If one declines to pay the half of the expenses, it is an act of a Sodomite, and he must be compelled to do so. And according to R. Simeon: It is not, and he must not be compelled? Nay! All agree that such cases are to be compelled. Here, however, it is different, as the reason of R. Simeon's decision is: One may say, I would not like that my claim and my decided right should always be before your eyes, while I do not possess them; and this would be a burden to me, as if a lion would lie at my house, fearing every time that you might come to quarrel with me.

MISHNA IV.: If one has paid a part of his debt and deposited his document with some one, with the stipulation: If I should not pay you from date until a certain day, you may return this document to the lender, and finally he failed to pay; according to R. Jose: The depositary may return, and according to R. Jehudah: He must not.

GEMARA: What is the point of their difference? R. Jose holds: An *asmachtha** gives title. And R. Jehudah maintains: It does not. Said R. Na'hman in the name of Rabba b. Abuhu, quoting Rabh: The Halakha prevails with R. Jose. When they came to say the same before R. Ami, he said to them: After such an authority as Johanan teaches us, once and twice, that the Halakha prevails with R. Jose, what can I do? However, the Halakha does not prevail with R. Jose (remarks the Gemara).

MISHNA V.: If it happened to one that a promissory note became erased, he must find witnesses who are aware of the date when it was written, and bring them before the court, and they have to make the following approval: A, the son of B, came here with his note, which was erased on such and such a day, and C and D were his witnesses.

GEMARA: The rabbis taught: The approval must be written as follows: "We three, E, F, G, the undersigned, were sitting together, and before us was brought by A, the son of B,

* This term is explained in previous volumes in several places.

an erased note, which was signed on such and such a day, and C and D are his witnesses." And then if there be added: "We have examined the testimony of the witnesses, and have found it correct," the holder of the document may collect with it, without further evidence. If, however, this were not remarked, he must bring evidence.

If a document was torn, it is invalid; but if it was torn of itself, it is valid. If it was erased or faint, if still recognizable it is valid.

What does it mean—"was torn," and "was torn of itself"? Said R. Jehudah: If it was torn by the court; and of itself means not by the court. How is it to be known that it was torn by the court? Said R. Jehudah: If the places where the signatures of the witnesses, the date, and the amount were written are torn. Abayi, however, said: The court used to tear it in its length and width.

There were Arabs who came to Pumbeditha, who used to compel the inhabitants to submit to them the deeds of their estates. The inhabitants of the city came to Abayi with their deeds, requesting him to take a copy of them, so that, in case they should be compelled to deliver to the Arabs the originals, the copies should remain, so that in the future they could be sued. Said he: What can I do for you, since R. Safrā long ago decided that two deeds must not be written for one field, because it might happen that one would seize it once, and again thereafter. They, however, troubled him, and he said to his scribe: Write for them on an erased paper, and the witnesses shall sign on the paper which is not erased, as such a deed is invalid. Said R. Aha b. Minumi to him: But perhaps the writing will be recognizable, and then it will be valid, as stated in the Boraitha above? And he answered: I did not say he should write a correct deed: I meant he should write some letters of the alphabet.

The rabbis taught: If one comes before the court claiming that he has lost a promissory note from so and so, although he brought with him witnesses who testify, "We wrote and signed the note in question for the borrower, and in our presence he gave it to him," the court must not write another one. However, this is said only concerning promissory notes. But concerning deeds, if such a case happened, they may write him

another one, without mentioning that the seller is responsible in case it should be taken away by creditors. Rabban Simeon b. Gamaliel, however, maintains: This must not be done even concerning deeds. And he used to say also: If one has presented a gift to his neighbor by a deed, if the deed was returned by the beneficiary, the gift is considered returned. The sages, however, say: Nevertheless, the gift remains for the beneficiary. The master said: Without mentioning the responsibility of the seller. Why so? Said R. Safra: Because two deeds must not be written for one and the same field, for the reason it may happen that a creditor of the previous owner will take it away. Then, the buyer who has two deeds may use both deeds to take away the estates which were sold by A to D and E. (*I.e.*, A had sold a field to B, which was encumbered to C, the creditor of A; and C proclaimed his right to it. Then B proclaimed his right, based upon the deed, to the estate encumbered to C, and took away the estate from D, who bought it from A at a later date. After he did so, and the deed was torn by the court, he (B) would make a bargain with C that for a certain amount he should not hasten to take possession of the field to which he was entitled, but should wait a few years and then do it; for the purpose that C's first claim should be forgotten, and later on, when C should take possession of the field which was until now in the hands of B, it should seem to be as a new claim; and then, on the basis of the second deed retained by him (B), he should also take away from E the estates bought by him from A at a later date.

(Says the Gemara:) But as the promissory note of the creditor was torn by the court when he took away from him the first time, how came he to proclaim his right again? And should one say, in case it was not torn? Did not R. Na'hman say: The following is the order of claims before the court? The lender comes to the court to complain that the borrower does not pay his debt; then the court summons him, and if he does not appear it puts him under the ban, and a replevin is given to the lender, that he may levy on the estates of the borrower or of those who bought same from him at a later date than that of the promissory note. And when the creditor finds such estates in some other city, the court of that city tears the replevin and substitutes a document that he may collect such

and such an amount from such and such estate, after the appraisal shall be made for the court. And after this is done, the court furnishes him with a memorandum of the appraisal and tears the previous document. Hence a replevin in which it is not mentioned that the promissory note of the borrower was "torn by us" must not be taken into consideration by any court; and a document which was given for appraisal in which it is not mentioned that the replevin of such and such a court was "torn by us" is also not to be taken into consideration. The same is the case with the memorandum of appraisal with which the court furnishes him, if it is not mentioned that the document giving the right to make an appraisal of the estate for the debt of so and so was "torn by us." Hence the alleged bargain between B and C could not occur? The statement of R. Safras that two deeds must not be written is because it might happen that one should claim the field not for debt, but because he inherited it from his parents, and it was stolen by the possessors of it. In such a case the above-mentioned bargain may be made.*

Said R. Aha of Diphthi to Rabhina: According to the supposed bargain mentioned above, that B asked C that he should not hasten to take possession, to what purpose such a bargain? If he possesses two deeds, he may take away from D and E at one time? And he answered: By such an act he would invite investigation by his opponents, and they would find out the bargain.

One Mishna states: Concerning deeds, they may write another one, without mentioning the responsibility of the seller for the estate, in case it should be taken away. Why? Let the court write a correct deed and deliver it to the buyer, at the same time furnishing the seller with a document that the first deed was lost, and if such should be found, that it was of no value, as another deed was supplied to the buyer. The rabbis said before R. Papa, according to others before R. Ashi: Because this is not stated, we may infer that the court must not furnish the seller with such a receipt. And he answered: In other cases, receipts may be written. In this case, however, it is not because of the bargain mentioned above, but as the receipt

* The commentators give illustrations of how such a bargain might be made, so involved and far-fetched that we spare the reader their infliction.

which makes the first deed valueless is in the possession of A, and not in the hands of the buyers; and it might be that D and E, who had bought from A, would not be aware of such a document, and would not be in a position to protest against the estates being taken away from them by the creditors of A. But, finally, D and E would transfer their claims to A; and then he would show them the document, and the estates would certainly be returned to them? Yea! But meanwhile the creditors would consume the products, and it would be a difficulty for D or E to collect the value from them, as there is a rule: On consumed stolen property it is very hard to collect. It may also happen that D and E bought their estate without any responsibility on A's part; hence one may take it away without any claim from these parties. But if such a case is to be feared, why should they furnish such receipts in cases of loans, as the same may happen with promissory notes—that the goods should be taken away while the receipt is in the hand of the borrower? There it is different. If the claim comes with a promissory note which had nothing to do with this estate, the possessors of the estate would investigate the matter, whether the borrower had paid him the money due, and would not return the estate without consulting the seller, who is the debtor on that promissory note: which is not the case if the document was for real estate, as in such cases usually estates are claimed, and not money.

The master said: "It may be written without mentioning the responsibility," etc. How, then, should it be written? Thus said R. Na'hman: This deed is not for collection, neither from encumbered nor from unencumbered estates, but only to testify that the estate belongs to so and so, who is the buyer of it. Said Raphram: From this, where it must be written that such a document is not in force for collection, it may be inferred that in such a one where nothing is written there is authority to collect with it even from encumbered estates; as it is to be supposed that it is an error of the scribe, who had forgotten to insert the responsibility of the seller. R. Ashi, however, maintains: A document in which nothing is mentioned does not collect from encumbered estates. And the above Boraitha, which states, "not to mention the responsibility," etc., is not as R. Na'hman explained it, but is to be taken liter-

ally—that nothing is to be mentioned—and then he is not responsible.

There was a woman who gave money to one that he might buy estates for her. He bought them for her, without responsibility in case there should be claims. And she came to complain before R. Na'hman, who said: The woman is right, as she sent to you to the end that she should have benefit, but not that she should suffer damage. You, therefore, have to buy from the woman without responsibility, and thereafter to sell to her with your responsibility.

It is said above by R. Simeon b. Gamaliel: If one has presented a gift . . . the gift is considered returned. What is his reason? Said R. Assi: Because it is to be considered as if one were to say: I give you this for a present so long as you keep this document. Rabba opposed: If so, how is it if this document was torn or lost—must one also return the gift? Therefore, said he, the point of the difference between R. Simeon and the rabbis is thus: According to R. Simeon, title is given to documents and to all their contents by transferring; and therefore when the donee returned it to the donor, the latter acquired title to it and to its contents. But according to the rabbis, title is not given by transferring; hence when the donee takes possession of the gift, the returning of the document counts nothing.

The rabbis taught: If one came to claim a field, saying that he possesses a deed, and also that it was in his possession the years of hazakah—according to Rabbi, the main evidence should be the deed (if he cannot show it, his second claim of hazakah must not be considered); and R. Simeon b. Gamaliel maintains: The main evidence is the hazakah. What is the point of their difference? When R. Dimi came from Palestine, he said: They differ whether title is given to documents by transferring. According to R. Simeon b. Gamaliel, the transferring does not give title; and according to Rabbi, it does. Said Abayi to him: If so, you differ with my master, Rabba, who said above: R. Simeon b. Gamaliel holds: That transferring does give title. And he answered: And what if I do differ? Why not? Rejoined Abayi: I mean to say that the above Boraitha could be explained only as done by my master, but not otherwise. And then, if it is as you say, R. Simeon

contradicts himself. Therefore, said Abayi, the point of the difference between Rabbi and R. Simeon b. Gamaliel in the Boraitha just cited is: In case it happened that one witness who signed the deed was found to be a relative, or for some other reason incompetent to be a witness. And it is the same point in which R. Meir and R. Elazar differ. Rabbi holds with R. Elazar, who says that the final act of a divorce, or anything else, is to be considered done by the witnesses who are present at the transfer, and not by the witnesses who sign the document. And R. Simeon b. Gamaliel holds with R. Meir, who said: The final act is considered done by the witnesses who sign the document.

But did not R. Abba say: Even R. Elazar admitted that if there was any forgery in the document, or there were incompetent witnesses, the transferring is not considered, even when it was done by lawful witnesses? Therefore said Rabhina: All agree that if the court said, "We have investigated the testimony of the witnesses, and found it false," or that one of them was incompetent, the document is invalid, as R. Abba declared. And the above Tanaim differ concerning a document without witnesses at all. According to Rabbi, who holds with R. Elazar, if it was transferred in the presence of witnesses, the act is considered final; and according to R. Simeon, who holds with R. Meir, it is not. And if you wish, it may be said that the point of their difference is: Whether a document which the signer admits must or must not be approved by the court. According to Rabbi, it must not; and according to R. Simeon, it must. But have we not heard just the reverse in Middle Gate, p. 11? (The rabbis taught:) Therefore we must say that the point of their difference is: If one is obliged to convince the court of all the evidence one mentioned at the beginning of the trial, or it is sufficient if he convinces it of one part of it (*i.e.*, if he said, first, "My evidence is a deed, and also hazakah," and thereafter he was able to convince the court of the hazakah only). According to Rabbi: It is not sufficient unless he should show the deed. And according to R. Simeon: The latter evidence suffices. But if he should be able to show the deed, then all agree that the evidence of the hazakah would not be necessary at all. And this is similar to the following case: R. Itz'hak b. Joseph claimed to have money with R. Abba,

and came to complain before R. Itz'hak of Naf'ha. And R. Abba claimed: I paid you in the presence of A and B. Said R. Itz'hak (of Naf'ha) to him: Bring, then, A and B—they shall testify. Said he to him: Am I not to be trusted, even if they do not appear? Is it not a Halakha: If one borrowed money in the presence of witnesses, it is not necessary for the borrower that he shall pay him in the presence of witnesses? Rejoined the former: I hold with the Halakha which was said by you, master, in the name of R. Ada b. Ahaba, quoting Rabh: If one says, "I paid you in the presence of A and B," it is necessary for him that A and B shall come and testify. Said R. Abba again: But did not R. Giddle say in the name of Rabh: The Halakha prevails with Rabban Simeon b. Gamaliel? And even Rabh, his opponent, meant with his statement only to make his evidence clear before the court (but not because the law dictates so)? And R. Itz'hak answered: I also mean you shall make your evidence clear before the court, as I hold with Rabha; and if you are not able to do so, you must pay.

MISHNA VI.: If one has paid a part of his debt, according to R. Jehudah, the promissory note must be changed (*i.e.*, the old note must be torn, and a new one made for the balance). According to R. Jose: The lender has to give a receipt for the amount paid. Said R. Jehudah: Then, according to you, the borrower must watch his receipt so that it shall not be consumed by mice. Answered R. Jose: Yea! This is better for the lender, as if it should be a difficulty for the borrower to watch the receipt he will pay the whole debt sooner; and we must not impair the right of the lender.

GEMARA: Said R. Huna in the name of Rabh: The Halakha prevails neither with R. Jehudah nor with R. Jose, but the court must tear the first note and write him another one with the same date as the first. Said R. Na'hman, according to others R. Jeremiah b. Abba, to R. Huna: If Rabh were aware of the following Boraitha: "The witnesses tear the note, and write for him another one with the same date as the first," he would retract from his statement that this must be done by the court. And he answered: He was aware of this Boraitha, and nevertheless he did not retract, for the reason that only the court has the power to collect money, which therefore may tear and write another one with the former date, but not witnesses

who have done the message they were ordered to, as they have no right to do the same again without a new order. Is that so? Did not R. Jehudah say in the name of Rabh: If a deed was lost, witnesses may write another one, even if this occurred ten times, to one field. Said R. Joseph: Rabh meant a deed of gift. And Rabha said: Rabh meant a document without any responsibility of the estate for other claims.

Where is to be found the Boraitha cited above, of which Rabh was aware? It is thus: If one's debt was a thousand zuz on a document, and he paid five hundred, the witnesses may tear the document and write another one for five hundred, of the date of the old one. So is the decree of R. Jehudah. R. Jose, however, says: The document of the thousand remains, and a receipt for five hundred must be given to the borrower. And for two reasons it was said that a receipt should be written and handed to the borrower: first, because he should be compelled to pay as soon as possible; and, secondly, the debt should be counted from the first date. But does not R. Jehudah also say that a new document should be written with the same date as that which was torn? So said R. Jose to R. Jehudah: If you say that the document should be written from the first date, then I differ with you only in one thing—concerning the receipt; and if you think that the document should be written from the date on which a part was paid, then I differ with you in both.

The rabbis taught: If the document was written at the date used by the government, and such a date fell on a Sabbath or on the Day of Atonement, on which it is prohibited for an Israelite to write, this note is to be considered written with a later date, which is valid. So is the decree of R. Jehudah. But according to R. Jose, it is invalid. Said R. Jehudah to him: Did not such a case come before you in Cepphoris, and you made it valid? And he answered: I did so only with a case similar to that about which we are discussing, because, as the date fell on a Sabbath, it is highly probable that the document was of a later date; but in other cases, where such a supposition has no basis, I do not agree with you. But what answer is this? R. Jehudah also claimed that the case happened to be before R. Jose in Cepphoris. Said R. Pdash: All agree that if the date of the document was examined and found

to fall on a Sabbath, or on the Day of Atonement, it must be considered as with a later date, and it is valid. In what they do differ is: A document which is doubtful, if written with an earlier or a later date. According to R. Jehudah, who holds that in case of payment no receipt is given, but the document itself must be returned, it is valid, because it cannot do any harm to any one by being collectible twice. And according to R. Jose, who holds that for a payment in part the document must not be returned, and only a receipt is furnished, it is invalid, because he can collect with it the whole amount, as the receipt is in the hands of the borrower. Said R. Huna b. Jehoshua: Even according to them who say that a receipt may be written, it is only if a part or a half was paid; but for the whole amount no receipt is written, but he must return him the note; and if lost, he loses his money.

(Says the Gemara:) In reality it is not so, as a receipt may be written even on the whole amount; as it happened with R. Itz'hak b. Joseph, who had money with R. Abba, and when he demanded his money, R. Abba demanded his promissory note. And R. Itz'hak answered: The note is lost, and I will give you a receipt. And he answered: There are both Rabh and Samuel who taught that we do not write a receipt. And when this case came before R. Hanina b. Papi, he said: Rabh and Samuel were so beloved by us that if some would bring the earth of their graves we would keep it always before our eyes; but notwithstanding this, there are both R. Johanan and Resh Lakish who decided that a receipt should be given; and the same was said by Rabbin when he came from Palestine in the name of R. Ilah. Common sense also dictates so; as how can it be supposed that if the creditor lost the promissory note the debtor may consume the whole amount and enjoy himself? Abayi opposed: But after your theory that a receipt is to be written, how is it if the receipt is lost—should the lender collect the money again and enjoy himself? Said Rabha to him: Yea! So is the law, as we read in the Scriptures: "The borrower is a servant to the lender" [Prov. xxii. 7]. Said R. Yema, according to others R. Jeremiah of Diphthi, to R. Kahna: What is the basis of our custom that we write documents with later dates, and we also write receipts? And he answered: That which R. Abba said to his scribe: When it shall happen

that you have to write a document with a later date, you must write as follows: This document was postdated by us for a certain reason, and is dated not with the date it was ordered, but of to-day. Said R. Ashi to R. Kahna: However, in our day and in our country we do not act likewise. It is since R. Safras said to his scribe: Should you have to write a receipt for a lost promissory note, then, if you are aware of the date the promissory note was given, you must write: "The money which was due according to the note written on such and such a date was returned to the lender." And if you do not know the exact date, you must write: "The money due on a note of so and so, to so and so, was paid," not mentioning the date at all; and then, if the note should appear again, it will be of no value. Said Rabhina to R. Ashi, and according to others R. Ashi to R. Kahna: But why is it not customary in our time to do so, as we write documents with later dates without mentioning that they are postdated, and receipts with the date of payment, and we do mention the date of the document? And he answered: The rabbis enacted: One shall do so for his own sake; but if one does not care to do so, it will be his own fault if he should suffer damage. Said Rabba b. Ashila to the scribes: If you should have to write a deed of gift, or deeds in which the seller does not take the responsibility of the estate for the future, you shall do as follows: If you remember the date when the donor or the seller told you in the presence of witnesses to do so, you shall write that date; and if you do not recollect the exact date, you may write the current date, and it will not be considered false. Rabh told his scribes, and the same did R. Huna: When you are writing a document in the city of Shili, although you were ordered to do so in the city of Hini, you must write in the document the city in which you are doing it, and not the city where you were ordered.

Rabha said: If one holds a promissory note for a hundred zuz, and requests that it shall be rewritten in two notes, each of fifty zuz, his request is to be refused—for the sake of both the lender and the borrower: for the lender it is better to have one document, as, should it happen that he pay the half, he will give him a receipt, which the borrower will have to watch, and therefore he will hasten to pay his debt; and for the borrower

it is also better, as the law of a document paid in part is, that the lender must take an oath (and in case he is lacking cash the lender will give him time rather than take an oath). And he said again: If one has two notes of fifty each, and he requests that one of a hundred should be made instead of the two, also to this request no attention should be paid—and also for the sake of both. For the lender it is better, if fifty is paid, that the other document should remain in force, so that he will not be obliged to take an oath; and also for the borrower it is better, having paid one note, that he shall not be bound to watch the receipt for the other half. R. Ashi said: If the lender holds a promissory note for a hundred zuz, and orders the scribe to write for him another note for fifty zuz, claiming that the half was paid by the borrower, he must not be listened to; nor if he asks that the note should be written from that date, or from the current date. Why so? It is to be feared that the borrower has paid the whole amount, and to the demand that his note should be returned, he was answered, "It was lost," and furnished him with a receipt instead; and this note for fifty zuz he will collect from him, claiming that this note has nothing to do with the former one.

MISHNA VII.: If there were two brothers, one rich and one poor, and they inherited from their father a bath-house or an olive-press house, if for business, they must share equally; but if for private use, the rich one may say to the poor, "You may hire slaves, that they shall heat the bath for your use"; or, "You may buy olives and press them for your private use, but I shall not allow you to do this for a stranger, and you take the benefit." If it happen that in one city two persons bear one and the same name, they cannot give promissory notes to each other nor can any of the inhabitants collect on a promissory note of one of them. If there were found a promissory note of one of the two persons by some one which is marked "paid," the other may also claim: My note is paid. How, then, shall they do, if they wish that their documents shall be of value? Write their names threefold—*e.g.*, Joseph b. Simeon b. Jacob; and if they are alike in this also, they must make a sign to their names (*e.g.*, if one is shorter than the other, he must say, "the Little"; and if they are both of equal size, if one is a priest, he shall write "Cohen").

GEMARA: There was a promissory note which came to the court of R. Huna, in which was written: "I, A, the son of B, have borrowed from *you* a mana." Said R. Huna: "From you" can be any one—even the Exilarch, or even King Sabur. Hence it may be that some one lost it, and you found it. Said R. Hisda to Rabba: You must study the case, as in the evening R. Huna will ask you how to decide it. He had deliberated, and found the following Boraitha: A divorce which was signed by witnesses, but there was no date. Said Aba Saul: If the divorce reads: "I divorced her this day," it is valid. Hence we see that "this day" means that on which it was given out. The same is the case with this document; "from you" means from this man who holds it. Said Abayi to him: But perhaps Aba Saul holds with R. Elazar, who holds that the final act of the witnesses of transfer is considered (therefore he makes valid such a divorce as must be delivered in the presence of lawful witnesses). But in our case, why should it not be feared that the plaintiff found a lost note? And he answered: That such a supposition is not to be taken into consideration may be inferred from our Mishna, which states: If there are two persons who bear one and the same name, they cannot give promissory notes to each other, nor to any of the inhabitants, etc. But if one of them has a promissory note from one of the inhabitants, it is valid, and he may collect. Now, why is it not to be feared that it was lost by the other person who bears the same name, and this plaintiff found it? Hence we see that this is not taken into consideration. Abayi, however, may say that this is not taken into consideration because there is only one person who could lose it, and if so, he would certainly announce his loss; but in other cases, where it might be lost by any one, it should be feared. But is there not a Boraitha which states: As the two persons who bear the same name cannot collect promissory notes from each other, so also cannot one of them collect from any other one? Hence this Boraitha differs with our Mishna. And what is the point of their difference? Whether in such a case the plaintiff has to bring evidence. The Tana of the Mishna holds that he has not; and the Tana of the Boraitha maintains that he has. As it was taught: To promissory notes title is given by transferring. However, according to Abayi the holder

of them must bring evidence that they were transferred to him. And Rabha said: He must not.

Said Rabha: I infer my statement from the following Boraitha: If one of the brothers holds a promissory note from some one, claiming that his father or his brother had transferred it to him, it is for him to bring evidence. Hence we see that this law holds good only concerning brothers, who usually hinder one another, and claim that their brother took it without their or their father's consent; but in all other cases no evidence is needed. Abayi, however, maintains: On the contrary, this Boraitha comes to teach: Lest one say that concerning brothers, who hinder one another and are very careful with the inheritance, no evidence is needed for the one who holds the document, although in all other cases it is, the Boraitha came to state that it is not so. But there is another Boraitha: As the persons who bear the same name are allowed to take promissory notes from others, so they may take from each other. And what is the point of their difference? Whether a promissory note may be written for the borrower in the absence of the lender. The Tana of our Mishna holds that this may be done. Hence one of the two persons may go to the scribe, telling him that he wants to borrow from his fellow-citizen, who bears the same name, some money. And after he receives such a promissory note, he may claim that this was given by the other to him; therefore our Mishna says that they cannot collect from each other. And the Tana of the Boraitha holds: The promissory note must not be furnished to the borrower in the absence of the lender. Hence there is no fear.

"If a promissory note was paid," etc. We see, because a receipt was found. But how would it be if not? The promissory note would hold good. But our Mishna states: Nor can any of the inhabitants collect. Said R. Jeremiah: It speaks of when in the note his name was written threefold; but if so, let them see the receipt, to whom it was made out. Said R. Hoseah: It speaks of when it was written threefold in the note, but not in the receipt. Abayi, however, said: The Mishna is to be explained thus: If there was found among the borrower's documents a writing, "The promissory note which I gave to Joseph b. Simeon is paid," if he possess such from the other, both are considered paid.

"*To write their names threefold*," etc. There is a Boraitha: If both were priests, they must write their names fourfold—*e.g.*, Joseph b. Jacob b. Itz'hak b. Abraham; and that all the four names should be alike is very rare.

MISHNA VIII.: If one (while struggling with death) says to his son: "A promissory note among the notes I possess is paid, but I do not remember which," all of them are to be considered paid. If, however, one person has given two promissory notes, the larger amount is considered paid, and the smaller amount not.

GEMARA: Rabha said: If one says: "A promissory note from you, which I possess, is paid," and there were two from him, the larger amount is considered paid, and the smaller amount not; if, however, "The debt you owe me is paid," all the promissory notes from him which are in his hands are considered paid. Said Rabhina to him: According to your theory, if one says: "My field is sold to you," does it mean that the largest he has is sold? And if he said, "The field I possess is sold to you," does it mean all the fields? There it is different, as it is for the plaintiff to bring evidence; and if the buyer so claims, he has to bring evidence to what he claims. But here the creditor is the plaintiff; and if he says, "Your debt is paid," it is the best evidence that all the notes are paid.

MISHNA IX.: If one made a loan to his neighbor through a surety, he must not collect first from the surety, unless the borrower does not possess any estate; however, if the stipulation was made that he may collect from whom he pleases, then he may start with the surety.

R. Simeon b. Gamaliel (however) is of the opinion that even in such a case the lender may not start with the surety, unless the borrower does not possess anything. And he used to say thus: If one made himself a surety to a woman for her marriage contract, and thereafter the husband was about to divorce her, the court should compel him to vow that from the time divorced he should not derive any benefit from his former wife, which means not to remarry her, for fear that the husband and his wife may have made a bargain to collect the money for the marriage contract from the surety, and thereafter he will remarry her.

GEMARA: And why should not the creditor collect from the surety? Both Rabba and R. Joseph said: The surety may

claim: I have given bail for the money in case the borrower should die or run away, but not if I deliver him to you. R. Na'hman opposed, saying: Such is the Persian law. But this is not so, as the Persians collect from the surety only, even when the borrower possesses estates? R. Na'hman meant to say: Such a law is similar to a Persian law, for which they give no reason, and therefore he says the Mishna meant: He shall not summon the surety unless he has already summoned the borrower. So also we have learned in the following Boraitha: If one made a loan to his neighbor through a surety, he must not summon the surety first, unless the stipulation was that he might collect from whom he pleased. R. Huna said: Whence do we deduce that a surety is obliged to pay? From [Gen. xliii. 9]: "I will be a surety for him." R. Hisda opposed, saying: He was not a surety only, but also a receiver, as it reads farther on, "from my hand shalt thou require him," and also [ibid. xlii. 37], "deliver him into my hand," etc. Therefore said R. Itz'hak: From [Prov. xx. 16]: "Take away his garment, because he hath become surety for a stranger." (Here is repeated from Middle Gate, p. 305. See there.)

Amimar said: Whether a surety has to pay or not, R. Jehudah and R. Jose differ. According to the latter, who holds that an *asmachtha* gives title, he is responsible; and according to the former, who holds that an *asmachtha* does not give title, the surety is not obliged to pay. Said R. Ashi to him: But is it not a fact that a surety is responsible, although it is now taken as a rule that an *asmachtha* does not give title? Therefore said R. Ashi: Because of the pleasure that the lender trusted him on his word, the surety made up his mind that the lender should be paid under all circumstances; and such a case it is not considered as an *asmachtha*, but as a debt which lies upon himself.

"*That he may collect from whom he pleases,*" etc. Rabba b. b. Hana in the name of R. Johanan said: Even then, if the borrower possess estates, he must not collect from the surety. But does not the latter part of the Mishna state that Simeon b. Gamaliel said so; from which it is to be inferred that the first Tana holds that he may collect from the surety in any event? The Mishna is not complete, and should read thus: If one made a loan to his neighbor through a surety, he must not collect

through the surety unless he had made the stipulation that he might collect from whom he pleased. But even then he collects from the surety in case the borrower does not possess any estate; but if he does, he must collect from the borrower first, and if it should not be sufficient, then from the surety. If, however, the surety was also the receiver of the loan for the borrower, then he may collect from the surety, although the borrower possesses estate. R. Simeon b. Gamaliel, however, maintains that even then he collects from the borrower if he possesses any estate. (In the name of R. Johanan was said (First Gate, p. 156): In that case the Halakha does not prevail with R. Simeon b. Gamaliel.)

R. Huna said: If the surety said: "Lend to this man, and I am the surety"; or, "I will pay"; or, "Count the debt to me"; or, "Lend him, and I will give to you"—all these versions are considered surety. If, however, he said to him: "Give to him, and consider me as receiving the money"; or, "Give to him, and I will pay"; or, "Count the debt to me"; or, "Give to him, and I will return to you"—all these versions are considered receipt. (*I.e.*, if he said: "Borrow from him," it means that he should be the debtor: "In case he shall not pay, I will." But if he says, "Give to him," then the borrower is not considered here at all, as the lender gave by his order.)

The schoolmen propounded a question: How is it if he said, "Lend him, and count me as the receiver"; or, "Give to him, and I will be surety"? According to R. Itz'hak: In the first case, in which he remarked, "I will be the receiver," he must be so considered, although he said, "Lend *him*"; and in the second case, in which he said, "I will be surety," he is to be so considered, although he said, "Give to him." R. Hisda, however, maintains: In either case he is considered a receiver, unless he said, "Lend him, and I will be the surety." And according to Rabha: All the versions mentioned above are considered surety, unless he said, "Give to him, and I will return to you."

Said Mar b. Amimar to R. Ashi: So said my father: If the expression was, "give to him, and I will return you," then has the lender nothing to do with the borrower. (Says the Gemara:) In reality it is not so. The lender may collect the

money from the borrower, unless the surety took the money from the hand of the lender and delivered it to the borrower.

There was a judge who transferred the estate of the borrower to the lender, before the lender had demanded his money from the borrower, and R. Hanin b. R. Yeba removed the judge. Said Rabha: Who so wise to do such a thing, if not R. Hanin b. R. Yeba, as he holds that the estates of the debtor are his surety; and our Mishna states: He must not collect from the surety, nor must he demand his debt first from the surety?

There was a surety for orphans who had paid the lender before he notified the orphans (*i.e.*, he was surety for the father of the orphans, who borrowed some money, and after his death he paid the lender from his own pocket, and then summoned the orphans to pay him from their estates). And R. Papa decided: To pay a debt for which there is no document is a meritorious act, to which orphans who are not of age cannot be compelled; and therefore the surety must wait with his claim until they shall become of age. R. Huna b. Jehoshua, however, maintains: The reason why the orphans have not to pay until they shall become of age is, because they are not aware that the deceased had not paid such a debt. And the difference of the two statements is, in case the deceased had confessed before his death that he had not yet repaid the debt. Then, according to R. Huna, the orphans may be compelled to pay; but not, according to R. Papa.

A message was sent from Palestine: If one was put under the ban because he declined to pay his debt, and he died while still under the ban, he is to be considered as if he had confessed before his death that he had not yet paid, and the orphans have to pay, as the Halakha prevails in accordance with R. Huna b. Jehoshua.

An objection was raised from the following: If the promissory note of the deceased was in the hands of the surety, who claims to have paid the lender, and he demands the debt from the orphans' estates, he cannot collect (for perhaps the lender lost it, and he found it). If, however, there was marked in the note by the lender that he has received the debt from the surety, he may. Hence this is correct only with R. Huna's statement; but it contradicts R. Papa, who said: The orphans must not

be compelled to pay in such a case. R. Papa may say: When the lender wrote that he received the money from the surety and transferred the promissory note to him, it is no longer considered a debt without a document, the payment of which is only a meritorious act, to which the orphans cannot be compelled; as for that purpose the lender marked, "I have received from you that from this date the promissory note should be considered as if given by the deceased to the surety."

There was a surety for a deceased debtor to a heathen, who paid the heathen before he had demanded his debt from the orphans. Said R. Mordecai to R. Ashi: So said Abimi of Hagrunita in the name of Rabha: Even according to him who holds that it may be doubted whether the deceased had paid his debt before dying, it is only when the creditor was a Jew, but not when he was a heathen, who usually demands the debt from the surety and not from the debtor. Answered R. Ashi: It is just the contrary. Even according to him who said that it must not be doubted whether the debt was paid, it is only concerning a Jew; but concerning a heathen, whose law dictates that they have to collect the debt from the surety, it is to be feared that if the surety should not have in his hand an amount which would cover the debt in case it should not be paid, he would not consent to be a surety; and therefore he cannot collect from the orphans except by suing them when they shall be of age.

"If one made himself surety to a woman for a marriage contract," etc. Moses b. Azo was a surety for the marriage contract of his daughter-in-law, whose husband was R. Huna, who was a scholar, and became thereafter very poor and was unable to support his family. Said Abayi: Is there not one who shall advise R. Huna to divorce his wife, and she shall go to his father, who is rich, and collect the marriage contract, and thereafter R. Huna shall remarry her? Said Rabha to him: But does not our Mishna state: "He shall vow not to derive any benefit," etc.? Rejoined Abayi: Must, then, every one who wishes to divorce his wife go to the court? Finally it was developed that R. Huna was a priest, who could not remarry his wife in case of being divorced. Said Abayi: This is what people say: Poverty follows in the path of the poor. But did he not say above (p. 304), that he who gives such advice

is called a shrewd knave? In this case, where the surety was his father and the son was a scholar, it is different. But was not the father a surety only, who has not to pay (as will be explained farther on)? He was also a receiver. But even then, it is correct according to him who holds that a receiver must pay, even in case the groom possessed nothing at the time of marriage. But what can be said to him who said that in such a case even a receiver is not to be compelled to pay? It may be said that when his father became surety the son was still in the possession of some estates; and if you wish, it may be said that with a father it is different. As it was taught: A surety in a marriage contract, all agree that he has not to pay. A receiver from a creditor, all agree he must pay; but concerning a receiver in a marriage contract and a surety from a creditor the rabbis differ. According to one: If the borrower possessed estates at the time the loan was made, the receiver must pay, as it may be supposed that he obliged himself with all his mind, as he had nothing to fear; and the other holds: He must pay in any event. The Halakha, however, prevails: A surety must pay in any event, unless he was a surety to a marriage contract, even in case the husband was in possession of estates at the time he became surety. And the reason is, because it may be supposed that he did so as a meritorious act, in order that the couple should not be parted; and he did no harm to the bride, as, if the husband had money, he would pay.

R. Huna said: A sick person who has consecrated all his estates, and at the same time said, "So and so has a mana with me," he may be trusted, as it is to be assumed that one would not use deceit against the sanctuary. R. Na'hman opposed: Is it, then, usual that one should use deceit against his children? And, nevertheless, both Rabh and Samuel say: If a sick person said, "So and so has a mana with me," if he added, "Give to him," he is to be listened to; but if he did not, he is not to be listened to. Hence we see that, if he did not say "Give," his statement that so and so has a mana with him is considered as if he did so for the purpose that, should he be cured, his children should not think him very rich. Why should not the same be applied in the case of the sanctuary? R. Huna speaks in case there was a promissory note, and only the sick person admitted that the note was a right one. If so, then we must

say that the statements of Rabh and Samuel applied even when there was no promissory note. But if so, it was a loan without a document, and both Rabh and Samuel said: On such a loan one cannot collect, neither from the heirs nor from the buyers? Therefore said R. Na'hman: In both cases it speaks of when there was a document: one case treats of when the note was approved, and the other when it was not. And then if he said "Give," he approves the note, and is to be listened to; and if he does not say "Give," the note remains unapproved.

Rabba said: A sick person who said, "A has a mana with me," and thereafter the orphans claimed that they have paid, they are to be trusted. If, however, he said, "Give a mana to A," and the orphans say they have paid, they are not to be trusted. But is not common sense against such a theory? It seems just the contrary. If the father said, "Give," and the orphans said "We did so," they may be trusted; but if the father said, "A had a mana with me," it may be supposed they did not hasten to pay him, and why should they be trusted? Therefore if such a statement was made by Rabba, it must be thus: If a sick person said, "A has a mana with me," and the orphans thereafter said that after deliberating the deceased said, "I have paid it already," they may be trusted, as it is probable the deceased remembered that he had returned it. But if the sick person says, "Give a mana," and thereafter the orphans claim the same as is said above, they are not to be trusted; as if it were for deliberation, he would not say "give."

Rabha questioned: If a sick person had confessed (*i.e.*, his creditor came to him, saying, "You owe me a mana," and he said, "yea"), must the sick person also add "yea," that those who are present shall be witnesses, as is required in such a case of one in good health, or not? And it is also a question whether he must say to the witnesses: "Mark this in writing"; and also whether a sick person has the right to say, "It was only a joke," or, "This is out of the question." Concerning one who is dying, after deliberating, he came to the conclusion that all these are not necessary, as there is a rule: The words of a dying person are to be considered as written and delivered to whom it concerns.

MISHNA X.: If one borrows money on a promissory note, the lender has a right to collect from encumbered estates; and

if without a note, but in presence of witnesses, the lender may collect from unencumbered only. If A holds a writing that B owes him money (not a promissory note, which usually must be drawn by witnesses), he collects from unencumbered estates only. A surety who has signed his name after the signatures of the document ("I, so and so, am a surety"), the lender may collect from the surety from unencumbered estates only (as it is considered a verbal surety, as there were no witnesses who testified to this).

Such a case happened to come before R. Ishmael, and he decided that he should collect from free estate. Ben Nanas, however, maintains: He must not collect from any estate. And to the question of R. Ishmael: Why so? he answered: If it happen that a creditor sees his debtor in the market, grapples him by the throat, and one passes by and says, "Leave him alone, I will pay," he is nevertheless free, because the loan was made not upon his surety. The same is the case here. If, after the document was made and the witnesses signed it, he adds, "I am a surety," he is not considered such, as he was a surety when the loan was already made. Said R. Ishmael: If one wishes to become wise, he shall occupy himself with the civil law; for there is no store (of wisdom) in the entire Law richer than it (the civil law). And those who wish to study, civil law may take lessons of Ben Nanas.

GEMARA: Ula said: Biblically there is no difference between a loan on a document and by word of mouth; and it should be collected from encumbered estates. Why is it said that on a verbal one, one collects from free estate only? Because the buyers of the borrower should not suffer damage (*i.e.*, as they could not be aware of a thing done verbally). But when there is a document, it is their own fault if they do not investigate before they buy. Rabba, however, maintains the contrary: Both loans ought to be collected from free estates only; as, according to the biblical law, the estates are not mortgaged even if there is a document (unless it is so written). But why did the rabbis enact that a document collects from encumbered estate? In order not to close the door for borrowers. For a verbal loan, however, they did not enact, as it is not known to the people; and the buyers from the borrower could not know there was a loan.

Did, indeed, Rabba say so? Was not his decision [in Chapter VIII., p. 274] "that a first-born takes a double share in the estate collected after the death of the father"? Now if not mortgaged biblically, in a document why should he take a double share—to which he is not entitled in movable property or money collected after death? And lest one say that the names of Ula and Rabba should be reversed in the above statements, this would not hold good, as we have heard Ula saying elsewhere that a creditor collects biblically from the worse estate of the debtor. Hence we see that Ula holds that estates are mortgaged biblically. (This presents no difficulty, as the cited statement of Rabba [in Chapter VIII.] was only to give the reason of the Palestinians; but he himself does not hold with them.)

Both Rabh and Samuel hold: A verbal loan is not collectible—neither from heirs nor from buyers; as, biblically, estates are not mortgaged on any loan. But R. Johanan and Resh Lakish both hold: They are mortgaged, and therefore a loan is collectible—whether from heirs or from buyers. Said R. Papa: The Halakha prevails that a verbal loan is collectible from heirs, for the purpose of not closing the door to borrowers; but is not collectible from buyers, who could not know of the existence of such a debt.

"If *A* holds a writing . . . from unencumbered estates," etc. Rabba b. Nathan questioned R. Johanan: How is it if this writing was approved by the court? And he answered: Even then, the same is the case. Rami b. Hama objected from a Mishna in Tract Gittin, in which it is stated that, according to R. Elazar, if such a document, without witnesses, was given to the lender in the presence of witnesses, he may collect from encumbered estates? The case is different, as the writing was with the intention of transferring it in the presence of witnesses; it is the same as if the witnesses had signed the document.

"A surety . . . after the signatures," etc. Said Rabh: If the surety signed before the signatures, it may be collected from encumbered estates; and if after, from unencumbered estates only. But at some other time the same Rabh said: Even if he had signed his name before the signatures, it is to be collected from free estates only. Hence Rabh contradicts him-

self. This presents no difficulty, as his statement, from free estates only, speaks of when the surety wrote, *e.g.*, "B is a surety," which does not make it clear for whom he is a surety; and the witnesses who signed their names after him, perhaps they have nothing to do with the surety. And his statement that it is collectible from encumbered estates speaks of when there was written after the text, explaining the loan, "*And so and so is the surety,*" to which the approval was by the witnesses signed after him. And the same was said by R. Johanan.

"*Such a case came before R. Ishmael,*" etc. Said Rabba b. b. Hana in the name of R. Johanan: Although R. Ishmael praised Ben Nanas, the Halakha prevails with R. Ishmael.

The schoolmen propounded a question: How is it if such a case as illustrated by Ben Nanas occurs? Come and hear what R. Jacob said in the name of R. Johanan: Even then, R. Ishmael differs with him. But with whom, then, does the Halakha prevail? Come and hear what Rabbin, when he came from Palestine, said in the name of Johanan: R. Ishmael differs with Ben Nanas even in the case illustrated by him, and the Halakha prevails also in this case with R. Ishmael. Said R. Jehudah in the name of Samuel: However, if the man who said, "Leave him alone, I will pay," fulfils his promise with the ceremony of a sudarium, he is mortgaged. Infer from this that in case of all other sureties no sudarium is necessary; and this differs with R. Na'hman, who said: Only a surety, in the presence of the court, is free from a sudarium; but all others are not. The Halakha, however, prevails that with a surety who was present when the money was delivered, a sudarium is not needed, but after the delivery it is needed. With a surety appointed by the court it is not needed, as, because of his pleasure at the court choosing him to be the surety, he makes up his mind to pay, and is mortgaged.

END OF TRACT BABA BATHRA AND OF VOL. VI. (XIV.)





This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

NEW EDITION

OF THE

BABYLONIAN TALMUD

**Original Text, Edited, Corrected, Formulated, and
Translated into English**

BY
MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

**TRACT BABA BATHRA
(LAST GATE, PART II.)**

Volume VI. (XIV.)

BRARY
BLAND STANFORD JUNIOR
UNIVERSITY

**NEW YORK
NEW TALMUD PUBLISHING COMPANY
1342 CLINTON AVENUE**

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tman* of the original—We have learned in a Mishna; *Tania*—We have learned in a Baraita; *Immer*—It was taught.
2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.
3. When in the original there occur two statements separated by the phrase, *Ushana achana* or *Ushavivah d'ama* or *Usha d'amri* (literally, "otherwise interpreted"), we translate only the second.
4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.
5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.

107348

UNIVERSITY OF TORONTO LIBRARY

COPYRIGHT, 1900, BY
MICHAEL L. RODKINSON.

TO THE REVEREND GENTLEMEN
HERRN GEHEIMER REGIERUNGSRATH
MORITZ LAZARUS, PH.D., D.D.
UNIVERSITY PROFESSOR
AND
MONS. ZADOC KAHANA
GRAND RABBIN
DU CONSISTOIRE CENTRAL DES ISRAËLITES DE FRANCE
WHOSE NAMES ARE FAMOUS
IN THE SCHOLARLY WORLD ALL OVER THE GLOBE
THIS FOURTEENTH VOLUME
IS MOST SINCERELY INSCRIBED BY THEIR ADMIRER AND
PERSONAL FRIEND
MICHAEL L. RODKINSON

New York, Eve of Passover, 5662 (April 21st, 1902)

CONTENTS.

(PART II.)

CHAPTER VI.

	PAGE
RULES AND REGULATIONS CONCERNING THE SALE OF SEEDS WHICH BECOME SPOILED, THE QUANTITY OF DUST WHICH MAY OR MAY NOT BE ACCEPTED IN THE MEASURES OF GRAIN AND FRUIT, AND WINE WHICH BECOMES SOUR AFTER SALE BEFORE DELIVERY.—CONCERNING CONTRACTORS FOR HOUSES AND STABLES, WELLS AND GARDENS, SITUATED IN NEIGHBORS' PROPERTIES OR PUBLIC THOROUGHFARES IN PRIVATE GROUND, AND CONCERNING GRAVES AND CAVES FOR BURYING	215

CHAPTER VII.

RULES AND REGULATIONS CONCERNING ROCKS AND PITS IN GROUND SOLD; THE QUANTITIES OF GREATER OR LESS MEASURE WHICH MAY OR MAY NOT VOID A SALE OF FIELDS, VILLAGES, ETC.	231
--	-----

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING BEQUESTS TO AND INHERITANCE BY NEAR AND DISTANT RELATIVES, MALE AND FEMALE SLAVES AND THEIR DESCENDANTS, FIRST-BORN AND HUSBANDS. ONE MAY OR MAY NOT WISH TO BEQUEATH HIS ESTATE TO STRANGERS WHEN HE HAS CHILDREN. WHICH WILLS MUST BE CONSIDERED AND WHICH WILLS MUST NOT. THE DIVIDING OF AN INHERITANCE BETWEEN GROWN-UP AND MINOR CHILDREN, MALE AND FEMALE	241
---	-----

CHAPTER IX.

RULES AND REGULATIONS CONCERNING THE SUPPORT OF UNMARRIED DAUGHTERS AFTER THE DEATH OF THEIR FATHER, IF AMONG THE CHILDREN WERE AN HERMAPHRODITE OR AN ANDROGYN. MAY OR MAY NOT ONE BEQUEATH HIS ESTATE TO STRANGERS IF HE HAS CHILDREN? DOES THE SECOND WILL ABOLISH THE FIRST? IF A SICK PERSON RECOVERS AFTER MAKING A GIFT WHILE SICK, MAY HE RETRACT OR NOT? IF SUDDEN DEATH OCCUR TO MANY PERSONS, AND IT IS NOT KNOWN WHO DIED FIRST, AND EACH OF THE HEIRS CLAIMS FOR HIS BENEFIT 312

CHAPTER X.

HOW DEEDS SHOULD BE WRITTEN AND WHERE THE WITNESSES SHOULD SIGN. CONCERNING ERASURES OF SOME WORDS IN DEEDS. IN WHICH CASES BOTH PARTIES MUST BE PRESENT AT THE WRITING OF THE DEEDS, AND IN WHICH ONE OF THEM SUFFICES. CONCERNING A DEPOSITED DEED WHICH WAS PAID IN PART. HOW SHALL THE COURT APPROVE AN ERASED DOCUMENT? PROPERTY FOR PRIVATE USE WHICH WAS LEFT TO POOR AND RICH BROTHERS . 358

SYNOPSIS OF SUBJECTS

OF

TRACT BABA BATHRA (LAST GATE).

(PART II.)

CHAPTER VI.

MISHNAS I. TO VIII. If one sold fruit and it did not sprout, or an ox and thereafter it was found a goring one. May the trouble of slaughtering and selling the meat be taken into consideration? If an ox was found killed at the side of another pasturing one. Between majority and hazakah, which should be preferred (see footnote p. 217)? All hold the theory of majority. If one delivered wheat for grinding to fine meal, but the miller did not properly grind it; or if meal were delivered to a baker and he did not bake it properly. If one buys fruit, he has to accept a quarter of a kabh of dust on a saah. If he sold a cellar of wine, he must accept ten harsh barrels on each hundred. If wheat, a quarter of a kabh of peas; if barley, a quarter of chaff; if lentils, of dust. If the buyer has found more than the above prescribed quantity. The difference between a cellar and *this* cellar, and also if for keeping was added. May or may not wine which is sold in retail stores be considered products of the vine? If one sells wine, and it turns sour. Which wine is considered an old one. If one is proud, he is not tolerated even by his family. A commoner who disguises himself in the garment of a scholar cannot enter into the habitation of the Holy One, etc. If one sells, or a contractor undertakes to build, a wedding or a widow house. A groom who resides in the house of his father-in-law is lighter than bran, and still lighter is an invited guest who brings with him an uninvited one, and still lighter is he who answers before hearing the question. If one wishes to build a stable. If one possesses a well, situated on the other side of his neighbor's house, or a garden inside of his neighbor's. If there was a public thoroughfare through one's field, etc. If one sells a place for digging a grave, or an undertaker makes a place for one, the inside of the cave must be four by six, etc., 215-230

CHAPTER VII.

MISHNAS I. TO VI. I sell you earth of the size whereon one kur can be sown, etc., or measured with a line. In case the buyer has to make return, it shall be in money. If the seller said "the size of a kur," without

any addition, how is the law? "I sell you the estate," with a measurement a trifle more or less; or, "this estate . . . with its marks and boundaries." If two versions of the seller contradict each other, which is to be considered? The difference in opinion of the Amoraim in the explanation of Mishna IV. R. Papa bought an estate said to be twenty saahs—after it was measured it was found only fifteen. To two brothers who had divided their inheritance came a third brother (of whose existence they were not previously aware). If brothers divided their inheritance, and a creditor of their father came and took away the share of one of them. If the members of the court differ in the amount, upon appraisement brought before them. "I sell you the half of the field"; "The southern half of this field," etc.—the seller has to give space for a partition, etc., 231-240

CHAPTER VIII.

MISHNA I. There are those who bequeath, and also inherit; others who inherit but do not bequeath; and also those who neither bequeath nor inherit. The passage [Num. xxvii. 8] in the Scripture does not correspond with all that is taught above. Who were the grandfathers of Pinchos ben Elazar on his mother's side. If one is about to marry, it is advisable for him to investigate the character of the bride's brothers. It is better for one to hire himself to Abhada Zarah (idolatry) than to rely upon people that shall support him. Abhada Zarah means "idolatry." Literally, however, it is "a strange service." Is the tribe of the mother's side equal to the tribe of the father's side? What happened to Janai and Jehudah the second when they came together? The husband from his wife. Whence is this deduced? Whence came Pinchos ben Elazar to have a mountain which his father did not possess? Whence is it deduced that the husband does not inherit the estate to which his wife during her life is only heir apparent? In the case of a gift with the ceremony of a sudarium, whether healthy or sick, what time may be given him to retract, 241-255

MISHNAS II. TO IV. The order of inheritance is thus, etc. If one decides that a daughter shall inherit, when there is a daughter of a son, even if he were a prince in Israel, he must not be listened to. What happened to Rabban Johanan with the Sadducean? "The daughters of Z'lophchod have inherited," etc. The land of Israel was divided among the ascendants from Egypt, and not among their children. Joshua and Caleb inherited the shares of the spies. Whence is this deduced? May or may not a disciple be honored in the presence of his master? Why is the order in mentioning the daughters of Z'lophchod different in the Scripture? If a woman marries at less than twenty years of age, she bears children until sixty; but when she marries after forty, she does not then bear children. There were seven men who encompassed the whole world since its creation until now, etc. How was the land of Israel divided—into twelve parts, or among the people severally? The land of Israel will be divided among thirteen tribes. A son and a daughter are equal concerning inheritance, etc. How shall the double share of the first-born be counted—double as to each brother or as to the whole estate. What is the reason that Jacob took away the privilege of the first-born from Reuben and gave it to Joseph? Jacob's children, who came to Egypt, in sum you find seventy; however, if you will number

them in detail, you will find only sixty-nine. In the case of inheritance of a promissory note, the first-born took a double share, etc. A first-born does not take a double share in a loan. The Palestinians, however, say he does. What is to be done with an estate bequeathed for life only, which the inheritor has sold? A first-born does not inherit property to come in the future, and the same is the case with a husband. If the first-born protests when his brothers come to improve the estate left by their father, 255-271

MISHNAS V. TO VII. A will which is against the law of the Scripture must not be listened to; however, if it is as a gift, it may. "My son is my first-born," he takes a double share; "My son is a first-born," he does not. "Go to Sh'kh'at my son, who is a first-born, whose spittle cures eyes." If two wives of one have born two sons in a secret place which was dark, and it is not known who was born first, they may write a power of attorney each to the other, etc. If one was known to the people as a first-born, and his father said of another, etc. A creditor may collect from bondsmen belonging to orphans for their father's debt. A second-cousin, a third-cousin, may be a witness (according to the law). If one says, "This child shall inherit all," or, "My wife shall take an equal share with one of my sons," he is to be listened to. If the word "gift" was mentioned in the beginning, etc. How is this to be illustrated? If one wrote, "The field on the east side shall be given to A, and B shall inherit that on the west side," is title given or not? All that is said in one speech is valid, except as to idolatry. If one says: "A shall inherit my estate," and he has a daughter, he said nothing; or, "A shall inherit my estate instead of my daughter," or, "My daughter instead of my son"—how is the law? A Halakha must not be taken for granted from a discussion or from an act, unless one is told to do so. Rabbi said: My youth made me presume to contradict Nathan the Babylonian. If one bequeath all his estates to his wife, he makes her a guardian only. (All that is said above treats of a will by a sick man.) How is it if this was done while in good health? If one has bequeathed all his estates to his sons, but has left to his wife a small portion of ground. How is it in a similar case when one is in good health? A sick person who has bequeathed all his estate to a stranger, it is to be investigated if the latter is in some way fit to be called a direct heir. An inheritance has no interruption, and goes direct to the heirs of the inheritor. The rabbis condemned one who bequeathed his estate to strangers, leaving out his children. What happened to Shamaï the elder with Jonathan b. Uziel,

271-297

MISHNAS VIII. TO XII. "This is my son," he is to be trusted; "My Brother," he is not. If one testify he has divorced his wife, he is to be trusted. If a short period of time, can one's testimony be divided—that for the past he should not be trusted, and for the future he should? If a sick person said to witnesses: "Write, and give a mana to so and so," and before they did so he dies. How is it if the same was said by one in good health? If one wishes to bequeath his estate to his children, etc. How if he has written "from to-day and after my death"? If a sudarium is mentioned, no matter what version was used, nothing is needed to be added. "My estates are bequeathed to you, and after you to B," etc. Who is called a crafty villain? To a gift presented by one who is dying, at what time is title given? There was a woman who had a tree on the estate of

R. Bibbi b. Abayi, etc. If A said to B, "I give you this ox as a present, with the stipulation that you shall return it to me." If a sick man said, "I have a mana with so and so," the witnesses may write this, etc. The Halakha prevails that it must not be feared the court will err. The father has the right to gather the products bequeathed to his son, etc. If he left grown-up and minor sons, the grown ones have no right to derive any benefit on account of the minors, etc. How is it if a woman has borrowed money, consumed it, and thereafter she married without paying her debt, and brought estates with her at marriage? "The following is not to be returned in the jubilee year," etc. (p. 310). In some respects the husband should be considered as an heir, and in some respects as a buyer, 297-311

CHAPTER IX.

MISHNAS I. AND II. If one leave sons and daughters, if the inheritance is of great worth, the daughters must be supported from it; if a moderate one, the daughters must be supported, and the sons may go a-begging. If the estates were of great worth, but there was a promissory note in the hands of a creditor. If the deceased left a widow and a daughter, and the estates left could support only one of them. If one leave sons, daughters, and an hermaphrodite. "If my pregnant wife shall bear a male," etc. A child of one day inherits and bequeaths, etc. All that was said here was taught in the city of Sura. In Pumbeditha, however, it was taught otherwise, etc. One said, "I bequeath my estate to the children who shall be born of you by me," etc. One said, "My estate shall be for you and your children." And R. Joseph decided: One half of the estate belongs to her, and the other half to her children. There was one who had sent home pieces of silk, without any order to which member of his household they belonged, . 312-321

MISHNAS III. TO VII. If one left grown-up and minor sons, and the former improved the estate, etc. If one has made the wedding of his son in one of his houses, the son acquires title to the house, etc. Three things the rabbis enacted as laws without giving any reason. Brothers partners in business; if one of them was taken by the government to work, etc. If one of the brothers took two hundred zuz to begin the study of the Torah or to learn a trade, etc. Wedding presents may be replevined by the court. If one has betrothed a woman and dies before marriage, a virgin collects two hundred and a widow one hundred zuz. Five things were said about wedding presents: (a) They may be collected by the court; (b) they are returned at the time when the donator marries, etc. Who is like unto a wealthy man who is known to be rich by his many cattle and estates, etc.? The different explanations of Prov. xv. 15. If one sends presents to the home of his betrothed's father, to the value of one hundred manas, and has partaken of the betrothal meal, even for one dinar, they are not to be returned. How is it when the presents have improved, etc.? If a sick person had bequeathed all his estates to strangers, etc. Three things Achithophel charged his sons, etc. If a sick person said: "A shall reside in such a house," or, "B shall consume the products of such and such a tree," etc. A sick person who has bequeathed all of his estates to strangers, it must be investigated how was the case. If a sick person has bequeathed all his estates to strangers and thereafter is cured. The expressions, "He shall take," "shall be rewarded."

How shall it be done if he expresses himself: "A is the one who shall derive benefit from my estates"? If a sick person has confessed, "I owe so much to so and so," shall it be taken for granted, etc.? In five cases the act of a gift is not considered unless the bequeather writes "all my estates." What is considered estates? How is the case with the Holy Scrolls—as they must not be sold, are they considered estate or not, etc.? The mother of Rami b. Hama bequeathed to him her estates on one evening. The mother of R. Amram the Pious possessed a bundle of deeds, etc. Concerning a gift in part of a sick person—in one respect it is equal to a gift by one in good health, etc. A sick person who has bequeathed all his estates to strangers, although made with a sudarium, if he was cured he may retract. If one bequeathed first to one and thereafter to another, etc., . . . 321-345

MISHNA VIII. If in the deed it was not mentioned that he was sick, and he claims that he was sick at the time of writing and had a right to retract. What kind of evidence is required, etc. It happened in the city of Bene Brack, that one sold the estate of his father and died; and his relatives complained that he was not of age when he died. What must be the age of one who has the right to sell the estates left him by his father? How is he to be considered during the nineteenth year—nineteen, which is still not of age, or twenty? There was one lad less than twenty, who had sold the estate of his father. If a lad of thirteen years and one day presented a gift to some one, his act is valid. If one divides his estates verbally, no matter if he was in good health or dangerously sick, according to R. Elazar to real estate title is given by money, etc. It happened with an inhabitant of the city of Mruni, who was in Jerusalem, that he possessed much valuable property which he desired to present to different persons, etc. If it happens that a sick person divides his estates verbally on the Sabbath, etc. Suppose a house falls upon A and his father or on any persons, that one of them has to be bequeather and the other inheritor, and it is not known who dies first. If a son has sold his share of the inheritance of his father to some one, and dies while the father was still alive, and thereafter his father died, the son of the seller has a right to take away the goods from the buyer. And this is a complicated case in the law of money matters. A son inherits from his mother when he is already in the grave, so that his brothers from his father's side should inherit from him, 345-357

CHAPTER X.

MISHNAS I. TO V. A simple get (document) the witnesses must sign at the end of the contents. A folded one, however, the witnesses must sign outside, etc. In what place should the witnesses sign a folding document? If the signatures of the witnesses were separated by a space of two lines from the writing, the document is invalid; is it meant with their usual space or without? There was a folding document which came before Rabbi, and he said: "There is no date to it," etc. All must be done as is customary in the country. If there was only one witness to a simple, etc. If in the document was written, "hundred zuz," which make twenty selas, etc. If on the top of the document was written "a mana," and on the bottom "two hundred zuz," or *vice versa*, etc. There was a document in which was written, "six hundred and a zuz," etc. There was a toll-master of a bridge who was a

Jew who said to Abayi: "Let the master show me his signature," etc. A divorce may be written by the court for a husband in the absence of his wife—the husband must pay the fees. Documents of arbitrating and all other acts of mediating by the court must not be written unless both parties are present—at the expense of both. There was a receipt approved by Jeremiah b. Abba. However, the same woman came into his court to claim her marriage contract several years later, etc. If one has paid a part of his debt, and deposited his document with some one. If it happened to one that a promissory note became erased, he must find witnesses. The approval must be written: "We three, E, F, G, the undersigned, were sitting together, and before us was brought by A, the son of B, an erased note," etc. If one comes before the court claiming that he has lost a promissory note from so and so, etc. If one has presented a gift to his neighbor by a deed, if the deed was returned by the beneficiary the gift is considered returned. The following is the order of claims before the court. The lender comes to the court to complain that the borrower does not pay his debt, etc. Concerning deeds, they may write another one without mentioning the responsibility of the seller for the estate, etc. There was a woman who gave money to one that he might buy estates for her, etc. If one came to claim a field saying that he possesses a deed, and also that it was in his possession the years of hazakah, etc. If there was any forgery in the document, or there were incompetent witnesses, the transferring is not considered, 357-379

MISHNAS VI. TO IX. If one has paid a part of his debt, according to R. Jehudah the promissory note must be changed. According to R. Jose, the lender has to give a receipt for the amount paid. The Halakha prevails neither with R. Jehudah nor with R. Jose, etc. If the document was written at the date used by the government, and such a date fell on a Sabbath or on the Day of Atonement, etc. It happened with R. Itzhak b. Joseph, who had money with R. Abba, etc. Abba said to his scribe: "When it shall happen that you have to write a document with a later date, you must write as follows: This document was postdated by us for a certain reason," etc. If one holds a promissory note for a hundred zuz, and requests that it shall be rewritten in two notes each of fifty zuz, etc. If there were two brothers, one rich and one poor, and they inherited from their father a bath-house, or an olive-press house, if for business they must share equally; but if for private use, etc. If there are two persons who bear one and the same name, they cannot give promissory notes to each other, nor to any of the inhabitants. If a promissory note was paid, etc. If one (while struggling with death) says to his son: "A promissory note among the notes I possess is paid, but I do not remember which," etc. If one made a loan to his neighbor through a surety, he must not collect first from the surety, etc. Whether a surety has to pay or not, R. Jehudah and R. Jose differ, etc. If the surety said: "Lend to this man, and I am the surety," etc. If the expression was, "Give to him, and I will return you," then has the lender nothing to do with the borrower. There was a judge who transferred the estate of the borrower to the lender, before the lender had demanded his money from the borrower, etc. There was a surety for orphans who had paid the lender before he notified the orphans. If one was put under the ban because he declined to pay his debts. If the promissory

note of the deceased was in the hands of the surety, who claims to have paid the lender, etc. There was a surety for a deceased debtor to a heathen, who paid the heathen before he had demanded his debt from the orphans. If one made himself surety to a woman for a marriage contract, etc. A sick person who has consecrated all his estates, and at the same time said: "So and so has a mana with me," he may be trusted. A sick person who said: "A has a mana with me," and thereafter the orphans claimed that they have paid, they are to be trusted. If one borrows money on a promissory note, the lender has a right to collect from encumbered estates. If it happen that a creditor sees his debtor in the market, grapples him by the throat, and one passes by and says, "Leave him alone, I will pay," he is nevertheless free, because the loan was made not upon his surety. Biblically there is no difference between a loan on a document and by word of mouth, and it should be collected from encumbered estates. A verbal loan is not collectible—neither from heirs nor from buyers. If the surety signed before the signatures, it may be collected from encumbered estates. Only a surety in the presence of the court is free from a sudarium, but all others are not,

379-395

TRACT BABA BATHRA (LAST GATE).

(PART II.)

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE SALE OF SEEDS WHICH BECOME SPOILED, THE QUANTITY OF DUST WHICH MAY OR MAY NOT BE ACCEPTED IN THE MEASURES OF GRAIN AND FRUIT, AND WINE WHICH BECOMES SOUR AFTER SALE BEFORE DELIVERY. —CONCERNING CONTRACTORS FOR HOUSES AND STABLES, WELLS AND GARDENS SITUATED IN NEIGHBORS' PROPERTIES OR PUBLIC THOROUGHFARES IN PRIVATE GROUND, AND CONCERNING GRAVES AND CAVES FOR BURYING.

MISHNA I.: If one sold fruit or grain (without any stipulation), and the buyer sowed it but it did not sprout, even if this were seed of flax, the seller is not responsible. R. Simeon b. Gamaliel, however, maintains that if he sold seeds for gardens, which could not be used for eating, the seller is responsible.

GEMARA: It was taught: If one sold an ox, and thereafter it was found it was a goring one, the sale is void according to Rabh. Samuel, however, said: The seller may say: "I sold it to you for slaughtering." Let us see: If the buyer was one of those that buy for slaughtering (*e.g.*, a butcher), why then should the sale be void according to Rabh? And if he was one who buys for working purposes (*e.g.*, a farmer), why should the sale be valid according to Samuel? It treats of one who buys for both purposes (*e.g.*, if he was both a farmer and a butcher). But even then, let us see the amount he paid for it, from which we can judge whether he bought for slaughtering or for work. It treats of where the meat has increased in price to the extent of the value of an ox for working. If so, what is the difference (the buyer gets the full value for his

money in any case)? The difference is, if the trouble of slaughtering and selling the meat should be taken into consideration (according to Rabh it should, and therefore the sale is void; and according to Samuel it should not). Again, let us see how was the case. If the seller has no cash to return, why, according to Rabh, should the sale be void, so that the buyer has to return the ox? Let him keep the ox for his money; as people say: "If you keep something in hand belonging to your debtor, even if it is bran, take the trouble to make money by it." It means when the seller is not lacking in cash. According to Rabh, the sale is void because the majority must always be taken into consideration, and the majority of cattle-buyers are traders; and Samuel maintains that only in prohibitory laws the majority is to be taken into consideration, but not in money matters.

Come and hear an objection from the following (First Gate, V., Mishna I.): "Should an ox gore a cow and the new-born calf be found dead at her side, and it be not known," etc. (see there, end of the Mishna, p. 106). Now, according to the theory of our Mishna, the decision of the cited Mishna would not be correct, as the majority of cattle should be taken into consideration, which conceive and bring forth living offspring. Hence the dead one found at her side is dead because of the goring. Why, then, is it considered doubtful there? The doubt was, if the ox gored the cow in front, so that the premature birth took place because of terror before goring, or if the cow was gored in the back, and the premature birth was occasioned by the goring, and therefore the extent of the injury is considered doubtful. And there is a rule that such be divided.

Shall we assume that the point of difference between Rabh and Samuel is the same as that in which the Tanaim of the following Boraitha differ? "If an ox was pasturing and another one was found killed at his side, although investigation shows that the death occurred from goring, and the pasturing ox was vicious in goring, or the death occurred from biting, and the pasturing ox was vicious in biting, it is still uncertain that this ox has gored or bitten the other." R. Aha, however, said: If there was found a camel killed at the side of a biting camel, although the latter was not yet vicious, it must be taken

for a certainty that he killed the other. The schoolmen thought majority and hazakah * identical; for as a goring or a biting animal has a hazakah to gore, bite, and kill, it is to be taken for a certainty that the gored or bitten one found at his side was killed by him, and the same is the case with the majority.

Is it not to assume that Rabh holds with R. Aha, and Samuel with the first Tana?

Nay! Rabh may say: My decision is correct, even in accordance with the first Tana of the cited Boraitha, as the reason of his decision is not majority, but hazakah—*i.e.*, there was not a majority of vicious oxen, but one, which had a habit (hazakah) of goring or biting, as hazakah and majority are not identical; but if there should be a majority, it would be taken into consideration. And, also, Samuel may say: My decision is correct, even in accordance with R. Aha, as his reason is the habit (hazakah) of that animal which was found near, and a majority would not be taken into consideration.

Come and hear an objection from our Mishna, which states that the seller is not responsible, even for seeds of flax. Does not the term "even" mean, although the majority is for sowing, and nevertheless it is not taken into consideration? Hence it opposes Rabh? In this point the Tanaim of the following Boraitha differ: "If one sold fruit, and the buyer has sown it but it did not sprout, if it was garden seed, which could not be used for eating, he is responsible; but if it was seed of flax, he is not." R. Jose, however, said that the seller has to return to the buyer the value of the seed, as the majority buy it for sowing only. The sages, however, answered him: There are many who buy it for other purposes.

But who of the Tanaim in this Boraitha hold not the theory of majority? Shall we assume that it means R. Jose; and the sages answered *him* that there are many people who buy seeds, etc.? Then all of them hold the theory of majority, but one takes into consideration the majority of the seed (*i.e.*, the majority of seed which is bought for sowing, and the other the majority of men)? Therefore we must say that it means, the difference of opinion between the first Tana and R. Jose, or the difference of opinion between the first Tana and the sages,

* The translation of "hazakah" is chiefly "occupancy"; however, this term is applicable to everything which is the habit of persons, animals, etc.

who answered *him* (i.e., the statement in the Boraitha, "and they said to him," means the first Tana, not R. Jose).

The rabbis taught: "The seller has to return to the buyer the value of the seed, but not the expenses for ploughing, sowing, etc.; according to others, however, the expenses also." Who are the others? Said R. Hisda: R. Simeon b. Gamaliel. Which R. Simeon b. Gamaliel? Shall we assume from our Mishna, which states that for seeds which could not be used for eating, he is responsible, and from the first Tana's statement, that the seller is not responsible for seeds of flax, that it is to be inferred for seeds of flax only, but for other seeds which cannot be used for eating, the Tana is also of the opinion that the seller is responsible? Then they do not differ at all. Therefore it must be said that they differ in the expenses, the first Tana holding the seller must return the value of the seeds only, and R. Simeon all the expenses also (and so R. Hisda means R. Simeon of our Mishna). But perhaps the reverse is the case—R. Simeon holds the value of the seeds only, while the first Tana holds the expenses also? This presents no difficulty; for as usual the second Tana adds something. But perhaps the entire Mishna is in accordance with R. Simeon and is not complete, but should read thus: If one sells fruits and they were sown and did not sprout, even if they were seeds of flax, he is not responsible. Such is the decree of R. Simeon b. Gamaliel, who holds that only for garden seeds that cannot be used for eating the seller is responsible. Therefore we must say that R. Hisda means R. Simeon b. Gamaliel of the following Boraitha: "If one delivered wheat for grinding of fine meal, but the miller did not properly grind it, but made it into bruised grain or bran; or if meal were delivered to a baker and he did not bake it properly, but when he took it out it fell to pieces; or if an ox were delivered to a slaughterer, and he made it illegal, each of these persons is responsible, as they are considered bailees for hire." R. Simeon b. Gamaliel said, that they not only have to pay the damages, but also for the shame of the owner in the eyes of the guests who were invited to the meal, as well as for the shame of the guests themselves; and so the same R. Simeon used to say: There was a great custom in Jerusalem, if one ordered a banquet for guests, and the host spoiled it, he had to pay for his own shame, and for the shame

of the guests. There was also another great custom in Jerusalem: "a flag was put at the door where a banquet was to be given, and the invited guests had to enter only when the flag was still at the door, but when it was taken off they were not to enter any more."

MISHNA II.: If one buys fruit, he has to accept a quarter of a kabh of dust on a saah; of dry figs, he has to accept ten wormy ones in a hundred; on a cellar of wine, he must accept ten harsh ones on each hundred; if he sells him earthen jugs made in Sharon he has to accept ten unglazed ones on each hundred.

GEMARA: R. K'tina taught: By a quarter of a kabh of dust is meant peas, but not earth proper. Is that so? Did not Rabba b. Hyya Ktuspha'h say in the name of Rabba: If one has cleaned off little stones from the barn of his neighbor he has to pay him the value of wheat (i.e., as if they were there, he may put them in the measure, but to put them intentionally he is not allowed)? Peas, he has to accept a quarter of a kabh on a saah, but dust he has also to accept, although a less quantity. You say less than a quarter of dust, but did not the following Boraitha state: "If one sells wheat, he has to accept a quarter of a kabh of peas on a saah; if barley, a quarter of chaff on a saah; and if lentils, a quarter of dust." Is it not to assume that a quarter of dust is to be accepted for wheat and barley also? With lentils it is different, because they are not cut, but torn out from earth, and therefore usually a great deal of dust remains with them, which is not the case with wheat and barley; but if it is so, infer from this that for wheat and barley no dust must be accepted at all, while it is stated above that less than a kabh is to be accepted? Nay, from the statement that for lentils he has to accept a quarter nothing is to be inferred; this being stated, lest one say because there is usually much dust more than this quantity is to be accepted, it comes to teach us that it is not so.

R. Huna said: If the buyer has found more than the above prescribed quantity and sieves it, he may sieve the whole quantity he bought, without leaving any dust at all, and the seller has to fill the measure without allowing for the prescribed quantity. According to some it is the strict law, as usually one gives his money for clean fruit, but if for a trifle of dust, as

much as a quarter of a kabh on a saah, the buyer is not very particular and does not take the trouble to sieve it; but in our case, when he is compelled to trouble himself with sieving, he may make the whole fruit extremely clean; and according to others, it is a fine, as usually no more than a quarter of a kabh ought to be found in a saah, and when there was found more, it is presumed that the seller put it in intentionally, and therefore he is fined by the rabbis.

Come and hear an objection from the following Boraitha: "If a planter undertakes to plant a field with fruit trees, the owner of it must accept empty space for ten trees on each hundred, but if, however, it was found empty for more than this, he has to plant trees on the whole empty space." Hence is R. Huna's above statement law? Said R. Huna b. R. Jehoshua: This is not a support to R. Huna, as an empty place for more than ten trees is to be considered as a separate field, and the planter who undertook to plant the owner's fields is to be considered as if he had to begin the planting in this empty field, and therefore he has to plant the whole field, which case is not similar to that of R. Huna.

"If he sold a cellar of wine," etc. Let us see how is the case. Whether the seller said to the buyer, "I sell you a cellar of wine" or "*this* cellar of wine," it is a difficulty from the following Boraitha. "If he said 'I sell you a cellar of wine,' all of it must be good; if '*this* cellar of wine,' he must give him wine which is sold in the retail stores; but if he said, 'I sell you *this* cellar,' even if it was found to be all vinegar, the sale is valid." Our Mishna speaks of the case wherein the seller said, "a cellar of wine," and there is no contradiction of the cited Boraitha as it should read, and the buyer has to accept the ten spoiled ones in the hundred. But has not R. Hyya taught: If one sells a barrel of wine, he must give the buyer all good wine? With one barrel it is different, as a barrel contains only one kind of wine; but has not R. Z'bid in the name of the school of R. Ossiah taught in "a cellar of wine" all must be good, in "the cellar of wine" the seller must give the buyer all good wine, but the latter must accept ten bad in the hundred; and this is the word *Outzar* ("treasure of wine") which the sages have taught in our Mishna? Therefore it must be said that our Mishna treats of the case wherein the seller said

"this cellar," and the contradiction from the above Boraitha in the case, if "this cellar," presents no difficulty, as R. Z'bid says, if the seller told the buyer, "I sell you wine for keeping," and the Boraitha says the words "for keeping" were not said, and therefore (the Halakha prevails thus) if the seller said, "a cellar of wine for keeping," all of it must be good; if "*this* cellar of wine for keeping," the buyer must accept ten in the hundred; if "*this* cellar of wine," without the addition "for keeping," the seller may give the buyer wine that is sold in retail stores.

The schoolmen propounded a question; How is it if the seller said, "a cellar of wine," without the addition "for keeping"? On this point R. Aha and Rabhina differ. According to one the buyer has to accept ten in the hundred, and according to the other he has not, the one who says "he must accept" inferring it from R. Z'bid, who states in the case of "a cellar of wine," all of it must be good, and it was explained above that he speaks of the case in which the seller added "for keeping," from which it is to be inferred that if these words were not added, the buyer must accept; and the other, who says the buyer must not, infers from the above Boraitha, which states in the case of "a cellar of wine" all of it must be good; and it was explained above that the Boraitha treats of the case wherein "for keeping" was not said. But to him who infers from R. Z'bid, is not the Boraitha contradictory? He may say the Boraitha is not completed, but should read thus: This is said, if the seller told the buyer "for keeping," but if not, the buyer must accept, and if the seller said "this cellar of wine" without any addition, he may give the buyer wine which is sold in the stores; but to him who infers from the Boraitha, is not R. Z'bid contradictory who, as explained, said that the seller told the buyer the wine was "for keeping"? He may say that the same is the case if the seller did not say "for keeping," and the above explanation was only in order that the Boraitha and R. Z'bid might not contradict each other; in reality, however, R. Z'bid does not agree with the Boraitha.

R. Jehudah said: On wine which is sold in stores the usual benediction may be made. (The benediction is, "Blessed be Thou the Lord our God King of the Universe who hast created the products of the vine,") and R. Jehudah means to say that

although the wine in stores is usually bad, it is still called the product of the vine. R. Hisda, however, said: What have we to do with such a wine (*i.e.*, how can such wine be called a product of the vine)?

An objection was raised: In the case of moulded bread and sour wine, and any dish of which the appearance is spoiled, the benediction should be "That all is created by His words" (hence it contradicts R. Jehudah). Said R. Z'bid: R. Jehudah admits that over wine made of kernels, which is usually sold on the corners of streets, the right benediction may be said. Said Abayi to R. Joseph: "There is R. Jehudah, and there is R. Hisda, each of them with his opinion; I would like to know how is yours, master?" And he answered, "I am aware of the following Boraitha: 'If one examine a barrel of wine for the purpose of separating heave-offering from it, for all others, and he did so for a month or two, and thereafter it was found that the wine turned into vinegar, three days is considered certain, and further on doubtful.' How is this to be understood? Said R. Johanan thus: The first three days from the examination it is to be considered certainly wine, and thereafter it is to be considered doubtful. Why so? Because usually wine becomes sour from the top, and when he tasted it, it was not sour, and if you say it had become sour immediately after he tasted it, the smell only was vinegar-like, but the taste still of wine (as the sages had a tradition that less than three days from the beginning it becomes not vinegar) and such is considered wine. R. Jehoshua b. Levi, however, said that all he separated in the last three days is certainly vinegar, but previous to that it is doubtful. Why so? Because usually wine begins to turn sour from the bottom, and maybe when he tasted it it was sour already, of which he was not aware; and even should I admit that wine begins to turn sour from the top, my decision is still correct as it may be that it began to turn sour immediately after being tasted, and I hold that if it smells of vinegar, though the taste is still of wine, it must be considered vinegar" (hence according to R. Jehoshua b. Levi the wine which is sold in stores is not considered wine at all, and according to R. Johanan it is considered wine).

The sages of the South taught in the name of R. Jehoshua b. Levi thus: The first three days it should be considered as wine,

the last three days as vinegar, and in the days between as doubtful. But does this statement not contradict itself? The first three days it certainly is wine, hence if the smell is of vinegar and the taste of wine, it is considered wine; and thereafter they said, the last three days it is certainly vinegar, from which it is to be inferred that if the smell is of vinegar and the taste of wine, it is considered vinegar. The case was that it was found wholly strong vinegar, and it is stated above that it takes no less than three days after it turns sour to become wholly vinegar; hence it is to be supposed that in the last three days it was already vinegar. However, according to which of these two was the conclusion of R. Joseph? In this, also, R. Mari and R. Z'bid differ, one saying that his conclusion was in accordance with R. Johanan, and the other saying it was in accordance with R. Jehoshua b. Levi.

It was taught: If one sells a barrel of wine and it turns sour, according to Rabh the first three days it is considered under the control of the seller, and thereafter "it is considered under the control of the buyer." Samuel, however, maintains that the seller is not responsible even when it was still in his barrel, as this is to be considered the fate of the buyer.

R. Joseph acted in accordance with Rabh concerning beer of dates, and according to Samuel with wine, the Halakha, according to Samuel, however, prevails in every respect.*

MISHNA III.: If one sells wine and it turns sour, the seller is not responsible; if, however, it was known that the nature of his wine was to turn sour (and the buyer was not aware of it), the sale is void. If he said, "I sell you wine, prepared with spices, in good order," the wine must remain in good order until the feast of Pentecost. (Afterward it may become spoiled by heat.) If the seller sold the buyer old wine, it must be from last year; and if he said "very old," it must be aged not less than three years.

GEMARA: Said R. Jose b. Hanina: All this is said of the case wherein it was delivered to the buyer in his own jugs; but if it was placed in the jugs of the seller, the buyer might say: "Here are your jugs and your wine." Why then may not

* The text treats concerning the benedictions on wine, beer, etc., for which the proper place is the Tract Benediction, and to which it will be transferred

the seller claim: You ought not to keep it so long? It means that while selling, the seller told the buyer "for keeping." But what compels R. Jose to such a difficult interpretation, in which the jugs were the buyer's, and the seller says "for keeping"? Why is it not simply said that the jugs were the seller's and he said nothing? Said Rabha: It is because the further statement of the Mishna, "that if it was known that the nature of the seller's wine was to turn sour the sale is void" was a difficulty to him. Why, then, let the seller claim he ought not to keep it so long? We must then say, that the Mishna treats of the case wherein the seller told the buyer "for keeping" (he therefore interpreted the whole Mishna, that such was the stipulation), and infer from this that so it is. He, however, differs with R. Hyya b. Joseph, who said that the fate of one causes the spoiling of his wine; as it is written [Habakkuk, ii. 5]: "And even the wine of a proud man rebels."

Said R. Mari: If one is proud, he is not tolerated even by his family, as the above verse reads "the proud man whose house will not stand," which is to say that he is not tolerated by his household. R. Jehudah in the name of Rabh said: A commoner who disguises himself in the garment of a scholar, cannot enter into the habitation of the Holy One, blessed be He; and this is deduced from an analogy of expression, *Nvie*, which is to be found in Ex. xv. 13. The Hebrew expression in the above cited verse is also *Y'nvic* (literally, "dwelling," "inhabit").

Rabha said: "If one sells a barrel of wine to a storekeeper (with the stipulation that he shall sell it at retail and then pay the owner), and a half or a third of the wine turns sour, the law is that the seller must accept the return of his wine; and this is said only in case the faucet was not changed by the storekeeper, but if it was changed and placed near to yeast, there is no responsibility, and there is also no responsibility if the storekeeper kept the wine over the market day." He said again: "If one has accepted wine for half interest, with the intention of taking it to the suburb of Dwulchpht (where usually wine is dear), and by the time it reached there the price was lowered, the law is that the owner has to accept the return of the wine." The schoolmen propounded a question: How is it when the same was vinegar? Said R. Hillel to R. Ashi:

When we were at R. Kahana's he said to us, the same is the case with vinegar, as he agrees with R. Jose b. Hanina's statement above.

"*Old wine*," etc. A Boraitha in addition to our Mishna states that if it was said, "very old wine, it must keep its good quality until the feast of tabernacle in the third year."

MISHNA IV.: If one sells to one a place for the purpose of building a wedding-house for his son or a widow-house for his daughter, and the same is the case if a contractor undertakes to build such for him, the size must be not less than four ells in length by six in breadth; such is the decree of R. Aqiba. R. Ishmael, however, maintains that this is the size of a stable. If one wishes to build a stable for cattle, he builds it four by six. The smallest house is no less than six by eight, a large one eight by ten, and a triclinum (restaurant) ten by ten, and the height must be a half of its length and of its width. An example of this, said R. Simeon b. Gamaliel, was the building of the Temple.

GEMARA: Why does the Mishna state "a wedding-house for his son and a widow-house for his daughter"? Let it state a wedding or a widow house for his son or daughter. The Mishna incidentally teaches us that it is not a good custom for a son-in-law to dwell with his father-in-law, as it is written in the book of Ben Sira: "I have weighed everything on the scale and did not find a thing to be lighter than bran; however, a groom who resides in the house of his father-in-law is lighter than bran, and still lighter than he is an invited guest who brings with him an uninvited companion, and still lighter is the one who answers before he has heard thoroughly the question, as it is written [Prov. xviii. 13]: 'When one returneth an answer before he understandeth (the question), it is a folly unto him and a shame.'"

"*If one wishes to build a stable*," etc. Who said this? According to some, R. Aqiba himself, and he said so; and although this is the size of a stable for cattle, it nevertheless happens that human beings live in such a building (and as the seller or the contractor did not stipulate the size, the minimum may be taken). Others say R. Ishmael taught this saying: That if one wishes to build a stable, it is the size of four by six.

"*Triclinum*," etc. There is a Boraitha: For a *quantir*,

twelve ells square is needed. What does it mean? A fore yard?

"*An example of this,*" etc. Who taught this? Some say R. Simeon b. Gamaliel, and it should read thus: Whence is this deduced? Said R. Simeon b. Gamaliel: All must be judged according to the building of the Temple, and some say that the first Tana taught an example of it (and he was about to finish his statement with "the building of the Temple," but R. Simeon b. Gamaliel interrupted him saying:) Do you want to compare all common buildings with the building of the Temple; do all people build such buildings?

We have learned in a Boraitha: Anonymous teachers say the height must be not less than the length of the crossbeams of the ceiling. But why not say, simply, the height must be as the width? If you wish, it may be said that usually a house is wider at the top than at the bottom; and if you wish, it may be said that, because the ends of the beams are placed in the enclosures of the wall, they are longer than the width of the house.

MISHNA V.: If one possesses a well, situated on the other side of his neighbor's house (by inheritance, or even bought from him with a path), so that when water is needed he must pass through the house, he may enter and leave at the time people usually enter and leave. However, he is not allowed to take his cattle to the well, but he has to take water for them outside of the house and water them. The owner of the well, as well as the owner of the house, has a right to put a lock on it.

GEMARA: A lock on what? Said R. Johanan: Both locks may be put on the well. It is right that the owner of the well should put a lock on his well, so that no one can use the water; but for what purpose should the owner of the *house* put a lock on it? Said R. Elazar: Lest his neighbor, while passing his house to the well in his absence, should remain alone with his wife.

MISHNA VI.: If one has a garden inside of his neighbor's garden, he may enter and leave only when people are wont to do so. He must not take buyers with him to his garden, and he also has no right to pass through his neighbor's garden for the purpose of entering another field conjoining this one, when he has no business in his own garden; and only the owner of

the outside garden has a right to sow the path. If, however, a path was designated to him by court, on the side, with the consent of both parties, then he may enter and leave whenever he pleases and may also take with him buyers; however, the right to pass through to another field is not given, and neither of them has the right to sow the path.

GEMARA: R. Jehudah in the name of Samuel said: If one says, "I sell you a place of one ell for digging a well to water your dry land," it must contain the width of two ells, and he also has to add him two ells from his field to the edges of the well, on which to erect walls to prevent the overflow of the water; and if he said, "I sell you an ell for making a sewer," it must be one ell wide and one-half ell to each edge. But who has a right to sow the edges (while the walls were not as yet made)? R. Jehudah in the name of Samuel said: The owner of the field; and R. Nhaman in the name of Samuel said: The owner of the field may plant trees there, but not sow it, as by sowing he harms the water.

R. Jehudah in the name of Samuel said again: If the walls of a channel fall, the owner of it may repair it from the material of the field upon which the walls were placed; as certainly they fall on the same field where they were placed (but the material was scattered by the wind all over the field). R. Papa, however, opposed, saying that the owner of the field may claim that the water of "your well has underwashed the material and caused it to fall"; therefore he gave another reason, that such a stipulation must have been in existence when he hired that place, for otherwise he would not have wasted his money.

MISHNA VII.: If there was a public thoroughfare through one's field and he took it for himself and designated another one at the side of his field, what he has given is considered the public's, and to that which he took for himself he does not acquire title. If one sells a path in his field for a private thoroughfare it must be four ells, for the public it must be no less than sixteen. A way for the government has no limit. The way for carrying a corpse to the grave has also no limit; however, the space where the people stand for condoling was determined by the judges of Ziboras of a space where four kabhs may be sown.

GEMARA: Why should he not acquire title to that thor-

oughfare he took for himself, when he designated another one for the public; let him take a stick with which to drive off intruders, or do you want to infer from this that one cannot take the law in his own hands, even when he suffered damage? Said R. Zebid in the name of Rabha: It is to be feared that if this would be allowed, one would give to the public a crooked way; but R. Mesharshia in the name of Rabha said that our Mishna treats of a case wherein the owner of the field has designated such. R. Ashi, however, maintains that a way which is placed at one side is considered crooked, because it is near to one who resides near to this side, while it is far to him who resides on the other side, (and therefore he does not acquire title) to that which he took. But let him say to the public, "take your way and return mine" (and the Mishna states what he has given is lost). It is in accordance with R. Eliezer of the following Boraitha: "R. Jehudah said in the name of R. Eliezer, if the public has chosen a way for itself, what was done remains." But may the public be robbers, according to R. Eliezer? Said R. Gid'l in the name of Rabh: He speaks in case the public has lost a way in this field (*i.e.*, some time ago there was a thoroughfare which afterwards was lost). If so, why then said Rabba b. R. Huna in the name of Rabh that the Halakha does not prevail with R. Eliezer? The one who has taught this statement was not aware of the other statement (*i.e.*, R. Gid'l does not approve the statement of Rabba b. R. Huna in the name of Rabh). But according to Rabba b. R. Huna, what is the reason of our Mishna's statement, that of R. Jehuda, who said above (p. 145) that a path of which the public took charge must not be spoiled? By which act did the public acquire title to the thoroughfare, according to R. Eliezer? By passing, as we have learned in the following Boraitha: If one passed (in an ownerless field) on its length and breadth he acquired title to the place he has passed, so is the decree of R. Eliezer. The sages, however, maintain that passing has no effect at all, and title is not acquired unless he makes a hazakah. Said R. Elazar: The reason of R. Eliezer is the following verse [Genesis, xiii. 17]: "Arise, walk through the land in the length of it and in the breadth of it, for unto thee I will give it." The sages say this cannot be taken for a support, however, as Abraham was beloved by Heaven, and it was said to him for

the purpose of making easier for his children the subjection of the land. Said R. Jose b. Hanina: The sages admit to R. Eliezer in case of a footpath between vineyards, because it was made for passing, title is also given by passing. When such a case came before R. Itz'hak b. Ami he decided that the plaintiff should get a footpath upon which he should be able to carry a bundle of branches on his shoulders, which in turning here and there should not touch the walls. But this is said in a case wherein the places for the walls are not yet designated; but if they were, the space should be given him, so as to put one foot after the other.

"*For a private,*" etc. There is a Boraitha: Anonymous teachers say: "As much as an ass with its load could pass." The judges of the exile said: Two cubits and a half. And R. Huna said: The Halakha prevails with them. But did not R. Huna say elsewhere that the Halakha prevails with the anonymous teachers? The limit of both is "equal."

"*A public thoroughfare is sixteen ells.*" The rabbis taught: A private way is four ells, a way from one city to the other is eight ells, a public way is sixteen ells, and the way to the cities of refuge (Num. xxxv. 11) thirty-two. [Said R. Huna: Whence is this deduced? From the Scripture (Deut. xix. 3): "*The way to them.*" It should be "a way," and the word "the" makes it double.] The way of the government has no limit, as the king has the right to erect partitions, houses, and no one has a right to prevent him, and the way for burying a corpse has no limit, because of the honor of the dead.*

MISHNA VIII.: If one sells a place for digging a grave, or an undertaker makes a grave for one, the inside of the cave must be four by six, and opening into it eight niches for coffins, three on each side and two at the top and bottom. The length of the niches is four ells, the height seven spans, and the width six. R. Simeon, however, said: The inside of the cave must be six by eight, the niches must be thirteen, four on each side, three on the upper side, and one on the right side of the door and one on the left. He also makes a fore yard at the mouth of the cave six ells square, as much as the coffin with its carrier needs. He also has to open to this fore yard two

* The continuation of the text about graves and condolence, etc., we have transferred to Tract Great Mourning, page 60.

caves from two sides. R. Simeon, however, said four to all its four sides. R. Simeon b. Gamaliel, however, maintains that all must be done according to the rock (*i.e.*, if the earth is soft more niches could be made, but if rocky the number must be limited accordingly).

GEMARA: The two niches which R. Simeon requires, one on the right side of the door, etc., how shall he dig them? If their length should be dug from the wall of the cave under the fore yard, then they will be trodden down; furthermore, there is a Mishna to the effect that one who stands in the yard of a grave is clean, but if the niches should be dug under the yard the one who stands above would not be clean. Said R. Jose b. R. Hanina: He made the niches like an upright bolt; *i.e.*, placed the bodies in an upright position. But did not R. Johanan say that asses are buried in like manner? According to him, the niches should be made in the corners. But then each of them would come in contact with the other. Said R. Ashi: If he makes those in the corners deeper (according to R. Simeon, who said that four niches must be on each side), if they were all equally dug they would come in contact. It must be said that he digs some of them deeper, and the same may be said here.* R. Huna b. R. Jehoshuah, however, maintains that he makes the niches crooked. (Says the Gemara:) This statement does not hold, as according to it he would have to make eight inches in the space of eleven and one-fifth ells, which is impossible.†

* The text is so complicated here that the commentators have to make many illustrations, and after all the matter is hardly understood. However, according to our method we could not omit this, as it is essential from the historical point of view to know how these graves are made. We have done our best to make it intelligible.

† In the text are also mathematical calculations by the rule that one ell square contains one ell and two-fifths when crooked, which is not exactly correct. We have already mentioned this in a foot-note in Erubin, and therefore we have omitted the whole discussion here.

CHAPTER VII.

RULES AND REGULATIONS CONCERNING ROCKS AND PITS IN GROUND SOLD; THE QUANTITIES OF GREATER OR LESS MEASURE WHICH MAY OR MAY NOT VOID A SALE OF FIELDS, VILLAGES, ETC.

MISHNA I.: If one says: "I sell you earth the size where one kur can be sown, and there were crevices ten spans deep, or rocks ten spans high, they are not measured, but if less than that size they are measured. If, however, he said to him, "about the size of a kur," and there were crevices or rocks even more than the size of ten spans, they are measured.

GEMARA: Said R. Itz'hak: The statement of the Mishna about rocks and crevices which are measured when they are less than ten spans holds good only when all of them together do not measure four kabhs, but not if they do. Said R. Uqba b. Hama: Even then they are measured only when they are scattered within five kabhs space (but in less they are not measured); and R. Hyya b. Abba in the name of R. Johanan says that five kabhs do not suffice, and they are measured only when they are scattered within the greater part of the field, which is at least sixteen kabhs, as a kur is thirty kabhs; and R. Hyya b. Abba himself questioned: How is the law according (to R. Johanan's theory) if the greater part of the rocks in question were scattered within the smaller part of the field, and the smaller part of them within the larger part of the field (and if altogether they measured four kabhs)? These questions are not decided.*

There is a Boraitha: "If there were a single rock (but it bears a separate name; *e.g.*, 'the west rock') even if of less than ten spans, it is not measured; and also if the rock were placed

* In the text are some other questions: If the rocks were placed round, or square, etc.; and these need many illustrations, and all remain at last undecided. As they are of no importance, we have omitted them.

near to the boundary, whatever size it may be it is not measured." *

MISHNA II.: "I sell you earth of the size wherein a kur can be sown, measured with a line." If there were a trifle less, he may deduct; if a trifle more, the buyer has to return it. If, however, the seller says "about this size, a little more or less," even if there were less than a quarter of a kabh on each saah, the sale is valid; but if it were more than that size, an account must be taken. In case the buyer has to make return, it shall be in money; however, if he wishes to return him land, he may do so. And why was it said that the buyer should return the seller money? To favor the seller, so that if there were a trifle more the buyer should not have the right to return him this trifle, which the seller could not use; but if there were a kabh and a half more than the prescribed size, it means in the case of nine kabhs of land in a field and a half kabh in a garden, and according to R. Aqiba even a quarter of a kabh, then the buyer may return the land, and not only the land which is in excess of the prescribed size, but even that of this prescribed size itself is to be returned with the other.

GEMARA: The schoolmen propounded a question: If the seller said "the size of a kur," without any addition, how is the law? Come and hear. If the seller says, "I sell you an estate the size of a kur," or "about the size of a kur, a little less or more, I sell you," and thereafter it were found a quarter of a kabh less or more to a saah, the sale is valid. Hence we see that even if he does not add to the words "the size of a kur," it is the same as if he would say "about." Nay, the Boraitha is to be explained thus: The last part of the Boraitha explains the first part. If one says, "I sell you of the size of a kur," "about" is to be understood in case he should add a trifle less or more. R. Ashi objected: If this were so, why the repetition "I sell you, I sell you"? Therefore the Boraitha is to be explained as above, that the size of a kur means "about," and so it is.

"*It shall be in money.*" We see from this that the advantage of the seller and not the buyer is taken into consideration; but

* The text contains questions of no importance—e.g., if the rocks were placed round, crooked, etc.—which remain undecided. We have therefore omitted the whole discussion.

valid? If, however, the estate is larger, the court compels both the seller to sell and the buyer to buy; hence we see that the advantage of both is taken into consideration? (*I.e.*, that even have we not learned in the following Boraitha: If there were less or more than seven kabhs and a half on a kur, the sale is if the seller insists that the excess should be returned to him, he is not to be listened to if it is an advantage for the buyer to have it.) The Boraitha treats that at the time it was found over the prescribed size, the estate was lower in price and the seller willing to sell. Therefore we say to the buyer, "You may reckon it at the existing price," and the same is said to the seller, "If you do not wish the estate to be returned to you, you must accept the existing price." But have we not learned in another Boraitha that if the buyer compensates the seller, he must reckon at the previous rate? That Boraitha speaks that when the reverse was the case, the price was low at the time of the sale and became higher after it was known that there was an excess over the prescribed size.

"*It means in the case of nine kabhs,*" etc. Said R. Huna: This applies even in a valley which is of more than ten kurs. R. Na'hman, however, says seven and a half to each kur; but if there were a kabh and a half more (which counts nine kabhs) even to one kur, all must be returned, even if to the other kurs the addition were not over the prescribed size. Rabha objected R. Na'hman from our Mishna, which states that if he left nine kabhs in a field, etc. Does not the Mishna mean at least two kurs as the size of the usual field? Nay, it means one kur. Farther on, in a garden, a half of a kabh is given as the minimum of excess. Does it not mean at least two saahs, as usually a garden is called of that size? Nay, it means one saah, and according to R. Aqiba one quarter. Does it not mean, if the garden was a saah? Nay, it means if it was half a saah. R. Ashi questioned: If one sold a field, and afterwards, but before the money was paid, it became a garden, and there were found more than a quarter to a saah, but it should not reach the size of nine kabhs or *vice versa*, how should the prescribed size be reckoned—as that of a field or that of a garden? This question remains undecided.

There is a Boraitha: "If the estate over the prescribed size sold was conjoined with the other estate of the seller, even if

that were but a trifle, the buyer has to return the seller the estate." R. Ashi questioned: How is the law if there were a well between this estate sold and the other estate of the seller, a channel, a public thoroughfare, or a row of trees, should these constitute lines of demarcation or not? This question remains undecided.

"*And not only the land which is in excess,*" etc. How is this to be understood? Taught Rabbin b. R. Na'hman: Not only that which was over the prescribed size the buyer returns the seller, but all the quarters to each kur, although the rest be not over the prescribed size, he must return.

MISHNA III.: "I sell you the estate with a measurement, a trifle more or less." The last words, "more or less," nullify those preceding them. "I sell you a trifle more or less to be measured with a line." The last words here nullify the preceding ones (and the seller must give the purchaser a just measurement; so that if the land were in excess, the excess must be returned, and if less the seller must supply the deficiency), such is the decree of ben Nanas.

GEMARA: Said R. Abba b. Mamal in the name of Rabh: "The colleagues of ben Nanas differ with him." What came he to teach us? Have we not learned in the Middle Gate, p. 269, Mishna 8, that it happened in Ciphorius that one rented a bath-house for twelve golden dinars a year? The payment was to be one dinar monthly; and thereafter the year was made intercalary. When the case came before R. Simeon b. Gamaliel and R. Jose they decided that the payment for the intercalated time should be made at the same rate as for the ordinary time. If from that Mishna one says that the last words, "one dinar monthly," are to be interpreted as a retraction of the first words, "twelve a year," the last words, "a dinar monthly," may also be interpreted as explaining the former, "twelve a year" (over which the sages differed with ben Nanas); however, here, in that the last words cannot be interpreted as an explanation, but as a retraction of the former, the sages agree with him. He comes to teach us that they differ also in this case. R. Jehudah in the name of Samuel said: This which is taught in our Mishna is in the words of ben Nanas, but the sages say that the shorter expression must always have the greater weight (*i.e.*, "with a measurement" is shorter than "a

trifle less or more"), no matter whether the shorter phrase were said before or after the longer one. Says the Gemara: Shall we assume that with the expression "this" Samuel meant to say that he himself does not agree with him? Do not both Rabh and Samuel say (p. 188) that if one said "a kur for thirty selas," he may retract even at the last saah; and if he added each saah for one sela, to all which was measured title is acquired, which corresponds with the decision of ben Nanas? Therefore we must say that he meant to say "this," and I agree therewith. But is that so? Did not Samuel say (Middle Gate, p. 270): "The decision was so made . . ." but if they had appeared in the beginning, would it be entirely the owner's; and if in the end, the renter's? (This, at all events, cannot correspond with ben Nanas' decision.) Therefore it must be said again that by the word "this" he means that "I do not agree," and the reason of his decision in the case of each saah for selah is because that which was measured is considered already in his hands, and the same is the case with the rent for the intercalary month; if at the end of the month, it belongs to the renter, because it is already in his hand. R. Huna said: It was said in the college of Rabh: If one said: "I sell this to you for an *istra* a hundred *moahs*, he must give him a hundred *moahs*; but if he says a hundred *moahs* an *istra* he has to give him an *istra* although it is less in value than a hundred *moahs*."

What came he to teach us—that the last expression must be considered? Has not Rabh said this already concerning the case of the cited Mishna (page 270): "If I were there, I should give it to the owner of the house" (and that is because the last words were "a dinar monthly")? Lest one should say that in one case the last words ("hundred *moahs*," or *vice versa*) are to be considered as an explanation to the first words, he comes to teach us that it is not so.

MISHNA IV.: If one says, "I sell you this estate, the size of a kur, with its marks and boundaries;" and afterwards it were found that the size is less than stipulated—if it were less than a sixth of the whole size, the sale is valid; but if there were a sixth wanting, the buyer may deduct from the payment.

GEMARA: It was taught: R. Huna and R. Jehudah differ in the explanation of our Mishna. According to the former

the Mishna means that an exact sixth should be considered as less than a sixth, and the Mishna is to be explained thus: "With less than a sixth wanting, a sixth inclusive, the sale is valid." If, however, more than a sixth is wanting, it may be deducted. According to R. Jehudah the Mishna means that an exact sixth is to be considered as more, and it is to be explained thus: "With less than a sixth wanting the sale is valid; a sixth, however, or more wanting is to be deducted."

An objection was raised from the following Tosephtha: "With its marks and boundaries, and there was a sixth less or a sixth more, it parallels a case wherein the court appraises an estate, and the sale is valid." Now we know that in a case wherein the court appraises, if there were an error as to an exact sixth, it is considered as if it were more, and the appraisal is void; hence this contradicts R. Huna? R. Huna may say that there is no contradiction, as the Tosephtha ends with the words "the sale is valid," and if this paralleled the case wherein the court appraises, how could it be valid in case there were more than a sixth? Does not the law provide that in the case of an error of the court in more than a sixth, the appraisal is void? It must be said then that it is parallel in one respect but not in the other; and it is to be explained thus: It parallels the case wherein the court appraises with an error of less than a sixth (which does not affect the appraisal), but it does not parallel the case in which the error of the court is of a sixth or more and affects the appraisal, which differs from our case, as the purchaser has only to deduct the money value of the deficiency, while the sale is still valid.*

R. Papa bought an estate from some one who told him that it measured the size of twenty saahs. After it was measured it was found that there were only fifteen; and the case came before Abayi, who decided that the sale was valid, because the seller had used the qualifying words "as you see its marks and boundaries." But have we not learned that if there were more than a sixth lacking its value is to be deducted, and here there is a fourth part? In the first case the condition is not known to the buyer before the sale; but in the latter case, as the condition was known to R. Papa and he saw it at the time he

* We are compelled to explain this in accordance with R. Gershom, as Rashbam's explanation is still more complicated.

bought, it must be supposed that he had considered and accepted it. Rejoined R. Papa: But did he not tell me that it measured twenty? He probably meant to say that "these fifteen are better than twenty elsewhere."

There is a Boraitha: R. Jose said: "Some brothers divided their inheritance by lot, and when to each of them his lot fell, all of them acquired title to their shares." Why so? Said R. Elazar: At the time the land of Israel was allotted to the tribes. But was there not also the Urim v'tumim, as it is said farther on that the high priest Elazar had on the Urim v'tumim, and then the lots were cast? Said R. Ashi: By their arrangement prior to allotment (whereby the estate was divided into shares of equal value) they had prepared themselves that each should acquire title to the share which the lot should cast for him, and therefore no other ceremony was necessary. !

It was taught: To two brothers who had divided their inheritance between them came a third brother (of whose existence they were not previously aware). Their division is null and void according to Rabh. Samuel, however, maintains that each of the two must relinquish a third of his inheritance to the third brother (*e.g.*, they inherited six fields, and each of them must give one of these to the newcomer, so that the three brothers may have two fields apiece). Said Rabha to R. Na'hman: According to Rabh, who says that the division is null and void, it must be said he holds that since all of them did not share in the first division, the inheritance must be redivided. Would the same be the case with three partners, two of whom have divided (in the presence of three persons who are considered a Beth Din) in the absence of the third one, and there is a decision (Middle Gate, p. 74) that such holds good? The cases are dissimilar. In the latter case the partners divided the property into three shares, and as it was done in the presence of a Beth Din the division holds good; but in the former case the two brothers had divided the inheritance into two parts only, as they were unaware of the third brother's existence.

Said R. Papa to Abayi: According to Samuel's decision that the first division is valid, it must be said he holds that such an act, done in accordance with the law, must not be abrogated, although thereafter it appears that the brothers took more than belonged to them; but did not both Rabh and Samuel say: If

one says, "I sell you a kur for thirty selas," the seller may retract even at the last saah (above, p. 235)? (We see then that even when done in accordance with the law an act may still be abrogated.) There is, however, here a difference. The rabbis enacted that law to please both the seller and the buyer. (*I.e.*, in case the price should become lower, before the buyer has received the property, it is to his advantage to retract; and in case the price becomes higher, the advantage is for the seller. Hence this law is beneficial to both.)

It was taught: If brothers divided their inheritance and a creditor of their father came and took away the share of one of them, according to Rabh the former division is null and void. Samuel, however, said that such was this brother's lot, and it did not concern the other. R. Assi, however, maintains, not as Rabh, that the division is void, and they must divide the remainder, and not as Samuel, that it does not at all concern the other one; but that the second brother must surrender one quarter of his estate and a quarter of the money he has inherited. Rabh holds that the heirs, even after their division, are still to be considered heirs (hence if one of them has lost the property through his father's debt, he is still an heir to the remainder), while Samuel holds that at the time they divide they are considered buyers (each of them buying his share of his brother) without any security; and consequently each has no further concern after the division. R. Assi was doubtful whether they are to be considered heirs of buyers; therefore the half which ought to be taken from the one who did not suffer loss is considered doubtful money, and there is a rule that doubtful money is to be divided. Said R. Papa: The Halakha concerning the two cases, that of the third brother as well as that wherein the share of one was taken away by their father's creditor, prevails in accordance with Samuel, who says the division holds good, and it is for them to divide from their shares in payment of the debt. Amimar, however, said: The Halakha prevails in accordance with Rabh, who said that the division is void and the property must be redivided, and so the Halakha prevails.

The rabbis taught: If there are three who have qualified as a Beth Din to appraise the estate of one deceased, for the support of his widow and daughters, and if one says that in his opinion the estate is worth twenty-five selas (a moanah of

100 zuz), and the two others say two hundred or *vice versa*, the opinion of the individual is of no effect; but if one appraises the estate at one hundred zuz, which are twenty-five selas, the second for twenty, and the third for thirty, the value is fixed at one hundred zuz. R. Eliezer b. R. Zadok, however, says that it should be taken for ninety zuz, and anonymous teachers say that a third of the difference between the second and third valuations must be added to the second, which will give $93\frac{1}{3}$ zuz. The reason of him who says the estate is worth one hundred zuz is that the opinion of the arbitrator is to be taken into consideration, and the reason for R. Eliezer's opinion that the estate is worth ninety zuz is that he who appraised it at eighty underestimated by ten zuz, while he who appraised it at 100 overestimated by ten zuz, and as there is a majority who appraised it at not more than 100 zuz, the third, who appraised it at twenty zuz over a moah, is not to be taken into consideration at all. Why not say that the one who said 100 zuz has underestimated by ten and he who says thirty has overestimated by ten, and the estate should therefore be valued at 100? Because the majority declare it not worth more than 100 zuz, or one moah. The anonymous teachers maintain that the estate is worth $93\frac{1}{3}$ zuz, because the one who estimated its value at twenty selas (eighty zuz) underestimated by $13\frac{1}{3}$, and the one who said 100 zuz overestimated by $13\frac{1}{3}$, although he had intended to say $103\frac{1}{3}$ zuz, but thought he would not like to make his difference too large. And why not say that the one who said thirty selas (120 zuz) has overestimated by thirteen, and the estimate should be fixed at 113 zuz? The opinion of the majority that the estate is not worth over a moah is to be taken into consideration. Said R. Huna: The Halakha prevails with the anonymous teachers. Said R. Ashi: The reason of the anonymous teachers is not acceptable; should we decide according to them? There is a Boraitha that the judges of the exile are in accordance with the anonymous teachers, and R. Huna said again that so the Halakha prevails, but R. Ashi objected again for the same reason stated above.

MISHNA V.: If one says "I sell you the half of the field" (the half of the value is meant), the better one against the inferior is to be appraised, and the seller has a right to give the buyer the latter. The same is the case when he said "I sell you

the southern half of this field," and the buyer takes the half determined on by the seller. The seller, however, has to give space for a partition, and for a large and a small ditch. What is the breadth of a large ditch? Six spans. And of a small one? Three.

GEMARA: Said R. Hyya b. R. Abba in the name of R. Johanan: The buyer has to take the inferior. And he (when he heard this statement from R. Johanan) said to him: Does not the Mishna say "the better one against the inferior is to be appraised"? And should not this be explained to mean that each of them should take half of both good and inferior? And he answered: It seems to me that you have eaten too many dates in Babylon (so that you have no time to descend into the depths of the Mishna). Does not the Mishna contain the same expression, in the latter part,* concerning the sale of the south side of his field? And why the repetition? It should read "he should take a half at the south side," and we would understand it to mean half of the size. We must then say that it is repeated to teach that also in that case the half of the value is meant, as the same was in the first part.

"*The partition*," etc. There is a Boraitha: "The large ditch must be outside and the small one inside of the field, but both beyond the partition, so that beasts may not jump over the partition in the field." Why then the small ditch? Does not the large one suffice for this purpose? Because it is six spans wide, the beasts could enter in it and jump over. But does not the small ditch suffice? Because it is small, the beasts could stand on the edge of it and jump over. And how much shall the space be between the large and the small ditch? One span.

* The Mishna repeats the same language concerning the southern part which we, according to the sense, have translated "the same is the case."

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING BEQUESTS TO AND INHERITANCE BY NEAR AND DISTANT RELATIVES, MALE AND FEMALE SLAVES AND THEIR DESCENDANTS, FIRST-BORN AND HUSBANDS. ONE MAY OR MAY NOT WISH TO BEQUEATH HIS ESTATE TO STRANGERS WHEN HE HAS CHILDREN. WHICH WILLS MUST BE CONSIDERED AND WHICH WILLS MUST NOT. THE DIVIDING OF AN INHERITANCE BETWEEN GROWN-UP AND MINOR CHILDREN, MALE AND FEMALE.

MISHNA I.: (Concerning inheritance, there is a difference between relatives.) There are those that bequeath at their death, and also inherit at the death of their relatives. There are those who inherit but do not bequeath, and also those who neither bequeath nor inherit. The father, his children, and also the brothers of the father may both bequeath and inherit to and from each other. The son from his mother, and the husband from his wife, and also the children of sisters inherit, but the former do not bequeath to the latter. The woman to her children, her husband, and her brothers bequeaths, but does not inherit from them. The brothers of the mother, however, neither bequeath to nor inherit from her.

GEMARA: Why does the Mishna mention the father his sons first? It does so, first, because the reverse order would imply a curse, and usually the beginning must not be with a curse (for when the son dies before his father it is certainly a curse), and, secondly, the Scripture [Numbers, xxvii. 8] reads, "If a man die and have no son," etc.; hence the death of the father is mentioned first. The Tana of the Mishna does thus because the law that a father shall inherit from his son is not written in the Scripture but is deduced (as will be explained farther on) and he desires to mention it first. Whence do they deduce it? From the following Boraitha: "(It is written) 'his kinsman means the father, from which it is deduced that if one dies and leaves brothers and a father, the father is the heir and not the brothers'; but lest one say that the father of the

deceased is preferred to his son, it is written 'that is next to him,' which means, whoever is nearest, and the son to his father is considered nearer than a father to his son. And what is the reason that you exclude the brother and include the son? Because the Scripture has substituted the son for the father in the case of a man servant [Ex. xxi. 9] and also in that concerning the possession of a field [Levit. xxv. 13], of which it is said elsewhere that only when the son has redeemed the field sanctified by his father, it may be returned in the jubilee year, but not if the father's brother or any other relative has done so. But why not say that the brother shall have the preference, as he inherits from his brother in case the latter dies childless [Deut. xxv. 5]? This cannot hold good, as the brother thus inherits only if there is no son; but if there is a son the brother does not inherit." Is it only for this reason, and if it were otherwise would the brother be the heir? May the son be substituted for his father in the two cases above stated, and the brother in the one case only? Nay, the same reason is given in the case of the above-mentioned possession of a field, wherein the son is preferred to the brother, also because the brother inherits only when there is no son. But why not say a kinsman means the father, from which we infer that he is preferred to his daughter? Lest one say that he is preferred to his son also, therefore it is written, "who is next to him," and a son is nearer to his father than the father to his son. As said above, this could be opposed thus: Let us see! If one dies and leaves a daughter, it is the same concerning Yeboom as if he should leave a son. Hence we see that a son and daughter are here equal before the law, and the same equality would obtain concerning inheritance. But why not infer from this that the father has the preference over *his* brother? And lest one say that he should have the preference over the brothers of the deceased also, it is written "the next," and brothers are considered nearer than the father to his son. It is not necessary that the father's brother be considered as excluded in the Scripture, as that would be contrary to common sense. What is the basis for the inheritance of the uncle of the deceased from his nephew, if not that his brother is the father of the deceased; and when the father is still alive, why should the brother be the heir?

But let us see. The passage in the Scripture does not corre-

spond with all that is taught above [Num. xxvii. 8], "If a man die and have no son, then shall ye cause the inheritance to pass unto his daughter, and if he have no daughter . . . unto his brothers . . . and if no brothers, unto his father's brothers, and if . . . no brothers, . . . to the kinsman." (Hence when the kinsman is mentioned at the end, how can you say that it means the father, who is the first in case the deceased left no son?) The passages are not written in order, as the kinsman, meaning the father, should be mentioned first, but the Scripture relies upon the words "who is next to him," and it is for the court to decide who is nearest to him. The following Tana, however, deduces it from the same passage in another manner, as we have learned in the following Boraitha: R. Ishmael said: "It is written, 'If a man die and have no son, then ye shall cause his inheritance to pass,' etc. Infer from this that you transfer the inheritance from the father only when the deceased left a daughter, but not when he left brothers." But why not say that the daughter transfers the inheritance from his brothers but not from his father? Because if it were so, the passage would read "and ye shall *give* the inheritance," and not "ye shall *cause to pass*," which means that if there is a daughter, her father may pass the inheritance to her, even when his own father is still alive. Now, what does kinsman mean in the opinion of R. Ishmael, who has deduced this from the words "ye shall cause to pass"? That which the following Boraitha states: "His kinsman means his wife. Deduce from this that the husband inherits from his wife." But to him who infers this from the word kinsman, what do the words "ye shall cause to pass" mean? That which we have learned in the following Boraitha: Rabbi said: In all the passages it is written "shall ye give," and only concerning the daughter "ye shall pass," to show that there is no one who shall pass an inheritance to another tribe except a daughter; so if she marries one of another tribe, her son or her husband may inherit from her.

But, after all, where is it you are assured that kinsman means the father? In Levit. xix. 12, "Thy father's kinswoman." Then why not say it means the mother, as the next verse reads "thy mother's kinswoman"? Said Rabha: It is written [xxvi. 11] "next to him of his family," and the family is named

only from the father's side as [ibid., 2] "after their families, by the descent from their fathers." But is not the name of the mother's side also employed? Is it not written [Judges, xvii. 7], "And there was a young man out of Bethlehem-Judah of the family of Judah, but he was a Levite, and sojourned there"? Now does not this passage contradict itself? It is written "of the family of Judah," from which it is to be inferred that they came from the tribe of Judah, and then it says he is a Levite, which means that he was of the tribe of Levi. We must conclude that his father was from Levi and his mother from Judah, and nevertheless this is called a family name. Said Rabha b. R. Hanan: The verse reads "and he is Levi," which does not mean that he was a Levite, but that his name was Levi. If so, how is to be understood (ibid., 17), "I have obtained a Levite for a priest"? There it is also written Levi, and means a man by the name of Levi. But how can you say that his name was Levi? Was not his name Jonathan, as it is written (ibid., xviii. 30), "And Jonathan the son of Gershom . . . were priests," etc.? And he answered: Even according to your theory, was he then the son of Menashe? He was the son of Moses, as it is written [I Chron. xxiii. 15]: "The sons of Moses were Gershom and Eliezer." It is written Menashe, because he acted like Menashe, who was an idolator; and therefore the phrase "of Judah" is employed because Menashe came from Judah. R. Johanan in the name of R. Simeon b. Jo'hai said: From this is to be inferred that we confer a corrupt name on a corrupt man. R. Jose b. Hanina, however, said that this may be inferred from the following [I Kings, i. 6]: "And his mother had after Abshalom." But was not Adoniyah the son of Chag-gith, and Abshalom the son of Maacha? We must say that because he acted like Abshalom, who also rebelled against the kingdom, the verse conjoined him with Abshalom.

R. Elazar said: We see that when Moses married the daughter of Jethro, Jonathan was the outcome, and when Aaron married the daughter of Aminadab the outcome was Pinchos.

But was not Pinchos also a descendant of Jethro, as it is written [Ex. vi. 25], "Elazar took of the daughters of Putiel for wife and she bore unto him Phinchas," and it is said elsewhere that Jethro and Putiel are identical? Nay, this Putiel is Joseph, as it is also said elsewhere that Joseph and Putiel are

identical.* But is it not said elsewhere that the tribes chided Phinchas, saying: "See the descendant of Puti, whose grandfather had fattened calves for idols; shall he dare to kill a prince of the tribe of Israel?" Both names are applicable; for if his mother's father was a descendant of Joseph, his mother's mother was a descendant of Jethro or *vice versa*, and the word Putiel instead of Puti may mean both.

Rabha said: If one is about to marry, it is advisable for him to investigate the character of the bride's brothers; as it is written (*ibid.*, 23), the "sister of Nachshon." To what purpose is it written the "sister of Nachshon"? Is it not evident that she was the sister of Aminadab? Hence this is an intimation to one about to marry to investigate the brothers of his prospective bride. There is also a Boraitha to the effect that the majority of children resemble the brothers of their mother. It is written [Judges, xviii. 3], "Who brought thee hither?" (*halom*) which means "Are you not a descendant of Moses?" of whom it is written [Ex. iii. 5] "hither" (*halom*), and "thou shalt be a priest to the idol"? And he answered: "I have a tradition from the house of my grandfather that it is better for one to hire himself to *Abhada Zarah* (idolatry) than to rely upon people that shall support him." [(Says the Gemara:) He has misunderstood it. *Abhada Zarah* means "idolatry." Literally, however, it is "a strange service" and it is as Rabh said to Kahana: (If you are in need), fleece a carcass in the middle of the market and do not say you are a great man, and it is not fit for you.]

David saw that he was fond of money and appointed him treasurer for the government, as it is written [I Chron. xxvi. 24], "Shebuël the son of Gershom, the son of Moses, superintendent of the treasuries." Was then his name Shebuël? Was it not Jonathan? Said R. Johanan: Shebuël is composed of two words, *Shebu*, which means "repented," and *El* means "God"; and "Shebuël" means that he repented to God with all his heart.

* The Gemara infers it from terms in Hebrew or Chaldaic which it is impossible to translate into English; namely, Putiel, which is a name, *Pitem* meaning in Aramaic "fat," and *Pitpet*, which means in Aramaic "subduing." Hence by Putiel can be meant Jethro, who fattened calves for idols, and also Joseph, who subdued the evil spirits.

"*His children . . . inherit.*" Whence is this deduced? It is written [Numbers, xxvii. 8], "If a man die, and have no son," etc. We see the case is one wherein he has no son, but if he has one, that one has the preference. Said R. Papa to Abayi: But perhaps it means that if there is a son only, he shall inherit, and if there is a daughter only, she shall inherit; but if there were a son and a daughter neither of them should inherit. Said he: Who then shall inherit—the mayor of the city? I mean to say that neither of them shall inherit all, but each take an equal share. Said Abayi to him: Was it then necessary for the Scripture to state that if there were only one son he may inherit all the estates of his father? Answered he (R. Papa): I mean to say that the verse perhaps came to teach that a daughter may also be an inheritor. And he (Abayi) answered: This is already written [ibid., xxxvi. 8], "And every daughter that inheriteth," etc. R. A'ha b. Jacob said: This is to be deduced from the following [ibid., xxvii. 4], "Why should the name of our father be done away from the midst of his family because he hath no son?" But if he should have a son, the son would have the preference; but perhaps this was only the saying of the daughters of Zelophchod (*i.e.*, they thought that such was the law, as it was customary at that time). But after the Torah was given the law was changed, that a son and daughter should inherit together; therefore Abayi's explanation is better.

Rabhina said: This is to be deduced from the words "next to him," and a son is nearer than a daughter; and why? As it is said above, he may be substituted for his father in the cases concerning a maid-servant and a field, etc. But could then a daughter be substituted for her father in the case of a maid-servant? Hence the best interpretation is Abayi's; and if you wish, it may be deduced from Levit. xxv. 46, "For your sons after you," etc., which means to your sons* and not to your daughters. But according to this the verse [Deut. xi. 21], "The days of your children," which is also written with "*Bniechein*," should also be explained the sons and not the daughters? With a blessing it is different.

"*The brothers of the father.*" Whence is this deduced? Said Rabba: By analogy of expression "brothers" here [Num-

* It is written *bniechein*; literally, "sons." Leeser translates "children," according to the sense.

bers, xxvii. 9] and in Genesis, xlii. 32. "We are twelve brothers, the sons of our father"; as there they were brothers of the father, so are they here also on the father's side. But was it not said above that from the father's side the family is named, but not from the mother's? (See above, p. 244.) Yea, this is deduced from verse 11, as above, and Rabba's statement was taught concerning Yeboom (the marriage of a brother to the widow of his childless brother).

"*The son from his mother.*" Whence is this all deduced? From that which the rabbis taught. It is written [Num. xxxvi. 8]; "Any daughter who inherits the estate of the tribes."* How can a daughter inherit from two tribes? It must be concluded that her father was from one tribe and her mother from another, and both died leaving estates, and she has inherited both. This is concerning a daughter, but whence have we knowledge concerning a son? From the *a fortiori* argument that as a daughter who has no share in the inheritance of her father when there is a son is nevertheless an heir to the estate of her mother, a son who inherits from his father so much the more inherits from his mother. And from this it is to be deduced that, as there the son has the preference over the daughter as an heir of the father, so is it also with the inheritance from the mother. Both R. Jose b. Jehudah and R. Elazar b. Jose, however, say in the name of Zecharia the son of the butcher that a son and a daughter are equally heirs of their mother. Why so? Because there is a rule: It is sufficient that the result derived from the inference be equivalent to the law from which it is drawn (and as the law that a son may inherit from his mother is drawn *a fortiori* from the case of the daughter, it is sufficient to say that he inherits also, but not that he shall have the preference). But does the first Tana ignore the theory of "it is sufficient"? Is this not biblical, as we have learned (First Gate, p. 51, in the beginning of the Gemara)? In all other cases he uses the theory; here, however, it is different, because of the reading "from the tribes." We see then that the tribe of the mother is equal to the tribe of the father, and as concerning the father's the son has the preference, so also is it concerning the mother's.

Nithai was about to act in accordance with Zecharia, and

* Leeser's translation does not correspond.

Samuel said to him: Ignore Zecharia, as the Halakha does not prevail with him. R. Tabla had acted in accordance with R. Zecharia, and R. Na'hman asked him what he had done. And the answer was that he had done so because R. Hinna b. Shlamiah said in the name of Rabh that the Halakha prevails with R. Zecharia the son of the butcher, and R. Na'hman told him, "Go and retract from your statement, and undo what you have done, and if you will not listen, I will put out R. Hinna from your ears" (I will place you under the ban). R. Huna b. Hyya was also about to act in accordance with R. Zecharia, and R. Na'hman said, "What are you doing?" And he answered: "I do so because R. Huna said in the name of Rabh that the Halakha prevails with R. Zecharia. Said R. Na'hman: "I will send immediately a message to R. Huna asking him if he said so." And Huna b. Hyya became ashamed. Said R. Na'hman to him: "If R. Huna were dead, you would rebel against me and act accordingly." But in accordance with whose was R. Na'hman's opinion? With both Rabh's and Samuel's decision that the Halakha does not prevail with R. Zecharia.

R. Janai leaned upon the shoulders of R. Simlai his servant, when he walked on the street, and it happened that R. Jehudah the second was coming in an opposite direction, and R. Simlai said to him: "The man who is coming in an opposite direction is a respectable one, and he is also nicely dressed." When they came together, R. Janai fumbled about R. Jehudah's dress * and said: "Is this what you call nicely dressed? It seems to me like a sack." Jehudah the second questioned him: "Whence is it deduced that a son has the preference over a daughter in the estate of their mother?" And he answered: "Because it is written 'tribes,' and the verse compares the tribe of the mother with the tribe of the father. As in the former case the son has the preference, so is it in the latter." Said Jehudah: "If so, why not say that as in the father's case the first-born takes a double share, so should it be in the mother's?" Said R. Janai to his servant: "Take me away from him, this man does not want to learn." And what was the reason? Said Abayi: It is written [Deut. xxi. 17], "of all that is found in his possession," not in her possession. But why not say that

* R. Janai was very infirm and could not see well.

this is so when a single man has married a widow who has children from the first husband, but if a single man has married a virgin, the first-born shall take a double share? Said R. Na'hman b. Itz'hak: The same verse cited reads, "for he is the beginning of *his* strength," *his* but not *her*. Is this verse not necessary to include a first-born who came after a miscarriage, that he is entitled to a double share, although he is not considered as such to be redeemed? Because it should be read, "he is the first of strength," and from the addition *his* both inferences are drawn. But still it may be said in case a widower married a virgin, but if a bachelor married a virgin then the first-born is entitled to a double share also from his mother. Therefore said Rabha: The verse ends "to him belongeth the right of first birth"; which means to him a *male*, but not to a *female*.

"*And the husband from his wife.*" Whence is this deduced? From that which the rabbis taught. It is written [Numbers, xxvii.], "his kinsman," and his wife is meant. Infer from this that the husband inherits from his wife; but lest one say that she inherits from him also, it is written [ibid.] "and he shall inherit from her." "*Outhoh*" means he inherits from her, but not she from him. But the verses are not written in that order, you say? Said Abayi: Read thus: "Then shall ye give his inheritance to his next kinsman and *he* shall inherit from her." Said Rabha to him: It seems to me that you have a keen knife to cut the verses. Therefore, said he, the verse means he shall give the inheritance from *his* kinsman to him; as he holds that the sages have a right to subtract, to add, and to interpret. (I.e., it is written *nachlossou*, literally "his inheritance," with a Vav at the end; *lishourou*, literally "to his kinsman," with a Lahmed at the beginning. Subtract the Lahmed from *lishourou* and the Vav from *nachlossou*. Put these two letters together and they will read *lou*, literally "to him," and then the verse will read thus: "Ye shall give the inheritance of his kinsman to him.) The following Tana, however, infers this from the same verse in another way, as we have learned in the following Boraitha: It is written, "And he shall inherit from her." Infer from this that the husband inherits from his wife. So said R. Aqiba. R. Ishmael, however, said: It is not necessary to cut the verses (he does not hold the theory of subtracting, adding,

etc.), as there are other verses [ibid., xxxvi. 8], "every daughter that inheriteth," which refers to the transferring of an estate from one tribe to another through the husband, who is of one tribe and has married a woman of another tribe. It is written [ibid. 7], "And the inheritance of the children of Israel shall not pass from tribe to tribe," and it is also written next, "and no inheritance shall pass from one tribe to another," and then it is written [Joshua, xxiv. 33], "And Elazar the son of Aaron died and they buried him in the hill of Pinchas his son." Where then had Pinchas a hill which Elazar did not possess? We must then conclude that Pinchas married a woman who owned a hill, she died and he inherited it. And it is also written [I Chronicles, ii. 22], "And Segub begat Jair, who had three and twenty cities in the land of Gilad." And wherefrom did Jair obtain that which his father, Segub, did not possess, if not by inheritance from his wife. But to what purpose did R. Ishmael cite all the above verses? Lest one might say that the first cited verse does not speak of transferring an estate through the husband, but through her son, and the husband does not inherit. Therefore is the other verse cited, "And the inheritance of the children of Israel shall not pass," etc. But lest one say that this verse is written to make the one who transgresses answerable under a positive and a negative commandment, but still through the son and not the husband, therefore is the third verse cited. But lest one say that this verse is also written for the purpose of making the transgressor answerable under two negative and one positive commandments, therefore is the fourth verse cited; and lest one say that Elazar's wife owned a hill and Pinchas inherited it from her, therefore is the fifth verse cited. And lest one say that the same was the case with Segub and Jair, then why two verses which contain the same case?

Said R. Papa to Abayi: But what does this support? It may be said that the husband does not inherit, and all the above cited verses state that it was through the son, and did both Jair and Pinchas buy the estate in question? And Abayi answered: You cannot say that Pinchas bought the estate, as if this had been so the property would have been returned to the seller in the jubilee year, and then the upright Elazar would have been buried in ground not his own. But perhaps the hill

in question was transferred to Pinchas from estates set apart for the priests [Numb. xviii. 14]. Said Abayi to him: If we were to agree with your theory, the estate would be still transferred from one tribe to another. Is it not explained above that verse 8 refers to a woman who has inherited from both father and mother, who were of two different tribes? Why, then, if she should marry one belonging to the tribe of her father, would the estate of her mother be transferred to another tribe? And R. Papa said: This is no objection, as the case may be different, and perhaps the estate of her mother was already transferred. Rejoined Abayi: Such a supposition cannot be taken into consideration; as one would not say that because a part had already been transferred, the other part should now be transferred. Furthermore, the transfer was according to the law, as when a woman has married one of another tribe, her brother being still alive, she then possessed no heritage, but received it after she was already married. Afterward her daughter, who has inherited her mother's estate, if she should marry even one belonging to her father's tribe, her son would inherit from her the estate which had belonged to another tribe.

Said R. Jiiman to R. Ashi: Even in accordance with Abayi, who holds that the husband does inherit, it is correct. If the verse is to be explained that the daughter has already inherited from her mother, who was of another tribe, the Scripture commands that she shall marry one of another tribe, to the end that the estate of one tribe shall not be transferred to another one, no matter whether through son or husband; but if the estate of her mother was not as yet transferred, why should she marry one of her father's tribe? The estate of her mother, which belongs to her, if her husband inherits from her, would be transferred to him; hence the estate of one tribe would be transferred to another. The answer was that she might marry a man whose father was of the tribe of her father, and his mother of the tribe of her mother, and in such a case the estate of her father remains within the tribe of her father, and the estate of her mother remains also with the man whose mother is of the same tribe. But if so, should not the verse read "to one who is of the family of her father's and mother's tribe"? If the verse should so read, one might say that even if her husband's father were of her mother's tribe, and his mother was of

her father's tribe, this would not be in accordance with the law, as the estate of her father would be transferred to her husband, who is of another tribe. There is a Boraitha that through the son the estate is transferred, namely: "The seventh verse reads 'the inheritance of the children of Israel shall not pass,' etc., which refers to the son. But perhaps it refers to the husband? This could not be, as verse 9 reads 'as no inheritance shall pass from one tribe to another,' which refers to the husband; hence verse 7 refers to the son." There is another Boraitha: "Verse 9 refers to the husband, but perhaps it refers to the son? This cannot be, as verse 7 has already referred to the son." We see, then, that both Boraithas hold that verse 9 refers to the husband. Where is this taken from? Simon in the name of Rabba b. R. Shila said: From the expression "*ish*" in verse 8, which means husband. But is not the same expression in verses 7 and 9? Said R. N'ahman b. Itz'hak: From the expression "*Idbako*" (adhere). But also this expression is in 7 and 9? Therefore said Rabha: From the end of verse 9, which reads "the tribes of Israel shall adhere"; and R. Ashi maintains, from the expression "from one tribe to another tribe," a son cannot be called of another tribe.

R. Abuhu in the name of R. Johanan, who spoke in the name of R. Janai, who heard it from Rabbi, quoting R. Joshua b. Kar'ha, said: Whence is it deduced that the husband does not inherit the estate to which his wife during her life is only heir apparent (e.g., his wife is an only daughter and she dies before her father, leaving a child, and thereafter her father dies, and her child but not her husband inherits)? From [I Chronicles, ii. 22]: "Segub begat Jair, who had three and twenty cities." Whence did Jair obtain these, which his father did not possess. Infer from this that Segub had married a wife who had twenty-three cities, and she died while her nearest heirs yet lived. Thereafter her nearest heirs also died, and Jair, her son, not Segub, her husband, was her heir. And the same is the case with Elazar, who married a woman who possessed a hill, and she died while her nearest heirs were still alive, and thereafter the nearest heirs also died and Pinchas inherits from her. How are we assured that Elazar's wife brought him the hill; perhaps Pinchas' wife possessed it? By the words "his son," in Joshua, xxiv. 33 (which are superfluous, as every one

knows that Pinchas was his son), meaning his son who was the proper heir."

"*And also the children of sisters.*" There is a Boraitha, "Sons but not daughters of sisters." How is this to be understood? Said R. Shesheth: It means that if there were sons and daughters, the sons would have the preference. As R. Samuel b. R. Itz'hak taught in the presence of R. Huna: It is written [Numb. xxvii. 11] "and he shall inherit it," which means that the second inheritance shall be equal to the first; as in the first the son has the preference, so it shall be with the second. Rabba b. Hanina taught in the presence of R. Na'hman: It is written [Deut. xxi. 16], "Then shall it be (in the day *) when he divideth an inheritance," which means in the daytime he may divide an inheritance but not in the night-time. Said Abayi to him: "Do you mean to say that only from him who dies in the daytime his children may inherit, but otherwise they cannot? Perhaps you mean to say that judges must not discuss a case of a will, at night, as we have learned in the following Boraitha: It is written [Numb. xxvii. 11] "a statute of justice," which means that the whole section which treats of inheritance is a statute of justice (which must be discussed in the daytime *only* and by no less than three judges). It is as R. Jehudah said elsewhere: If three persons visited a sick man and he made verbally his last will before them, they might, if they wished, write it down, and, further, they might execute it. If, however, there were only two, they might write down his will (as witnesses), but could not execute it. And to this R. Hisda added that so it is as to the daytime only, but if it were at night, even if there are three, they may write down the will, but not execute it; because they are considered witnesses only, and a witness cannot qualify as an executor. And Rabba answered him: Yea, this is what I meant to say.

It is taught: In the case of a gift with the ceremony of a sudarium by any person, whether healthy or sick, what time may be given him to retract? Rabba said: As long as they are sitting at that place where the ceremony was performed. And R. Joseph said: As long as they are discussing this matter. Said R. Joseph also: It seems to me that I am right in my decision, as R. Jehudah said that three who are visiting a sick person

* The Scripture reads *byom*, "at the day," which Leeser has not translated.

may, if they like, write down his will and execute it; now, if you say he may retract as long as they are sitting there, though they do not discuss the matter, how can they execute the will but in the doubt that while they are doing so he may retract? Said R. Ashi: I have maintained before R. Kahana, even in accordance with R. Joseph's theory, that it is to be feared that even while they are discussing this matter he will retract; how then can they execute the will? Say, then, that they have ceased to discuss this matter and are discussing another one. The same can be said here, that they arose after hearing his will, and again took their seats. The Halakha, however, prevails in accordance with R. Joseph concerning the field mentioned above (p. 38), concerning this case, and concerning the case of "a half" (when the sick man says, "I bequeath my estate to you and your son," upon which, according to R. Joseph, the estate may be divided equally), which matter will be explained in Chapter IX.

"The woman to her children." To what purpose is this repeated? Does not the first part read "the son from his mother," etc.? It comes to teach us that the case of "the woman to her children" is equivalent to that of the woman to her husband. As the husband does not inherit in the place of his wife that which she would have inherited had she lived (as illustrated in the case of the woman who predeceases her father), so also the son inherits his mother's share, but his brothers (of the one father) do not inherit from him if he dies.* R. Johanan in the name of R. Jehudah b. R. Simeon said: Biblically a father inherits from his son, and a mother also inherits from her son, as it is written "tribes," from which is deduced the tribe of the mother as well as the tribe of the father; as concerning the tribe of the father, the father inherits from his son, the same is the case with the mother. R. Johanan, however, opposed R. Jehudah, from our Mishna, which states that a woman to her son, her husband, and the brothers of the mother may bequeath but not inherit. R. Jehudah answered: I am not aware who taught our Mishna; but let him say that our Mishna is in accordance with R. Zechariah, who does not care to explain the

* This is the explanation of Gershom. Rashbam, however, interprets it to mean that if the son dies while his mother is still alive, the legal heirs are not his brothers, but the relations of her father.

word "tribes" as a comparison. Our Mishna cannot be explained in accordance with R. Zechariah, as it states "and the children of sisters," and a Boraitha adds that the sons but not the daughters are meant, which was explained by R. Shesheth as meaning that the sons have the preference, and according to R. Zechariah, sons and daughters are equal heirs of their mother. But how is to be explained the teaching of the Tana of our Mishna? If he holds that the word "tribes" is to be taken as a comparison of one tribe to another, why should not a woman inherit from her son; and if he does not, whence does he derive his theory that a son has the preference in the estate of his mother? The comparison holds good, but this case is different; because it is written "every daughter that inheriteth," which means she may inherit but does not bequeath.

MISHNA II.: The order of inheritance is thus: If a man dies, leaving no son, the inheritance shall pass to his daughter (reads the passage), by which we see that the son has preference before the daughter, and the same is the case with all the descendants of the son, who also have preference before the daughter. The daughter has preference over the brothers of her father, and the same is the case with her descendants. The brothers of the deceased have preference over the father's brothers, and the same is the case with their descendants. This is the rule: After every one who has the preference concerning an inheritance, his descendants have, in order, a like preference. The father has the preference before all his descendants.

GEMARA: The rabbis taught: It is written "a son"—from which we know the son himself only, but whence do we deduce the son's son or his daughter, or even the grandson of his daughter? It is written *ien lou*; and we read the word *ien* as if it were written *ayin*, which means investigate, for perhaps his son left a son or a daughter, etc. It is also written "a daughter," by which we know indeed the daughter, but whence do we deduce her daughter, son, and daughter of her son? It is written *ien*, "*ayin*," as said above. And the same is the case with investigation in the opposite direction (*i.e.*, perhaps the father's father is yet alive), so that an investigation concerning inheritance may stretch back to Reuben, the son of Jacob. Why only back to Reuben, and not as far as Jacob? Said Abayi: We have a tradition that the whole tribe cannot be ex-

tinguished.* R. Huna in the name of Rabh said: If one decides that a daughter shall inherit, when there is a daughter of a son, even if he were a prince in Israel, he must not be listened to, as so acts the Sadducean, which we have learned in the following Boraitha: On the 24th day of the month Tebheth we returned to our old law, namely: the Sadducean used to say that a daughter should inherit an equal share with the daughter of the son, and Rabban Johanan b. Zakai said to them: "Ye fools, wherefrom have ye taken this?" And none was there to answer him, except an old man who talked (childishly) against him thus: Is this not an *a fortiori* conclusion? The daughter of his son who comes upon the strength of her deceased father, the son of the bequeather inherits. So much the more the daughter who comes upon the strength of the bequeather himself should take a share in the inheritance. R. Johanan then read before him [Gen. xxxvi. 20], "These are the sons of Seir the Chorite, who inhabited the land, Lotan and Shobal and Zibon and Anah," and there is also written [ibid. 24]. "And these are the children of Zibon, both Ajah and Anah." How is it to be understood? Infer from this that Zibon had lain with his sister Ajah, and she bore Anah. [But perhaps there were two Anahs?] Said Rabba: I shall say a thing which would be fit for King Sabur to say [Samuel is meant, although, according to others, R. Papa said so when he meant Rabba]. It is written in the same verse cited "that Anah," which means one that is the same as the Anah of verse 20. Said the Sadducean to R. Johanan: Rabbi, with such an explanation do you think to override me? R. Johanan answered: And why not? Should not our Torah with its regulations ignore your gossip? Your *a fortiori* conclusion could be easily overthrown by the following theory: How can you compare one's daughter to the daughter of his son, when the latter has a right of inheritance even when the brothers of her father are still alive, while the former has no such right (for a daughter does not inherit when she has brothers)? And with this he conquered the Sadducean, and this day was established for a festival.

It is written [Judges, xxi. 17]: "And they said their inheritance must be secured for Benjamin, that not a tribe may

* *I.e.*, it cannot happen that all the descendants of one of the twelve tribes of the sons of Jacob should die. The basis of this is Malachi, iii. 6.

be blotted out from Israel." Said R. Itz'hak of the school of R. Ami: Infer from this that at that time a stipulation was made that as long as the tribe of Benjamin should continue, the daughter of a son should not inherit her share with existing brothers, in order that, through her marriage to a man of another tribe, she might not divert the estate from the tribe of her father. R. Johanan in the name of R. Simeon b. Johai said: He who leaves no son to succeed him is unloved of heaven, as it is written [Psalms, lv. 20]: "Those who leave * no changes fear no God." R. Johanan and R. Joshua b. Levi differ. According to one a son is meant, and according to the other a disciple. From the fact that R. Joshua b. Levi did not go to a funeral unless the deceased was childless, because it is written [Jeremiah, xxii. 10], "Weep sorely for him that goeth away," which R. Jehudah in the name of Rabh interpreted as meaning "he who passeth away without a son," it must be concluded that R. Joshua b. Levi was the one who said "a disciple." R. Pinchas b. Hama lectured: It is written [I Kings, xi. 21]: "And when Hadad heard in Egypt that David slept with his father and that Joab the captain of the army was dead." Why concerning David is it written "slept," and concerning Joab "dead"? Because David left a son, and Joab did not. But is it not written [Ezra, viii. 9]: "From the children of Joab, Obhadia b. Jechiel"? Therefore, as "slept" is the word employed for David, we must conclude that he left a son like himself, which was not the case with Joab. Wherefore in his case the term "dead" is used. And he also said: Poverty in the house of one is harder than fifty plagues, as it is written [Job, xix. 21]: "Spare me, spare me, O ye my friends! for the hand of God hath touched me." And he was answered [ibid. xxxvi. 21]: "Thou hast chosen this instead of poverty." † The same said again: If one has a sick person in his house, he shall go to a wise man and request him to pray for the sick one, as it is written [Prov. xvi. 14]: "The fury of a king is like the messengers of death; but a wise man will appease it."

"*This is the rule.*" Rami b. Hama questioned: If the deceased left a grandfather and a brother, as did Abraham and Jacob to the estate of Esau, who had the preference? Said

* Leeser translates "dread," which does not correspond.

† Leeser does not correspond at all.

Rabha: Come and hear the decision of our Mishna, which states that the father has the preference before all his descendants. Rami, however, maintains that the father has the preference over his descendants, but not over the descendants of his son. (Says the Gemara:) It seems that Rami is right. As the Mishna states, this is the rule: He who has preference concerning inheritance, his descendants have the same. Now, if when Esau died Isaac and Abraham were both alive, Isaac would have had the preference to the estate; the same would have been the case if Isaac had been dead. Then Jacob would have had the preference over Abraham, because he was a descendant of Isaac. Infer from this that so it is.

MISHNA III.: The daughters of Z'lophchod have inherited three shares from the inheritance of their father, his share as one of the ascendants from Egypt, his share in the division of Chipher his father (who was also among the ascendants from Egypt), and because he was a first-born he inherited a double share.

GEMARA: Our Mishna is in accordance with him who said that the land was divided among the ascendants from Egypt, and not to their children (*i.e.*, the person who entered the land of Israel, if he was among the ascendants of Egypt, took his share, and divided it among his children; and if an ascendant had died and his children entered the land, the share of their deceased father was given to them and they divided it among themselves), as we have learned in the following Boraitha: R. Iashiah said: The land was divided to the ascendants of Egypt, as it is written [Numb. xxvi. 55], "According to the names of the tribes of their fathers." But how does this correspond with [ibid. 53], "unto these shall the land be divided," which means to those who entered the land? Those are meant who are of sufficient age (twenty years), excluding the minors. R. Jonathan, however, said that to those who *entered* the land it was apportioned, not to their fathers, as it is written in the verse just cited. But how would this correspond with verse 55? This inheritance is different from all other inheritances, as in all others the living inherit from the dead, and here the dead inherit from the living; and to illustrate this, said Rabbi, I shall give you a parable. It is similar to the case of two priests in one city, one of whom has one son, while the other has two;

and when they go to the barn to take the Taruma, he who has only one son takes one share (e.g., a saah), and he who has two takes two shares, and they turn them over to their fathers, who divide the shares equally among themselves, according to the number of souls. Such, also, was the apportionment of the land of Israel. Each received land according to the number of his souls, and after that they divided it among themselves according to the number of the heads of the family who were of the ascendants from Egypt; hence the dead ascendants inherit from the living. R. Simeon b. Elazar, however, said that the land was apportioned to both, in the manner stated in both of the above-cited verses. How so? He who was of the ascendants from Egypt took his share among them, and he who was of those who entered the land of Israel took his share among them, and he who was of both the ascendants and the entering took his shares with both of them. The shares of the spies Joshuah and Caleb took and divided equally. Those who murmured and the congregation of Kora'h had no share in the land at all, and their children took their shares, as the direct heirs of their grandfathers on both the paternal and maternal sides. But whence do you know that in Num. xxvi. the ascendants from Egypt are meant? Perhaps it means the tribes themselves who entered the land? It is written [Ex. vi. 8]: "I will give it you for an heritage." Inheritance implies from parents to children, and this was said to the ascendants from Egypt.

Said R. Papa to Abayi: It is understood by him who says that the land was divided among the ascendants from Egypt [Num. xxvi. 54], "To the large tribe shalt thou give the more inheritance, and to the small shalt thou give the less inheritance," etc.; but to him who says "to those who entered the land," what does this verse mean? This objection remains.

R. Papa said again to the same: To him who said that the land was divided to the ascendants it is to be understood why the daughters of Z'lophchod sued for their father's share; but according to him who says "to those who entered the land," for what did they sue? There was no share for them, as Z'lophchod was dead and he had no share. They sued that the share of their deceased father might be given to their grandfather Chipher, and that they might take their shares in succession. (He said again:) It is comprehended by him who says "the

ascendants," etc., why the children of Joseph cried [Joshua, xvii. 14], "Why hast thou given me but one lot and one portion of inheritance?" But to him who says "to those who entered," why did they cry—each of them took his share? They cried concerning the minor children, which were numerous. Said Abayi: From all this is to be inferred that all who entered the land of Israel had a share; and if not, they protested. And lest one say that he whose protest had effect is written, and he whose protest had no effect is not written, then the protest of the children of Joseph was of no effect and nevertheless written down. This is beside the purpose of the verse, which is aimed to convey good advice to mankind; in effect, that one shall take care not to be afflicted by a covetous eye. And this is what Joshuah said to the children of Joseph [ibid. 15], "If thou art a numerous people, then get thee up to the wood country," which means, "Go and hide thyself in the forest, that no covetous eye may afflict thee"; and they answered: We are the descendants of Joseph, whom a covetous eye cannot afflict. As it is written, etc. [see Middle Gate, p. 213].

The text says that the shares of the spies Joshua and Caleb inherited. Whence is this deduced? Said Ula: It is written [Numbers, xiv. 38]: "But Joshua the son of Nun and Caleb . . . remained alive." What is meant by "remained alive"? Shall we assume it is meant literally? To this there is another verse [ibid. xxvi. 65], "save Caleb and Joshua." We must then conclude that the first-cited verse means that they lived with their shares. Farther on they murmured, and the congregation of Kora'h had no share? But did not a Boraitha state that the shares of the spies, the murmurers, and the congregation of Kora'h, Joshua and Caleb inherited? This presents no difficulty. The Tana of our Boraitha compares the murmuring to the spies, while the other master does not, as we have learned in the following Boraitha: It is written [ibid. xxvii. 3], "Our father died in the wilderness." Z'lophchod is meant. "But he was not of the company" means "the spies"; "of those who gathered themselves" means "the murmurers in the company of Kora'h," literally. Hence one compares the murmurers to the spies, and one does not.

Said R. Papa to Abayi: And to him who does not so compare them, did then Joshua and Caleb inherit almost the whole

land of Israel (as the murmuring ones were very numerous)? And he answered: He means to say the murmurers who were among the company of Kora'h.*

"As a first-born he inherited a double share." But why? At the time when Z'lophchod died the land was not as yet prepared for apportionment (as it was still in the possession of the nations), and it is said above that a first-born does not inherit a double share in that which is not yet in existence. Said R. Jehudah in the name of Samuel: The Mishna was meant to say "in their personal property."

Rabba opposes R. Jehudah's statement that the daughters of Z'lophchod took four shares, as it is written [Joshua, xvii. 5], "Ten portions of Menasseh." Therefore said Rabba: The land of Israel was considered prepared for division, since the Lord himself promised to give it as an inheritance to Israel. An objection was raised from the following: R. Hidqua said: "I had a colleague, Simeon the Shqmuni, who was one of the disciples of R. Aqiba. He used to say thus: Moses our master was aware that the daughters of Z'lophchod were heiresses; but he did not know whether they were entitled to the share of the first-born, and the passage about the inheritance would be written through Moses, even if the case of the daughters of Z'lophchod had not happened, but they were favored by heaven that this passage should be written through them. The same was the case with the wood-gatherer. Moses our master was aware that for the crime he committed there is a capital punishment, but he did not know by which of them he should be executed; and the passage would have been written through Moses, even if the case of the wood-gatherer had not happened. But as he was guilty, it was written through him; and this is what is meant by the reward of virtue, while the chastisement for sin is dealt out through a sinner. (See Sabbath, 1st ed., p. 55.) Now, if it be borne in mind that the land of Israel was prepared for division, why was Moses doubtful? He was doubtful in the following: It is written [Ex. vi. 8]: "And I will give it you for an heritage." Does this mean "an heritage from the parents"? Hence a first-born has to take a double share; or does it mean, "I give it to you—you shall bequeath it to your children" (as the decree was, that the persons ascending from

* The text continues a discussion about the same matter, explaining the supposed contradiction of the passages, which is of no importance, and is therefore omitted.

Egypt were to die in the desert), and the decision was both that the land was a heritage from the parents and yet not for themselves, but to bequeath to their children? And this is what is written [ibid. xv. 17]: "Bring them, and plant them." It was not said "*us*," and this was a prophecy, wherein they themselves did not know they were prophesying.

It is written [Num. xxviii. 2]: "And they stood before Moses and before Elazar the priest, and before the princes and all the congregation." Is it possible that when Moses did not answer them they were going to complain before the princes? Therefore this verse must be reversed. So said R. Jashia. Abba Hanan in the name of R. Elazar said: All of them were in the college when they came to make their complaint. And the point of their differing is: Whether in presence of the master the disciple must be honored or not. According to one, he may; and therefore he maintains that before they came before Moses they asked the princes, and he who said that this verse must be reversed, maintains that all were of the opinion that in presence of the master the disciple must not be honored with any question. There is a Boraitha that the Halakha prevails that he may be honored. But another Boraitha states: He may not. And it presents no difficulty. In case the master himself honors the disciple, it may be done; and in case he does not, it may not.

There is a Boraitha that the daughters of Z'lophchod were wise, understood lecturing, and were also upright. They were wise, as their protest was to the point. As R. Samuel b. R. Itz'hak said: At the time when Moses our master was sitting and lecturing about the law of Yeboom [Deut. xxv. 57], "If brothers dwell together," they said to him: If we are considered as a son, then let us inherit; and if we are not considered at all, then let our uncle marry our mother. And therefore [Num. xxvii. 5]: "And Moses brought the cause before the Lord." They understood lecturing, as they said: If he should have a son, we would not say a word. But there is a Boraitha that they said: If there should be a daughter. How is this to be understood? Said R. Jeremiah: Ignore the Boraitha. Abayi, however, said: "It is not necessary to ignore it. As they said: If there should be a daughter from a son, we would not say a word. They were upright, in that they each only married him

who was respectable and fit for them. R. Eliezer b. Jacob taught: Even the youngest of them was not less than forty years of age when she married. Is that so? Did not R. Hisda say: If a woman marries at less than twenty years of age she bears children until sixty. After twenty she bears until forty; but when she marries after forty, she does not then bear children? Because they were upright, a miracle happened to them, as to Jochebed, the mother of Moses. As it is written [Ex. ii. 1]: "And there went a man of the house of Levi, and took a daughter of Levi." Is it possible that a woman of one hundred and thirty years of age should be named daughter? As R. Hama b. Hanina said: This meant Jochebed, whose mother was pregnant while on the road to Egypt, and she was born before the walls (when they arrived in Egypt). As it is written [Num. xxvi. 59]: "Jochebed the daughter of Levi, whom (her mother) bore to Levi in Egypt." And why is she named daughter? Said R. Jehudah b. Zebidah: Infer from this that signs of youth returned to her. The wrinkles disappeared, the complexion became improved, and her beauty returned to her. But why is it written "he took"? It ought to read, "he remarried." Said R. Jehudah b. Zebidah: Learn from this that he did with her as if he were marrying for the first time: he placed her under a canopy. Aaron and Miriam sang before her and the angels said: "The mother of the children shall rejoice."

Farther on the Scripture mentions the daughters of Z'lophchod according to their age, and here according to their wisdom.* And this is a support to R. Ami, who said: In the college the most scholarly has preference to age; at a banquet, however, age is considered. Said R. Ashi: Even in college, only *he* who excels in wisdom; and also concerning a banquet, only *he* who is of advanced age is considered (but if one has little wisdom and little more age than the others it does not matter).

In the school of R. Ishmael it was taught: All the daughters of Z'lophchod were equal in wisdom (and that they are mentioned in the Scripture differently means nothing).

R. Jehudah in the name of Samuel said: It was permitted to them to marry any one of any tribe, as it is written [Num. xxxvi. 6]: "To those who are pleasing in their eyes may they

* [Num. xxvii. 1:] Mahlah, Noah, Chaglah, Milcah, and Thirsah, while on the occasion of their marriage, Mahlah, Thirsah, Chaglah, Milcah, and Noah are written.

become wives." But what is to be said of that which is written farther on: "Only to the family of their tribe," etc.? This is to be considered as a good advice—that they should marry respectable men only who were fit for them, and not as a positive commandment.

Rabba objected: It is written [Lev. xxii. 3]: "Say unto them . . . in your generations." (How is this to be understood?) Say unto them, who were at the mountain of Sinai; and to "your generations" means that the same law shall apply to "all their generations." But why should it be mentioned, "the parents and their children"? Because there were some commandments for the parents only, and some applying to children only. And what are the commandments to parents only? The law [Num. xxxvi. 8]: "And every daughter that inheriteth any possession," etc. And what are the commandments to the children? Many, as *e.g.*, heave-offering, tithe, and all others imposed upon the land of Israel.

We see, then, that the cited verse 8 prohibited marriage to other tribes at that time only? Rabba himself answered his objection: The daughters of Z'lophchod were not included in the commandments to the parents.

The master says: "The commandments belong to the fathers, but not to the sons. But whence is this deduced? From [ibid., verse 6]: 'This is the thing,' which means, 'This thing shall be customary only in their generation.' So said Rabha." Said Rabha the minor (Zuti) to R. Ashi: According to this, should Lev. xvii. 3, in which the same expression is used, also be "for their generation" only? And he answered: There it is different, as verse 7 reads plainly: "A statute forever shall this be unto them throughout their generations."

There is a Mishna in Tract Taanith, p. 80: "Never were any more joyous festivals in Israel than the 15th of Ahab and the Day of Atonement," etc. Why is the 15th of Ahab a festival? Said R. Jehudah in the name of Samuel: In their days the tribes were allowed to intermarry.

(Here is repeated from Taanith, pp. 91, 92, q. v.)

The rabbis taught: There were seven men who encompassed the whole world since its creation until now: namely, Mesushelach has seen Adam the first, Shem has seen Mesushelach, Jacob has seen Shem, Amram has seen Jacob, Achiah the Shiloni has

seen Amram; Elijah the prophet has seen Achiah, and the latter (Elijah) is still alive. But how can you say Achiah had seen Amram? Is it not written [Num. xxvi. 65]: "There was not left of them one man save Caleb and Joshua"? Said R. Hamnuna: The tribe of Levi was excluded from the decree that all should die in the desert. As it is written [ibid., xiv. 29]: "In this wilderness shall your carcasses fall, and all that were numbered of you, according to your whole number from twenty years," etc., excluding the tribe of Levi, of which the number was from thirty years. But did not the same happen to other tribes? Is there not a Boraitha that Jair and Machir, the sons of Manasseh were born in the time of Jacob, and did not die until after the entering into the land of Israel? Said R. A'hab. Jacob: In that decree, they who were less than twenty, and more than sixty years old, were not included.*

The schoolmen propounded a question: How was the land of Israel divided? Was it divided into twelve parts for twelve tribes (and for each tribe as a whole), or was it divided severally? Come and hear! [Num. xxvi. 56]: "According as they are many or few" (hence it was divided among the tribes and not severally). And there is also a Boraitha: "In the future the land of Israel will be divided among thirteen tribes," while in the past it was divided only among twelve; and it was also divided by money (the explanation will be given farther on); and it was also divided only "by lot" and by the Urim v'tumim, as it is written [ibid., 56]: "by the decision of the lot." How so? Elazar was attired in the Urim v'tumim. Joshua and all Israel were standing by, and an urn containing the names of the tribes, and another, and the names of the boundaries of the land, were placed there; and Elazar, influenced by the Divine Spirit, would say thus: "Zebulon will now come out from the urn, and with him the boundary of Akhu." And then one of the tribe of Zebulon would put his hand into the urn and draw the name of his tribe, and then put his hand into another urn and draw Akhu. And then again Elazar, influenced by the Divine Spirit, would say: Now Naphtali will come, and with him the boundary Ginousar. And so it was with each tribe. However, the division in the world to come will not be equal to the division of

* In the text it is deduced by analogies of expression, and omitted as of no importance.

land in this world, as in this world, usually, the lot of one is a field of grain, and of another, one of fruits; but in the world to come, every one will have a share in the mountains, valleys, and plains. As it is written [Ezek. xlviii. 31]: "The gates of Reuben, one," etc., which means that every one will have equal land and shares, and the Holy One, blessed be He, Himself will assign the shares. As it is written [ibid., 29]: "And these are their allotted division, said the Lord Eternal." We see, then, that the Boraitha states that in the past the division was twelve parts to the twelve tribes. Hence it was divided among the tribes and not severally. Infer from this that so it is.

The master said: The land of Israel will be divided among thirteen tribes. Who will be the thirteenth? Said R. Hisda: The prince of Israel will be the thirteenth. As it is written [ibid., 19]: "And the laborer of the city (*i.e.*, the prince who bears the yoke of the whole city), whom men of all the tribes will serve." * Said R. Papa to Abayi: But why not say that to the prince would be given a city or the like, but not a thirteenth share of all the land? † And he answered: This could not be borne in mind. As it is written [ibid., 21]: "And the residue shall belong to the prince, on the one side and on the other of the holy oblation, and of the possession of the city," etc. (Hence we see that a share was given to him by all tribes.)

The text says farther on: "It was divided by money." What does it mean? Shall we assume that he who had good land would pay to him who had inferior? Does the Boraitha treat of fools, who take money instead of good land? Therefore it must be said that money was paid by those who had shares near to Jerusalem to those who took their shares far from Jerusalem (nearness to Jerusalem being preferable, as it was nearer to the Temple and farther from the land of the natives, therefore in less danger than if near to them). And on this point the following Tana'im differ. R. Eliezer said that they were rewarded with money, and R. Joshua maintains that this reward was in land, as, *e.g.*, compared with where a saah can be sown nearer to Jerusalem they took five saahs.

* Leeser's translation does not correspond.

† The text has "Rungur." The Aruch explains this as two words of the Persian language: "Run" means "day," and "gur" means "hirer"; and accordingly Rashbam construes "day-hirer," which does not fit very well. We have therefore translated in accordance with R. Gershom.

It says farther on: "It was divided only by lots." There is a Boraitha, "except Joshua and Caleb." What does it mean? That they did not take any land at all? Is it possible? It is said above that they took the shares of the spies, etc. Hence they took what did not belong to them. So much the more what did belong to them. It means they did not take by lots, but by the decree of heaven. As it is written [Joshua, xix. 50]: "By the order of the Lord did they give him the city which he had asked—Timnath Serah on the mountain of Ephraim." And Caleb—as it is written [Judges, i. 20]: "And they gave Hebron unto Caleb as Moses had spoken." But was not Hebron one of the cities of refuge? It means the suburbs and villages around the city.

MISHNA IV.: A son and daughter are equal concerning inheritance. However, a son takes two shares of the estate of his father, but not of the estate of his mother; and the daughters are fed from the estate of their father, but not from that of their mother.

GEMARA: What does the Mishna mean by its statement that they are equal concerning inheritance? Shall we say that they inherit together? Is it not said above that the son and all his descendants have preference over the daughter? Said R. Na'hman b. Itz'hak: It means to say that they are equal concerning an estate which is not yet fit for division. But have we not learned also this: That the daughters of Z'lophchod took three shares from the estate of their father, and when Z'lophchod died the land was not yet fit for division? And, secondly, what does the expression "however" mean? Said R. Papa: It means to say that they are equal in taking the share of a first-born. It means that when a first-born died childless they took his share. But this also was already stated concerning Z'lophchod; because he was a first-born, a double share belonged to him, which his daughters inherited, and in reference to him also we do not know what the expression "however" means. Therefore said R. Ashi: It means to say that the son and daughter are equal; in case one has bequeathed to him or to her all his estate, his will must be executed. Is this in accordance with R. Johanan b. Beroka? This is said farther on by him: If one has bequeathed to them who are legal heirs, his words must be listened to? And even if one should say that our Mishna is in

accordance with R. Johanan, and the succeeding Mishna is in accordance with them who differ with R. Johanan, is it not a rule that in such a case the Halakha does not prevail with the anonymous Mishna? And still, what means the word "however"? Therefore said Mar b. R. Ashi: It means that the son and daughter are equal in all cases concerning inheritance, be it the estate of father or mother. However, there is a difference between them, that the son takes two shares from the estate of the father, but does not from the estate of his mother."

The rabbis taught: It is written [Deut. xxi. 17]: "To give him a double portion," which means a double portion as against one brother. But perhaps it means a double portion from all the estate, and should be discussed thus: His share, when he has five brothers, should be equal to that when he has only one. As in the latter case he takes two shares from the whole estate, so it should be with the former. On the other hand, it can be discussed thus: His portion, when he has five brothers, should be equal to that when he has only one brother, in this respect, that as in the latter case he takes twice as much as his brother, so it should be in the former case, that he takes twice as much as all of them. Therefore it is written [ibid., 16] "Among his sons, what he hath." We see, then, that the Torah treats of the inheritance as among all one's sons; hence we have to take the second supposition, and not the first. It is also written [I Chron. v. 1]: "And the sons of Reuben, the first-born of Israel, for he was the first-born; but when he defiled his father's bed, his birthright was given unto the sons of Joseph the son of Israel, so that the genealogy is not to be reckoned after the first birth." And it is also written [ibid., 11]: "For Judah became the mightiest of his brothers, and the prince descended from him; while the first birthright belonged to Joseph."

Now the case of the first-born is mentioned concerning Joseph, and also concerning generations; as in the case of Joseph, it was only twice as much as each of the brothers. As it is written [Gen. xlviii. 22]: "Moreover, I have given unto thee one portion above thy brothers." So also is it with the case mentioned as to generations, that the first-born should have only one portion more than his brothers. It is written farther on: "Which I took out of the hand of the Emorite with my sword and with my bow." Did he indeed take it with sword

and bow? Is it not written [Ps. xlv. 7]: "For not in my bow will I trust, and my sword shall not help me." ? Therefore we must explain that "with his sword" he means prayer, and "with my bow" supplication.

To what purpose was it necessary to cite all the verses? Lest one say that the cited verse in the above Boraitha is needed for R. Johanan's above theory; therefore the other cited verse, etc.

Said R. Papa to Abayi: How is it inferred from the last cited verse that Jacob gave Joseph twice as much as to all his brothers? Perhaps he presented to him only a like estate? And he answered: To thy question the Scripture says [Gen. xlviii. 5]: "Ephraim and Manasseh shall be unto me as Reuben and Simeon. (Hence we see that he had twice as much as his brothers, who each were counted as one tribe, and he for two.)

R. Helbo questioned R. Samuel b. Na'hmeni: What is the reason that Jacob took away the privilege of the first-born from Reuben and gave it to Joseph? You ask for the reason. Does not the Scripture state the reason: "When he defiled his father's bed"? I mean to say: Why did he give it to Joseph? And he rejoined: I will tell you a parable to which this case is similar: There was one who had raised an orphan in his house. At a later period the orphan became rich, and thought, I will recompense my benefactor (because Joseph supported his father in the years of famine, therefore he recompensed him). Said R. Helbo to him: And how would it be if Reuben had not sinned: then Jacob would have given nothing to Joseph? Thereto I shall tell you what R. Jonathan your master said concerning this: The first-born had to come from Rachel. As it is written [ibid., 37]: "These are the generations of Jacob. Joseph." But Leah was preferred by virtue of her prayers. Because of the very chastity of Rachel, the Holy One, blessed be He, returned it to her. And what were Rachel's virtues? As it is written [ibid., 12]: "And Jacob told Rachel that he was her father's brother, and that he was Rebekah's son." The brother of her father? Was he not the son of her father's sister? It was thus: He asked her whether she would marry him, and she said, Yea, but my father is very shrewd, and you cannot persuade him. And to the question: What does it mean? she answered: I have a sister who is older than myself, and my father will not give me

to you while she is not married. Then he said: I am his brother in shrewdness. She then asked him: Is it, then, allowed to the upright to be shrewd? And he answered: Yea; as it is written [II Sam. xxii. 27]: "With the pure thou wilt show thyself pure, and with the perverse thou wilt wage a contest." And then he furnished her with some signs, that when she should be brought to him he would ask her for these signs, that he might be sure that she was not exchanged for Leah. Thereafter, when Leah was brought to him instead of Rachel, the latter thought, Now Leah will be ashamed, and confided to her the signs. And this is what is written [Gen. xxix. 25]: "And it came to pass that in the morning, behold, it was Leah," from which it is to be inferred that until the morning he did not know that she was Leah, because of the signs which Leah received from Rachel.

Abba Halipha Qruyah questioned R. Hyya b. Abba: Of Jacob's children who came to Egypt in sum you find seventy; however, if you will number them in detail, you will find only sixty-nine. And he answered: There was a twin with Dinah. As it is written [ibid., xlv. 15]: "With Dinah his daughter." According to your theory there was a twin with Benjamin also, as the same expression was used? He said then: A valuable pearl was in my hand, and you were about to abstract it. So said R. Hama b. Haninah: This was Jochebed, whose mother was pregnant, and bore her before the walls (above, p. 263).

R. Helbo questioned again R. Samuel b. Na'hmeni: It is written [Gen. xxx. 25]: "And it came to pass, when Rachel had borne Joseph," etc. Why when Joseph was born? And he answered: Because Jacob our father saw that the descendants of Esau would become submissive to the descendants of Joseph only. As it is written [Obadiah, i. 18]: "And the house of Jacob shall be a fire, and the house of Joseph a flame, and the house of Esau a stubble." Helbo objected to him from [I Sam. xxx. 17]: "And David smote them from the twilight even unto the evening of next day," etc. Hence we see that they were submissive also to David, who was a descendant of Judah, and not of Joseph. Answered Samuel: The one who made you read the prophets did not do so with the Hagiographa, in which it is written [I Chron. xii. 21] * "And as he was going over to

* In the Hebrew Bible it is verse 21; in Leeser's, verse 20, because he put together verses 5 and 6.

Ziklag . . . captains of the thousands that belonged to Manasseh." Hence they were submissive to the descendants of Joseph. R. Joseph objected from [ibid., iv. 42 and 43]: "And some of them, even of the sons of Simeon, five hundred men, went to mount Seir, having at their head Pelatyah and Nearyah and Rephayah, and Uzziel, the sons of Yishi. And they smote the rest of the Amalekites that were escaped, and dwelt there unto this day." Said Rabba b. Shila: Yishi was a descendant of Manasseh. As it is written [ibid., v. 24]: And these were the heads of their family divisions: namely, Ephraim and Yishi."

The rabbis taught: "The first-born takes a double share in the shoulders, in two cheeks and the maw, in the consecrated things, and also in the improvement of the estate which was improved after the father's death. How so? If the father left them a cow which was hired to others, or she was pasturing on the meadow and she brought forth offspring, the first-born takes a double share. If, however, the heirs build houses or plant orchards, the first-born does not take a double share."

Let us see how was the case with the shoulders, etc. If already in the father's hand, it is self-evident; and if not when still alive, then it was not yet in existence; and there is a rule that a first-born does not take a double share in that which is fit, but not yet in existence? The Boraitha treats of a case where the priest has acquaintance among people who usually give such a gift to him only, and the cattle were slaughtered while the father was still alive. And the Tana of the Boraitha holds that the above gifts are considered separated immediately after slaughtering, although they were not as yet taken off. It states farther on: If the father left them a cow, etc. Let us see: It teaches that the first-born takes a double share, even when it was under the control of others. Is it not self-evident that so much the more does the rule apply when it was pasturing on the meadow under proper control? It comes to teach us that the case "hired out to others" should be equal to pasturing in the meadow in this respect, that the heirs not needing to feed it, the improvement came of itself; but not when the heirs fed it, as then the improvement would be considered as made by the heirs, of which no double share is given. And this Boraitha is in accordance with Rabbi of the following Boraitha: A first-born

does not take a double share in the improvement of an estate which was improved after the father's death. Rabbi, however, said: I say that he takes, provided the improvements came by themselves, but not if improved by the heirs.

When they inherited a promissory note, the first-born took a double share; and if there was left a promissory note from the father, the first-born had to pay a double share. If, however, he says, "I will not pay double and also not take a double share," he may do so. What is the reason of the rabbis? It is written [Deut. xxi. 17]: "To give him a double portion." We see that the Scripture considers this a gift; and a gift is not considered unless it comes to one's hand. The reason of Rabbi is, because it is written "a double portion." We see, then, that the Scripture equals this to an ordinary share; and as concerning an ordinary share it is considered belonging to the heir even before it reaches his hand, the same is the case with the double share.

Said R. Papa: In case the father left a small tree, and pending the time of inheritance it became large; or unmanured earth, which has improved by itself, all agree that a double share is given. In what they differ is, in a case where the father dies when the seeds are as yet growing, and at the time of dividing the inheritance had been made into sheaves; or date-trees were as yet blooming, and at the time of dividing bore dates. According to one, it is to be considered an improvement by itself; and according to the other, it is considered changed to another article, of which a double share is not to be given.

Rabba b. Hana in the name of R. Hyya said: If one has acted in accordance with the decision of Rabbi, the act is valid; and the same is when he has acted in accordance with the decision of the sages. And the reason is because R. Hyya was doubtful whether the Halakha prevails with Rabbi when he differs with an individual, or it is so even when he differs with a majority (as in this case a majority differs with him). Hence it cannot be considered a wrong act if one has acted according to one of the decisions. Said R. Na'hman in the name of Rabh: It is prohibited to act in accordance with Rabbi [as he holds that the Halakha prevails with Rabbi against an individual only]. R. Na'hman, however, himself maintains that it is permitted to act in accordance with Rabbi [as he holds that the Halakha pre-

vails with Rabbi even against a majority]. Said Rabha: It is prohibited to act in accordance with Rabbi to start with; however, if one did so, his act is valid [and his reason is, that in such a case where Rabbi differs with the majority, the college has to teach in accordance with the majority to start with, but it cannot compel the one who acted in accordance with Rabbi to ignore his act].

It was taught: R. Na'hman taught in the Mechilta and Siphre, it is written [Deut. xxi. 17]: "Of all that is found in his possession," means to exclude the improvement which was made by the heirs after the father's death, but not that which improved by itself. And this is in accordance with Rabbi. Rami b. Hama, however, taught in the above-mentioned books that it excludes that which improved by itself, and so much the more that which was improved by the heirs. And this is in accordance with the sages.

R. Jehudah said in the name of Samuel: A first-born does not take a double share in a loan. According to whom is it? It cannot be in accordance with the rabbis, as they exclude him even from an improvement which is under the heirs' control; so much less of a thing which is not under their control. It must then be said that this is in accordance with Rabbi. But then the Boraitha which states: "If they inherit a promissory note, the first-born takes a double share in the loan, as well as in the interest," will not be in accordance with both the rabbis and Rabbi. It may be that Samuel's statement is in accordance with the sages; and nevertheless he has to teach this, lest one say, because he holds the promissory note in his hand, it is to be considered as already collected, he comes to teach us that it is not so.

"A message was sent from Palestine, that he takes a double share in the loan, but not in the interest." According to whom is this? It cannot be in accordance with the rabbis, for the reason stated above; and also not in accordance with Rabbi, who states in a Boraitha that he takes a double share in the loan, as well as in the interest? It is in accordance with the sages; but the Palestinians hold that a note is considered as already collected.

Said R. A'ha b. Rabh to Rabhina: Amimar happened to be in our city, and lectured: "A first-born takes a double share

in a loan, but not in the interest thereof. And Rabhina answered: The Nahardeans are in accordance with their theory elsewhere (both Amimar and R. Na'hman were from Nahardea), as in such a case Rabba said that if the heirs recovered real estate on a loan of their father a double share is given, but not if they collected money. R. Na'hman, however, holds the reverse: A double share is given if money is collected, but not on real estate. Said Abayi to Rabba: There is a difficulty concerning your decision, and also concerning the decision of R. Na'hman. Concerning your decision, the reason of which is to be supposed that their father left to them not *this* money now collected, as he left a promissory note only; but why should it not be the same with the estate? Did, then, their father leave real estate to them? Moreover, you, master, said that the reason given by the Palestinians concerning the case of a certain old woman (stated farther on) seems to you a right one, and this certainly contradicts your present decision. And concerning R. Na'hman's there is also the same difficulty, as his reason must be that there is no double share from the collected estate, because they did not inherit it from their father: Why should it not be the same with money, as the collected money was not of the inheritance of their father. Moreover, did not R. Na'hman say in the name of Rabba b. Abuhu, that if orphans have recovered real estate for a debt to their father, and there was a creditor to whom their father was indebted, the creditor might take away the estate which they recovered? (Hence he (R. Na'hman) considers the recovered estate as if left by the deceased—why, then, should there not be given a double share?) Answered Rabba: There is no difficulty concerning my statement, nor concerning R. Na'hman's, as we both have pointed out only the reason of the Palestinians by which, according to my theory, a double share is given from real estate, but not for money; and to R. Na'hman's it is the reverse. But our own opinion is, that neither from real estate nor from money is a double share given.

What was the case of the old woman, mentioned above? There was one who wrote in his will: "My estate shall be given to my old grandmother, but after her death it shall belong to *my* heirs." The deceased had a married daughter, who died while her husband and the deceased grandmother were still

alive; and her husband, after the death of the old woman, demanded the estate of his father-in-law, which was in the hand of his grandmother. And R. Huna's decision was: His claim is right, as the will states, "After her, my heirs shall inherit it," which is to be explained, "My heirs, and the heirs of my heirs." R. Anan's decision, however, was: His claim is not to be considered, as the will states, "to *my* heirs," and he was not his heir, but the heir of his daughter. And the Palestinians sent a message: The Halakha prevails with R. Anan, but not for his reason, as, according to his reason, even should his daughter leave a son, he would also not inherit; and this is not so, as the reason why the husband could not inherit is, that the law that the husband inherits from his wife holds good only when she left real estate, but not such an estate as was not as yet in her hands, but to come, which is not the case with a son, who inherits this also.

But shall we assume that R. Huna holds that one may inherit even an estate which was not as yet in the hands of his wife? Said R. Elazar: This case was discussed by great men, and the final decision, with its reason, will be rendered by a small man like my humble self. Every one who says "after thee" is to be considered as if he were to say "from to-day" (*i.e.*, the above will states "after her," which means the estate shall belong to "my heirs from to-day, but they are not to use the products so long as the old woman is alive"). Rabba, however, said: It seems to me that the reason given by the Palestinians is good as, according to that will, if the old woman should sell the estate, the sale would be valid.

R. Papa said: The Halakha prevails that a husband does not inherit a property which was to come in the future to his wife, and the same is the case with a first-born. He—the first-born—also does not take a double share in a recovered loan, in real estate or money; and, furthermore, if the first-born owes money to his father, the share which belongs to a first-born is to be divided, half to himself and the other half to his brothers. (The reason is, according to Rashbam, because this share is considered doubtful money, as it is not certain that the first-born is to be considered an occupant with respect to it, the supposition being that he has mortgaged all his estate for this debt to his father for the purpose that, in case of his father's death, he should take a double share. And there is a rule that doubtful

money is to be divided. And according to Gershom, the reason is because this loan is not to be compared with the loan of a stranger, as he who is an heir is also an occupant with respect to this debt, and this gives him title to a half of the share in question.)

Said R. Huna in the name of R. Assi: If the first-born protests when his brothers come to improve the estate left by their father, saying: "They shall delay improvement until after division," this protest must be considered in case they have not listened to him, and he takes a double share in the improvement also. Said Rabba: The decision given by R. Assi seems to me right in case, *e.g.*, they inherited vines, and the improvement was by gathering the grapes from the vines; or they inherited olives, and took them off from the trees: but if they made wine or oil thereof, the protest is not to be considered. R. Joseph, however, maintains: Also in the latter case, it is to be considered. Why? They inherited grapes, and now it is wine! As R. Uqba b. Hama said elsewhere: It means he shall receive a double share of the value of the grapes. The same is the case here. *I.e.*, if it happened that the vine was of less value than the grapes, he might claim his double share in the grapes, as he has protested that wine be not made of them. And where did Uqba say this? In reference to the statement of R. Jehudah in the name of Samuel, that if a first-born and his brother have inherited vines or olives, and gathered them, the first-born takes a double share of them, even when they were pressed. Pressed! Were they not first grapes, and now wine? Mar Uqba b. Hama explained that it means that the first-born receives his full double share of the value of the grapes, as explained above.

R. Assi said: If, at the dividing, the first-born took an equal share with his other brother, it is to be considered that he has relinquished his right. R. Papa in the name of Rabha said: He has relinquished his right in the divided estate only. R. Papi in the name of Rabha, however, said: It is to be considered that he has relinquished his right on all the estates. The reason of the former is because he holds that the first-born has nothing until the estate is divided. Therefore he can relinquish his right only in the divided ones. And the latter holds that as soon as the father dies the double share belongs to the first-born, even before division. And therefore, as he has relinquished his right

in the divided estate, so has he done with all others. Both statements, however, were not said by Rabha plainly, but were inferred from the following act: There was a first-born who sold all the estate belonging to him and his brother. The orphans of his brother were going to eat dates of the estate belonging to their father, which was in the possession of the buyers, who struck them. Their relatives said to the buyers: It is not enough for you that you have bought their estate without the consent of the father and the orphans, you dare to strike them. And the case came before Rabha, who decided that the act of the first-born was null and void. R. Papi explained that it means he did nothing with the share belonging to the ordinary brother, but concerning his own share, the sale was valid; and R. Papa explained the decision of Rabha, that the whole sale was null and void, because the first-born had nothing in the estate before it was divided.

A message was sent from Palestine: If a first-born sold out before division, he did nothing. Hence they hold that the first-born had nothing before the division. The Halakha, however, prevails that he has. Mar Zutra of Drishba had divided a basket of pepper with his brothers, and took an equal share, though he was a first-born; and when the case came before R. Ashi, he decided that as he relinquished his right concerning the pepper, it was also relinquished on all other property.

MISHNA V.: If one said in his will, "My son so and so, who is a first-born, shall not take a double share," or, "My son so and so shall not inherit at all with his brothers," he said nothing, as this provision is against the law in the Scripture. If, however, he has divided all his goods in his verbal will, and to some of his heirs he has bequeathed more and to some less, also equalizing the first-born, his will is valid, provided he has not mentioned in his will the word "inheritance." But if he said "because of inheritance," it is not to be considered. If there was a written will in which, in the beginning, middle, or end, was mentioned "a gift," all that it contains is to be listened to.

GEMARA: Shall we assume that our Mishna is not in accordance with R. Jehudah, who said in Tract Kedushin that a condition against the law in the Scripture, if in money matters, may be listened to? This Mishna can be even in accordance with him, as in that case the woman was aware of the law, but

relinquished her right. In our case, however, no one has relinquished.

R. Joseph said: "If one said in his will, 'My son so and so is *my* first-born,' he takes a double share. If, however, he said, 'My son so and so is a first-born,' he does not, as perhaps it was meant he was a first-born to his mother." There was one who came before Rabba b. b. Hana as a witness that he was certain so and so was a first-born. And to the question: Whence do you know it? he answered: Because his father called him "the first-born fool." And he said: This is no evidence, as people used to name a first-born to his mother first-born fool (*i.e.*, a first-born without right).

It happened that another came before R. Hanina as a witness for a first-born, and to the question: Whence do you know it? he answered: His father used to say, "Go to Sh'kh'at my son, who is a first-born, whose spittle cures eyes." But perhaps he meant a first-born to his mother? There is a tradition that a first-born of the father cures, and a first-born to his mother does not.

R. Ami said: If born *αρχητος*, and after perforation found to be a male, he does not take a double share, as it is written [Deut. xxi. 15], "first-born son," which means a son when born. R. Na'hman b. Itz'hak said that also the law of *ibid.*, *ibid.* 18 does not apply to him. Amimar said: Such is not considered an heir at all, so that his share is not to be reckoned, and does not diminish the double share for the first-born. R. Shezby said: He must also not be circumcised on the eighth day. And R. Shrabyah said: The law [Lev. xii. 2] does also not apply to such (as in all the cited verses it reads a son or a male child). Said Rabha: There is a Boraitha in accordance with R. Ami: It is written a son, but not *αρχητος*; a first-born, but not a doubtful one. What does the latter part mean to exclude? That which Rabha lectured: If two wives of one have born two sons in a secret place which was dark, and it is not known who was born first, they may write a power of attorney each to the other (*i.e.*, if I am the first-born, I authorize you to take the double share for me; and if you are, then take it for yourself. And then one of them collects the double share and divides it with the other. Said R. Papa to Rabha: But did not Rabbin send a message: I have questioned all my masters about the law

in this case, and could get no answer from any of them; but it was said in the name of R. Janai that if they were recognized, and afterward they were mixed up again, then the stated power of attorney is to be written, but not otherwise. Then Rabha took an interpreter and announced in college: That which I said in my first lecture was an error, as in the name of R. Janai was said thus: That if they were already recognized and afterward mixed, then the above-mentioned power of attorney should be given to each by the other, etc.

The inhabitants of a village situated in a meadow sent the following question to Samuel: Master, teach us where it was certain to the people that so and so, from the children of so and so, was a first-born. Their father, however, said that another was the first-born. How is the law? And his answer was: They should write the above-mentioned power, one to the other.

According to whom was Samuel's decision? If he holds in accordance with R. Jehudah, let him say so; and if in accordance with the rabbis, let him say so? He was in doubt according to whom the Halakha prevails. And wherein is their differing? The following Boraitha: It is written [ibid., ibid. 17]: "Shall he acknowledge," which means, he shall introduce him to others (which is superfluous, this being already written in the previous verse). From this said R. Jehudah: One is to be trusted if he testifies, "This is my first-born son." And as he is trusted concerning a first-born, so is he also to be trusted to testify, "This is a son of a divorced woman," and of lost priesthood. The sages, however, say that he is not trusted. Said R. Na'hman b. Itz'hak to Rabha: According to R. Jehudah's theory, the above-cited verse is right; but according to the rabbis, to what purpose is it written? That in case of a doubt the father's acknowledgment is needed (but in a case of certainty to the people that one was a first-born, the father is not trusted in denying it). But to what does such a law apply? If concerning a double share, even if he was not a first-born, has the father not a right to bequeath him a double share in the manner of a gift? It means, in case the father acquired estates after acknowledgment (i.e., if he is to be trusted, the acknowledged first-born takes a double share; and if not, he does not). But according to R. Meier, who said that one may grant a thing

not yet in existence, to what purpose is the above verse written? If property came to him while he was struggling with death.

The rabbis taught: If one was known to the people as a first-born, and his father said of another, that he was the first-born, he is to be trusted; and if one was known to the people as not a first-born, his father, however, testifying that he is, he is not to be trusted. The first part is in accordance with R. Jehudah, and the latter with the rabbis. R. Johanan said: If he has testified, "He is my son," and thereafter said, "He is my bondsman," he is not to be trusted. If, however, he testified, "He is my bondsman," and thereafter, "He is my son," he is to be trusted; as the first testimony is to be considered as if he should say, "He serves me like a bondsman." The reverse is the case when at the house of taxes. If he said before the officers, "He is my son," and afterwards, "my bondsman," he is to be trusted, as the first statement was to avoid the payment of taxes for his slave; but if he said before the officers, "He is my bondsman," and thereafter, "my son," he is not to be trusted. An objection was raised from the following: If he has served him like a son, and he acknowledged him as such, and thereafter he said, "he is my bondsman," he is not to be trusted; and the same is the case if he has served him like a bondsman, and was acknowledged by him as such, and thereafter he said, "He is my son": he is not to be trusted. (Hence this contradicts R. Johanan.) Said R. Na'hman b. Itz'hak: The Boraitha treats of when he was called "the slave who costs me a hundred zuz," and such a thing a father would not say of his son.

R. Abba sent a message to R. Joseph b. Hama: If one says, "You have stolen my slave," and the defendant says, "I have not," and to the question, "What, then, is he doing with you?" the defendant answers, "They sold him to me," or "gave him to me as a present; and if you wish, take an oath that it was not so, and then you can take him." And if the plaintiff did so (although, according to the law, the plaintiff had no right to take him with an oath, and for the defendant no other evidence or oath is necessary, if he would not say so), the defendant has no right to retract from his previous words.

What news came he to teach us? This we have already learned in a Mishna (Sanh. III., 2)? He comes to teach that

the differing of R. Meier and the sages is in a case equal to our case, and the Halakha prevails in accordance with the sages.

The same R. Abba sent a message to the same R. Joseph: The Halakha prevails that a creditor may collect from bondsmen belonging to orphans for their father's debt. R. Na'hman, however, said: He must not.

The former sent another message to the same: The Halakha prevails that to a second-cousin a third-cousin may be a witness (according to the law, relatives must not be witnesses, and Abba comes to teach that a third to a second-cousin, which means a great-grandson to a grandson, is not considered a relative in this respect). Rabha, however, said: The third-cousin is competent as a witness even to the first-cousin. Mar. b. R. Ashi had accepted a grandfather as a witness: the Halakha, however, does not prevail with him. The same sent another message to the same: If one can witness about an estate, and he became blind, he is no longer competent as a witness in the case. Samuel, however, maintains that he is, as it is still possible for him to mark the boundaries; but concerning a garment, he is not. R. Shesheth, however, maintains that even in case of a garment he is still competent, as he may mark the width and the length of the garment; but not in a piece of metal. R. Papa, however, maintains that even in such a case he is still competent, as he may be aware of the weight.

An objection was raised: If one were cognizant of a case before he became a son-in-law to one of the parties, and the case came before the court after he became a son-in-law; or he was cognizant of the case when he was still in good health, and afterward became dumb, blind, or insane, he is not competent as a witness. But if he was cognizant of the case before becoming a son-in-law, and thereafter married a daughter, but she died before the case came before the court; or he was in good health when he became cognizant of the case, and also when it came before the court, but in the time between he became dumb, blind, etc., and cured, he is fit to be a witness. This is the rule: If in the beginning or the end of the case he was not competent, his testimony is not to be considered; but if he was competent both at the beginning and the end, but not in the time between, his testimony holds good. This opposes

the statements of all the Amoraim as above, and the objection remains.

R. Abba sent another message to R. Joseph b. Hama: If one say, "Of one child among the others," he is to be trusted. R. Johanan, however, says: He is not. What does this mean? Said Abayi: If one says, "This child shall inherit all my estates," he is to be listened to in accordance with R. Johanan b. Beroka. R. Johanan, however, says: He is not to be listened to, in accordance with the rabbis. Rabha, however, opposed: Does the message say he shall or shall not "inherit"? It says "trusted." Therefore he explained it thus: "If one testifies to one child among his children that *he* is the first-born, he is to be trusted, in accordance with R. Jehudah. R. Johanan, however, says: He is not to be trusted, in accordance with the rabbis. The same sent another message to the same. If one said in his will, "My wife shall take an equal share in my estates with one of my sons," he is to be listened to. Said Rabha: It holds good only concerning the estate in possession when the will was made, but not concerning the estate bought thereafter, and also that she takes an equal share with one of his children at the time of dividing (*i.e.*, if his children increased in number after the will was made, she takes her share accordingly, but not according to the number of children at the time the will was made). The same sent another message to the same: If one holds in his hands a promissory note, saying, "Nothing was paid," but the borrower say, "The half is paid," and witnesses testify that the whole amount is paid, the borrower has to take an oath that he paid the half, and then the lender may collect the other half from unencumbered, but not from encumbered estate, as the people by whom the estate is encumbered may claim, "We rely upon the witnesses that the whole amount is paid." And even according to R. Aqiba (Middle Gate, p. 5), the borrower may be considered as one who returns a lost thing—that is, if there are no witnesses; but if there are, R. Aqiba also admits that a half must be paid, as it is to be supposed that the borrower has admitted the half when he has seen that there are witnesses, and he did not know whether they were for or against him, and therefore he admitted a half. Mar. b. R. Ashi opposed: Even in accordance with R. Simeon b. Elazar, who said that the admission is to be considered, as an admission in part, to which an oath is

given biblically, it is only when there are no witnesses who support him; but not in this case, where witnesses support him: he is certainly considered as if he returned a lost thing. Mar Zutra in the name of R. Simeon b. Ashi lectured: The Halakha prevails in accordance with all messages that were sent by R. Abba to R. Joseph b. Hama. Said Rabbina to R. Ashi: But does not R. Na'hman oppose one of the above messages (and there is a rule that the Halakha prevails with R. Na'hman concerning money matters)? And he answered: We read the above message: It must not be collected; and so also said R. Na'hman. If so, what does Mar Zutra mean to exclude by his statement that the Halakha prevails with all the messages? It cannot mean Rabha's above statement, as he does not oppose, but explain; and also not Mar b. R. Ashi's, who said that a grandfather is competent as a witness. It is already said there that the Halakha does not prevail with him. And should we say that it means to exclude Samuel's, R. Shesheth's, and R. Papa's concerning witnesses who were not competent at the time the cases came before the court, they also were already objected? Therefore, we must say he came to exclude R. Johanan's statement, and the opposition of Mar b. R. Ashi as above.

"If it was mentioned in the beginning," etc. How is this to be illustrated? When R. Dimi came from Palestine, he said in the name of R. Johanan: "There shall be given such and such a field to so and so, who shall inherit it"—this is considered as if "gift" were written in the beginning. "So and so shall inherit such and such a field, and it shall be given to him"—this is a gift in the end. "He shall inherit, and it shall be given to him to inherit"—this is considered "gift" in the middle. This, however, is if there were one man and one field—i.e., "Such and such a field shall be given to A, and he shall inherit"; but if it was written, "The field on the east side shall be given to A, and he shall also inherit such on the west side," that concerning which inheritance is mentioned is not to be considered, as it is against the biblical law. The same is the case where there was one field and two persons, as, e.g., "A shall inherit a half of such and such, and the other half be given to B." R. Elazar, however, maintains: The law holds good even in the latter cases, but not when there are two fields and two persons. When Rabbin came from Palestine,

he said: "If one wrote, 'The field on the east side shall be given to A, and B shall inherit that on the west side'—according to R. Johanan, title is acquired, and according to R. Elazar it is not. Said Abayi to him: Your saying is right concerning R. Elazar, as he said above that when there are two fields and two persons the will is not to be considered; but it contradicts R. Johanan's above statement. And he answered: R. Dimi and I differ in the statement which was made in the name of R. Johanan. Resh Lakish, however, maintains that title is not acquired unless it is stated plainly, 'A and B shall inherit such and such fields which I have presented to them as a gift.' Then they should inherit (*i.e.*, as this will speaks about two persons, "gift" must be mentioned twice, so that it should constitute a gift for each of them). However, in this case the Amoraim still differ. R. Hamnuna maintains that the will in question holds good only as to one person and one field, but not as to one person and two fields, or *vice versa*. R. Na'hman, however, said that it holds good even as to one person and two fields, or *vice versa*; but not as to two persons and two fields; and R. Shesheth maintains that it holds good even in the latter case.

Come and hear an objection from the following: "My estates shall belong to you, and after you so and so shall inherit, and after him so and so shall inherit. If the first heir dies, title is given to the second; if the second dies, title is given to the third; but if the second dies while the first is still alive, the estate must be turned over to the heirs of the first one." Now, is not the case in that Boraitha equal to two fields and two men, and nevertheless it states that title is given? And lest one say that the Boraitha also treats of a case in which the persons mentioned are all direct heirs of the testator, and it is in accordance with R. Johanan b. Beroka's statement said above, then how is to be understood the latter part: "If the second dies, title is given to the third"? Did not R. A'ha b. R. Ivia send a message that in accordance with R. Johanan b. Beroka, if one says, "My estates shall belong to you, and after you to so and so," if the first was a direct heir, the second has nothing in the estate, as the expression is not to be considered as a "gift," but as an "inheritance"? And there is no interruption concerning an inheritance (*i.e.*, an inheritance cannot be halved so that a half of the inheritance shall belong to the direct heir and the other

half to the second, and also cannot be interrupted by the death of the regular heir, but is to be inherited by his heirs). Hence the Boraitha is an objection to the statements of all the Amoraim mentioned above, and so it remains.

Shall we then assume that it also objects to Resh Lakish's statement (*i.e.*, that the Halakha does not prevail with him)? How can this be imagined? Did not Rabha say that the Halakha prevails with Resh Lakish in certain three things, one of which being his statement made above? This presents no difficulty. The Boraitha cited speaks of when it was said in one speech (*i.e.*, there was no interruption between the words, "My estate shall belong to you, and after you," etc. It is therefore to be supposed that at the time he gave title to the first he also gave it to the second; and therefore all of them acquire title). But Resh Lakish treats of when it was said *with interruption* (*i.e.*, the statement of Resh Lakish that if there were two men and two fields title is not given, means that he said first, "This field shall be given to them," and after deliberating he said again, "shall inherit such a field," etc. Then the word "given" cannot be considered, in case of this other, and therefore title is not given). The Halakha prevails that all that is said in one speech is valid, except as to idolatry (*i.e.*, if one said this shall be for the idol, and without any interruption he said for something else, the thing in question is prohibited: because of the rigor as to idolatry, the first word which was spoken is considered). And the same is the case concerning betrothing—the first word is considered and the following is not, although it was in one speech.

MISHNA VI.: If one says: "A (who is a stranger to him) shall inherit my estate," and he has a daughter, or, "my daughter shall inherit," though he has a son, he said nothing, as the provision is against the biblical law. R. Johanan b. Beroka, however, maintains that if he has bequeathed to such persons as are fit to be his heirs, his will must be listened to; but if the persons are not fit to be his heirs, it is not to be considered.

GEMARA: From the expression of the Mishna, to a stranger instead of his daughter, or to the daughter instead of a son, it is understood if it was one daughter among others, or one son among others, he may be listened to. How, then, as to the latter part? R. Johanan b. Beroka said: If the persons

were fit to be his heirs, etc. Is this not the same as what the first Tana said? And lest one say that R. Johanan holds that even in the former case his will is valid, this cannot be, as the following Boraitha states: R. Ishmael the son of R. Johanan said: My father and the sages do not differ as to when one has bequeathed to a stranger instead of his daughter, or to his daughter instead of his son—he is not to be listened to; and wherein they do differ is, if he had bequeathed to one son or to one daughter among others, where according to my father his will is valid, and according to the sages it is not. (Hence there is a difficulty in understanding the expression of the Mishna?) If you wish, it may be said that because R. Ishmael found it necessary to say that they do not differ, there must be one who said that they do; and this was the first Tana. And if you wish, it may be said that the whole Mishna is in accordance with R. Johanan b. Beroka. But it is not complete, and should read thus: If one said: “A shall inherit my estate instead of my daughter,” or “My daughter instead of my son,” he said nothing. If, however, “My daughter so and so shall inherit my estate instead of my other daughters,” or “my son instead of my other sons,” he may be listened to; as R. Johanan b. Beroka declares that if he has bequeathed all his estate to him who is one of his direct heirs, his will is valid.

Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Johanan. And so also said Rabha. And he added: What is the reason of R. Johanan b. Beroka? [Deut. xxi. 16]: “Then shall it be, when he divideth as inheritance among his sons what he hath,” means that the Torah gave permission to the father to bequeath his estate to whichever of his sons he pleased. Said Abayi to him: This may be inferred from “that he shall not institute the son of the beloved as the first-born before,” etc. We see that this is said only about the first-born, but not about the other sons. Nay, the latter is needed in addition to what we have learned in the following Boraitha: Aba Hanan in the name of R. Eliezer said: To what purpose is it written, “that he shall not institute,” etc.? Because from the beginning of the verse it is deduced that permission is given to a father to bequeath his estate to whom he pleases. And one may discuss thus: An ordinary son has the privilege to take his share in the estate which is not yet fit for division as if it

were already fit, and nevertheless his father has the permission to ignore him; a first-born, who has no such privilege, so much the more he could be ignored. Therefore it is written, "He shall not institute," etc. But let the Scripture read, "he shall not institute," *only*. Why the first half of the verse? Because one may discuss thus: a first-born, who has not the privilege to take his double share from that which is not yet fit, has nevertheless the privilege that he cannot be ignored by his father. An ordinary son, who has the privilege, so much the more he should not be ignored. Therefore the beginning of the verse, from which we infer that the father is permitted to bequeath his estates to whom he pleases, was necessary.

Said R. Zrika in the name of R. Ami, quoting R. Hanina, who said so in the name of Rabbi: The Halakha prevails in accordance with R. Johanan b. Beroka: Said R. Abba to him: He did not say so, but he decided so in a case (which came before him.) And what is the difference? One holds preference is to be given to a statement (*i.e.*, if he states that so the Halakha prevails, it is a teaching forever; but if he was only acting so, it may be said that it was only according to the circumstances and we cannot take it for a rule forever). And the other holds that the preference may be given to an act.

The rabbis taught: A Halakha must not be taken for granted from a discussion or from an act, as one has no right to act unless he is told to do so. If he questioned his master and he told him such and such a Halakha is to be practised, then he may go and act so, provided he does not compare one case to another. But do we not compare one thing to the other in the laws of the Torah? Said R. Ashi: It means to say that he must not compare one thing to the other in the law of dietary (*i.e.*, an animal which is fit for eating biblically, if it has such a sickness that it cannot live twelve months, it must not be used). In Tract Chulin the diseases are enumerated, but such diseases as are not enumerated there are discussed whether in connection with lawful use or otherwise. And it is said that in such cases no comparison is to be taken in consideration unless known by tradition. As we have learned in a Boraitha, one must not say, concerning *Trepheth* (sickness which makes the animal illegal): This is similar to this. And one should not be surprised, as, if one cuts a piece of the animal from one side, it

may remain alive; and from another side, and it dies immediately.

R. Assi questioned R. Johanan: "If you, master, declare a Halakha to us, saying that such is the law, may we practise accordingly? And he answered: You shall not practise unless I tell you that such is for practice. Said Rabha to R. Papa and to R. Huna b. R. Joshua: If it should happen that my written resolution in a judgment should come to your hands, and you should see some objection concerning it, you shall not tear it before seeing me; for if I should have some reason to approve it I will tell you, and if not I will retract from it. But if the same should happen after my death, you shall not tear it, and at the same time you shall not take it for an example for other cases. You shall not tear it, because, if I were alive, probably I would approve it by a good reason; and shall not take it for an example, as a judge has to act only according to his conviction and to that which he sees with his own eyes.

Rabha questioned: How is it when one bequeaths his estates to one son among others, while he is still in good health? Shall we assume that R. Johanan b. Beroka's statement is concerning a sick person only, to whom the above-cited passage may apply, but not concerning one who is in good health (when it is not usual for one to divide his estate), or it does not matter, and one may bequeath his estate when he pleases? Said R. Mesharshia to him: Come and hear the following: R. Nathan said to Rabbi: You have taught the following Mishna: If one has not written in the marriage contract, "Male children borne of you by me shall inherit the amount mentioned in your marriage contract in addition to their share among their other brothers," he is nevertheless responsible in this respect, as this stipulation is made by the Beth Din (court). And Rabbi answered him: It is to be read in that Mishna, instead of "inherits," they shall "take" (which means a gift, and to this all agree that the father has a right). Thereafter, however, Rabbi said: My youth made me presume to contradict Nathan the Babylonian, as I see now—from the law that male children cannot collect their mother's marriage contract from encumbered estate—that Nathan, who declared the expression of the Mishna to be "inherited" was right, as if the expression were as I declared, why, then, should they not collect from encumbered estates also?

(Hence we see that one even in good health has the right to bequeath, etc., as the Mishna treats of one entering into marriage.) And who is the one who holds that one may give the preference to one of his sons among others, if not R. Johanan b. Beroka? Hence there is no difference if he does it while sick or in good health. Infer from this that so it is.

Said R. Papa to Abayi: Let us see. According to both, no matter if the expression in the Mishna is "inherit" or "take," why should this hold good? Is there not a rule that one cannot grant to some one a thing which is not as yet in his hands? And even according to R. Meir, maintains that one *may* do so, it is when the thing is in existence, but not as yet in his hands. Here, however, concerning the marriage contract the male children are not at all in existence, and in such a case even R. Meir admits that one cannot. And if the answer to this question should be: When the court made a stipulation, it is different. Say then that only in a case where the stipulation of Beth Din holds, one can write so, even when he is in good health, but not otherwise? And Abayi answered: After all, it may be inferred that the Halakha prevails in accordance with R. Johanan b. Beroka, from the expression "inherit," as it could state "take" to which there is no opposition; and the choosing of the expression "inherit" shows that it agrees with R. Johanan. Thereafter, however, said Abayi: "What I said above is incorrect, as there is another Mishna: If one has not written in the marriage contract, 'The female children whom you will bear by me shall remain in my house after my death, and shall be fed from my estates until they shall marry,' he is nevertheless responsible, as this is a stipulation of the Beth Din." Now we see that the two statements which ought to be written in the marriage contract are in one case because of inheritance and in the other because of a gift; and in such a case even the opponents of R. Johanan admit that it is lawful. Said R. Nihumi, according to others R. Hananiah b. Minumi, to Abayi: But how do you know that one Beth Din has enacted both the stipulations mentioned above? Perhaps they were enacted by two different Beth Dins?

R. Jehudah in the name of Samuel said: If one bequeath all his estates to his wife, it is to be considered that he makes her a guardian only. It is also certain that if he did so to his elder

son, he is considered a guardian only. But how is it if he has bequeathed all his estates to his younger son? It was taught: R. H'nilai b. Aidi in the name of Samuel said that the same is the case even when his younger son was in his cradle.

It is certain that if one allot in his will an estate to a son and a stranger, the son is considered a guardian and the stranger acquires title to that which is bequeathed to him as a gift. The same is the case if to his wife and a stranger. It is also certain that when he had bequeathed his estates to his bride who was betrothed (and yet not married), or to his divorced wife, that it is a gift and they acquire title. The schoolmen, however, were doubtful when he did so to his daughter if there were sons, or to his wife if he left brothers; and also to his wife, who had no children, but stepsons. Shall we assume that he appointed any one of them as guardian only, for the purpose that she should be respected by the heirs as long as she lived, or he made them a gift and they acquire title to the estate. Said Rabhina in the name of Rabha: The women mentioned above do not acquire title, as they are considered guardians; except the bride and also his childless wife if she is together with her stepsons. and therefore acquire title). R. Avira, however, said in the name of the same authority that all the above-mentioned women acquire title except his childless wife, if he left brothers; and also his childless wife if she is together with her stepsons.

(All that is said above treats of a will by a sick man?) Rabha questioned: How is it if this was done by one while in good health? Shall we assume that the above verse applies only to a sick man, whose last will must be respected, or the same is the case with one in good health, as for this purpose he so acted that his words should be respected from that day? Come and hear: If one writes the products of his estates to his wife, and thereafter he dies, she may collect her marriage contract from the estate itself. If he writes her a part of the estate—a half, a third, or a quarter—she may collect her marriage contract from the remainder. If, however, he had presented to her all his estates, and thereafter a creditor came holding a promissory note from the deceased, according to R. Eliezer the deed of gift shall be annulled and she shall remain by her marriage contract. The sages, however, maintain, on the contrary: The marriage contract shall be annulled and she shall remain by the

deed of gift (as it may be supposed that she has relinquished her right in the marriage contract because of the gift she has received). Should, however, evidence be brought that the gift was not lawful, she remains shorn on both sides of the head. R. Jehudah the baker told that such a case happened with his sister's daughter, who was a bride; and the case came before the sages, and they decided that her marriage contract should be annulled and she should remain by her deed of gift. And thereafter the latter, for some reason, was also annulled, and she remained shorn on both sides of the head. We see, then, that if it were not for the creditor with his note, title would be given to her. Now, how was the case? Shall we assume that it was by a will from a sick man? Is it not said above that she is considered a guardian only? We must then say that it was by one in good health. Hence Rabha's question can be decided affirmatively. Nay, it may treat of a will by a sick man; and, according to R. Avira, it can apply to all the women mentioned above, and according to Rabhina's explanation it may apply to a bride and a divorced wife. Said R. Joseph b. Minumi in the name of R. Na'hman: The Halakha prevails that the marriage contract shall be annulled as the sages declare. Shall we assume that R. Na'hman does not hold the theory of supposition? Have we not learned in the following: If one's son went to the sea countries, and was thereafter reported dead, and he in consequence bequeathed all his estates to some one else, the gift is valid, even if his son were alive and returned. R. Simeon b. Menasia, however, maintains that the gift is null and void, as if he were aware that his son was still alive he would not do so; and R. Na'hman said that the Halakha prevails with the latter. (Hence we see that R. Na'hman holds the theory of supposition.) Yea, his decision that the marriage contract should be annulled is also because of a supposition—that for the pleasure she has in announcing that her husband presented to her all his estates she has relinquished the right to her marriage contract.

There is a Mishna (Peah, III., 10): "If one has bequeathed all his estates to his sons, but has left to his wife a small portion of ground, she loses her marriage contract." How is this to be understood—because he gave her a parcel of ground, she lost her marriage contract? Said Rabh: It means when he made the ceremony of a *sudarium*, to give title to his sons with

her garment (*i.e.*, as she has given her garment for the purpose of dividing all his estate among his sons, it is to be supposed that she agreed to this act without any objection concerning her marriage contract). Samuel, however, maintains that it is sufficient if he did so in her presence and she kept silent (as if this were against her will she would protest). R. Jose b. Hanina, however, maintains: It speaks of when he said to her, "Take this ground instead of your marriage contract." And the Boraitha teaches that concerning a marriage contract it is more loosely constructed than for other creditors, as the latter do not lose their right unless they say plainly, "We relinquish our right," while concerning a marriage contract it is sufficient that she does not protest. There is an objection from a Mishna in Khethuboth: R. Jose said: "If she has accepted, although he wrote nothing, she has lost the right of her marriage contract." From which it is to be inferred that according to the first Tana the accepting is not sufficient unless he writes. Hence he requires both writing and accepting. And lest one say that all of the Mishna in question is in accordance with R. Jose (*i.e.*, if he wrote her a small parcel of ground, she loses her right). And R. Jose adds that the same is the case if she accepted, although it was not written. This cannot hold good, as there is a Boraitha in addition to that Mishna: Said R. Jehudah: All this holds good when she was present and had accepted; but if she accepted and was not present, she lost nothing of her right in the marriage contract. Hence this Mishna is an objection to all the Amoraim mentioned above, and the objection remains.

Said Rabha to R. Na'hman: In the case in question we have heard the opinions of Rabh, Samuel, and R. Jose. Now I would like to know what is the opinion of you, master. And he answered: I am of the opinion that as soon as he made his wife a sharer with his sons (*i.e.*, at the time when he bequeathed his estates to his sons and set aside a piece of ground for her), she lost her marriage contract. (Provided she had not protested, as R. Na'hman holds with Samuel that if she kept silent it was sufficient.—Rashbam.) And so also it was taught by R. Joseph b. Minumi, in the name of R. Na'hman. Rabha questioned: How is it in a similar case when one is in good health? Shall we say only when he was sick, and she was aware that he had no other estates, therefore she relinquished? But when he was

still in good health she might think, "Why should I relinquish my right—he may in the future buy some other estates?" Or, on the other hand, having seen that he divided all his estates, she renounced her hope and relinquished? This question remains undecided.

There was one who wrote in his will, a half of my estate to one daughter, and the other half to another, and a third of the products to my wife. At that time R. Na'hman happened to be in Sura (where this will was made), and R. Hisda questioned him: How should such a case be decided? And he answered: Thus said Samuel: Even if he left to her the products of one tree only, she lost her right in the marriage contract. Said R. Hisda to him: Samuel's decision was when he gave her title to that which is attached to the ground; but in our case he left for her only fruit which was already gathered. And he rejoined: Then you speak of movable property. In such a case she certainly lost nothing. There was another man who said in his will: A third to one daughter, a third to another, and a third to my wife. It happened that one of the daughters died while her father was still alive (*i.e.*, as a father inherits from his daughter the deceased's share reverted to him, and this is similar, as he might buy some other estate after the division of his previous one), and R. Papa was about to decide that his wife had only the third bequeathed to her, but nothing in the third left from her daughter, for the reason that as soon as he has made her a sharer with his daughters the marriage contract was considered null. Said R. Kahana to him: Why should this case be different from the case that after making his will he bought other estate? Would she not have a right to it because of her marriage contract, as she has relinquished her right only for the sake of her daughters, when there was no other estate, but not in the estate he bought afterwards? The same is the case here: the inheritance of his daughter is to be considered as other estate bought.

There was another who divided all his estate but one tree among his wife and children, and Rabhina was about to say that the widow had a right to this tree only, if the amount of her marriage contract exceeded the value of the estate she received. Said R. Yimar to him: If she relinquished her right at the time the division took place, then she has no right even to this tree; and, on the other hand, if she has a right to this

tree, which means that she did not relinquish her right, then, by the same right by which she collects the excess from this tree, she may do so from the others which are in possession of the heirs.

R. Huna said: From all said above, it is to be inferred that in the case of a sick person who has bequeathed all his estate to a stranger, it is to be investigated if the latter is in some way fit to be called a direct heir. Then he takes it as an inheritance; and if not, he takes it as a gift. Said R. Na'hman to him: Why quibble? Say plainly the Halakha prevails in accordance with R. Johanan b. Beroka, as your decision is in accordance with him. However, perhaps you refer to a case which happened while one was dying and was questioned: To whom do you bequeath your estate—probably to so and so? and he answered: To whom else? And hence your statement that if the legatee is in some way fit to be an heir he takes it as an inheritance; and if not, he takes it as a gift? And he (Huna) answered: Yea, that is what I meant. But what is the difference whether he takes it as an inheritance or a gift? R. Ada b. Ahbha in the presence of Rabha said: If because of inheritance, then the widow of the deceased must be fed from the estate until she gets the amount belonging to her according to her marriage contract, which is not the case when he takes it as a gift. Said Rabha to him: Shall such a case make the position of the widow worse? In the case of an inheritance biblically, it is said that the widow must be fed from the estate; in the case of a gift, which is only a rabbinical enactment (as in reality one cannot present anything after death, but the sages enacted that the will of a sick person shall be considered as written and presented), shall she not have her right of support? Therefore Rabha explained: R. Huna's above statement agrees with the message which was sent by R. Aha b. Ivia: In accordance with the decision of R. Johanan b. Beroka (above, p. 285), an inheritance has no interruption, and goes direct to the heirs of the inheritor. Said Rabha to R. Na'hman: But the testator himself has controverted this with his saying, "after you, so and so shall inherit." He said so because he meant that he might do so. But the law dictates that there shall be no interruption; hence this stipulation is against the biblical law, and must therefore not be considered.

There was a man who said in his will: My estates shall belong to A and after A to B. A, however, was a legitimate heir, and when he died, B came and demanded the estate. And R. Elish in the presence of Rabha was about to decide that B's claim was a right one. Said Rabha to him: Judges who are arbitrators (*i.e.*, who do not decide according to the strict law, but mediate between the parties) judge so. This case, however, was the same as that concerning which R. Aha b. Ivia sent his message (that inheritance has no interruption), and he became ashamed. Rabha then applied to him [Is. lx. 22]: "I the Lord will hasten it in its time" (*i.e.*, Elish was ashamed that were it not for Rabha he would have acted against the law). And Rabha comforted him, in that Providence would not leave such an upright man to act wrongly, and therefore it so happened that he (Rabha) was present. Hence he had no need to fear the justice of his decisions in other cases.

MISHNA VII.: If one bequeathed his estates to strangers, leaving his children without anything, his act is valid; but he is condemned in the eyes of the sages. R. Simeon b. Gamaliel, however, maintains that if his children were not going in the right way he might be mentioned among the good men.

GEMARA: The schoolmen propounded a question: Do the rabbis differ with R. Simeon or not? Come and hear: Joseph b. Joezer had a son with bad habits; and he had also a measure of dinars. And because of his son, he consecrated the dinars to the Temple. The son went and married the daughter of Gadil, the master of the crowns for King Janai; and when his wife had borne a child, he bought a fish for her, and found in it a pearl. Said his wife to him: Do not carry it to the court of the king, as they will appraise it cheaply and will take it from you. Take it, rather, to the treasurer of the sanctuary; but do not mention any price for it, as if you should do so, you will have no right to change it thereafter, as there is a rule that concerning a sanctuary the upset price is considered final, and one has no longer right to retract, as after delivery to a commoner. He did so, and it was appraised by the treasurer at thirteen measures of dinars. The treasurer then said to him: We have now in the treasury only seven measures of dinars, as the taxes are not yet collected. And he answered: Let the remaining six measures be consecrated to heaven. And the treasurer re-

corded in his book: Joseph b. Ioezer brought to the sanctuary one measure, while his son has brought six. According to others, they wrote: Joseph brought to the sanctuary one measure, and his son took from it six measures. Now, as they wrote Joseph brought in, it is to be inferred that he acted rightly. But perhaps, on the contrary, as according to others they recorded "his son took out seven," it may be said that they considered the act of the father unlawful. Therefore from this Boraitha nothing is to be inferred. However, how should this question be decided? Come and hear: Samuel said to R. Jehudah: Do not transfer an inheritance from any one, even from a bad son to a good one; further, nor from a son to a daughter.

The rabbis taught: It happened in the case of one whose children had evil habits, that he bequeathed all his estates to Jonathan b. Uziel; and the latter sold a third of them, consecrated a third, and the remaining third he returned to the deceased's sons. And Shamaï the Elder came to rebuke him for having so done with estates bequeathed to him, contrary to the will. And he answered him: Shamaï, if you have the right to make null that which I have sold and that which I have consecrated, then you have also a right to take away the property which I have returned to the children. But as you have no right to do the former, you have no right to exclaim against my latter act (*i.e.*, if you consider me the owner of the estates bequeathed to me, then I may do with them what I please; and if I am not the owner, then also what I have consecrated should be annulled; and as you cannot annul the consecration, because the estate was bequeathed to me without any condition, consequently the estates are mine, and you cannot take away the property from the children.) And Shamaï exclaimed: The son of Uziel has vanquished me! the son of Uziel has vanquished me! But what was his opinion before he came to rebuke him? He did so because of what happened in the city of Beth Horon. There was one of whom his father vowed that he should not derive any benefit from him; and when he made a banquet for the marriage festival of his son, he said to his neighbor: I make you a present of this courtyard and all that is prepared for the banquet, but only to the end that my father should be able to come and eat with us at that banquet. And his neighbor answered: If all this is mine, I consecrate it to heaven. And the

donor rejoined: I have not given you my property to be consecrated to heaven. Rejoined the neighbor: Then you have given all this to the end that your father and you shall eat and drink and be reconciled, and the sin shall rest on my head. And the sages decided that a gift which cannot be consecrated by the benefactor is not to be considered a gift at all.*

MISHNA VIII.: If one says: "This is my son," he is to be trusted; but, "my brother," he is not to be trusted. He may, nevertheless, share with him the inheritance of his father (when there are only two; but if there are three, the third, who does not recognize him as his brother, is not bound to share with him, and so he receives a half of the share of the brother who does recognize him). If the doubtful man dies, the estate must be turned over to him from whom it was taken. If, however, the deceased left other estates besides those he inherited with his brother, all the brothers share equally (because in the case of that one who testified that he is a brother to all, he has no right to the inheritance without the other brother).

GEMARA: The Mishna states: "'This is my son,' he is to be trusted." To what purpose is it stated? Said R. Jehudah in the name of Samuel: For the purpose that he may inherit from him, and to acquit his wife of Yeboom. But was it necessary for the Mishna to state that he might inherit from him? Is it not self-evident (*i.e.*, if its testimony was because of inheritance only, he could give it as a present)? It was necessary to state that he is to be trusted to acquit his wife of Yeboom. But this also we have learned elsewhere: If one says while dying: "I have children," he is to be trusted (and his wife is acquitted of Yeboom). If, however, he says: "I have brothers somewhere," and he was childless, he is not to be trusted (the intent being that his wife should be prohibited from remarrying). That Boraitha speaks of when the people were not aware of any brothers, and our Mishna came to teach that even when people were aware that one had brothers he is to be trusted if he testifies that such a person was his son.

R. Joseph in the name of R. Jehudah, quoting Samuel, said: Why was it said: One is trusted in testifying that he has a son; because if one testify that he has divorced his wife, he is to be trusted? And Joseph himself exclaimed: Lord of Abraham!

* In the text is repeated here from Tract Sukka, p. 36, which see.

He sustains a thing which we have learned in a Mishna by a thing which was not learned at all. Therefore, if this was taught, it must be thus: R. Jehudah in the name of Samuel said: Why is one trusted to testify, "This is my son" (and with this to acquit his wife of Yeboom)? because, if he likes, he can divorce her. Said R. Joseph again: Now, when we come to the conclusion that the theory of "because" may be used, we may infer that if one testify he has divorced his wife, he is to be trusted; because, if he wishes to make her free, he may give her a divorce then. When R. Itz'hak b. Joseph came from Palestine, he said in the name of Johanan: A husband is not trusted to testify that he has divorced his wife. R. Shesheth, when he heard this, made a gesture implying: Now the "because" of R. Joseph is gone. Is that so? Did not Hyya b. Abin say in the name of R. Johanan: The husband is trusted? This presents no difficulty. If his testimony is of a time long past, he is not to be trusted; and if of a short period of time (*e.g.*, a day or two before, so that this testimony should be used for the future), he is to be trusted. The difference is in case she was suspected of adultery a month before his testimony: If he is trusted, then she committed no adultery; and if not, the suspicion must be investigated.*

The schoolmen propounded a question: Should one's testimony for the time past, in which he is not to be trusted, be considered for the future (*e.g.*, if he testified in January that he had divorced in December, which does not hold good in case of the suspicion stated above, does it hold good for the time after the testimony took place? And the question is: Can one's testimony be divided—that for the past he should not be trusted, and for the future he should)? R. Mary and R. Zebid: According to one we may divide, and according to the other we may not. But why should this case be different from the following case stated by Rabha: If one testifies that his wife has committed adultery with so and so, if he has another witness, the man can be put to death in accordance with the law that two witnesses have to testify to a crime—we conjoin his testimony to the stranger's and they are considered two witnesses; but his wife cannot be executed, as it is unlawful that

* The commentators try to explain at length with illustrations, which we omit as of no importance.

a husband should be a witness against his wife (hence we see that the testimony is divided: for one it is considered, and for the other it is not)? It may be said: Concerning two we do divide, but not concerning one person.

There was one who, while dying, was questioned concerning his wife (*i.e.*, he was childless, and they questioned him if his wife was divorced from him, so that she might remarry after his death or she remained liable to Yeboom)? And he answered: She is fit to marry even the high priest * (*i.e.*, I have divorced her). Said Rabha: We may trust him, as it is said above by Hyya b. Aba in the name of R. Johanan: A husband is to be trusted in testifying that he has divorced his wife. Said Abayi to him: But did not R. Itz'hak b. Joseph in the name of R. Johanan say: He is not to be trusted? And Rabha rejoined: But have we not explained above, that one speaks of the past, and the other of the future? Rejoined Abayi: Shall we rely upon an explanation in such a rigorous law as marriage is? Then said Rabha to R. Nathan b. Ami (before whom the case came: Investigate this matter (as probably Abayi is right). There was another, of whom it was known to the people that he had no brothers, and so, also, he testified while dying. However, it was murmured by some that he had brothers in some other country. And R. Joseph decided: There is no risk in allowing his widow to remarry, as he not only said so while dying, but it was known to the majority. Said Abayi to him: But is it not murmured that there are witnesses in the sea-country that he has brothers? (Answered R. Joseph:) But at present there are no witnesses, and in a similar case, R. Hanina said elsewhere: Should we prohibit a woman from marrying because some say that there are witnesses in the north? Rejoined Abayi: If Hanina had decided leniently concerning a woman in captivity, whose prohibition to marry a priest is rabbinical only, should we compare our case, which is biblical, if the childless deceased left brothers? And Rabha said to Nathan b. Ami, who had charge of this case: Investigate this matter.

" 'This is my brother,' he is not." But let us see what the

* The commentators find difficulty in explaining the meaning of this expression. It seems to us, however, very simple. He meant: I divorced her before having intercourse with her, and she is still a virgin, whom a high priest may marry.

other brothers say. If they admit that the one in question is their brother, why should he share with one only? We must then say that they deny it. Then how is the latter part, "If he had estates from other sources, the brothers have to share," to be understood? They do not deny that he was their brother. It means when the others say, "We do not know whether he is a brother or not."

"*It must be turned over to him,*" etc. Rabha questioned: How is it if the same estate were improved of itself—e.g., if it were a young tree, and it grows up, etc., there is no question of the improvement being through the labor of the deceased, as this is similar to the case in which one got estates from other sources; but the question is: If the improvement was of itself? This question remains undecided.

MISHNA IX.: If one dies, and a *διαθηχη* was tied to his body, it is not to be considered at all. If, however, while sick he had submitted it to some one, be he his direct heir or not, it must be listened to.

GEMARA: The rabbis taught: What is to be considered a *διαθηχη*? (Repeated here from Middle Gate, p. 40, from the quotation "Wills" to the end of the paragraph. See there.)

Rabba b. R. Huna was sitting in the balcony of Rabh, and declared the following in the name of Johanan: If a sick person said to witnesses: "Write, and give a mana to so and so," and before they did so he dies, it must not be listened to, for the reason that probably the deceased had in mind to give title in the case by a deed only; and as such a deed cannot be written after death, nothing can be done. Said R. Elazar to the disciples who were also sitting there: Bear in mind this Halakha, as it is for practice. R. Shezbi, however, said: The reverse was the case: R. Elazar declared the Halakha, and R. Johanan told them to bear it in mind, etc. Said R. Na'hman b. Itz'hak: It seems to me that R. Shezbi is right, as, if R. Elazar declared the Halakha, it was necessary for R. Johanan to approve it; but if Johanan declared it, was it then necessary for Elazar to give his approval to what his master said? And secondly, from the following, it is to be inferred that Elazar had declared the above, namely: Rabin sent a message in the name of R. Abuhu: It shall be known to you that R. Elazar sent a message to the sages in exile, in the name of our master (Rabh): If a sick person said,

Write, giving a mana to so and so, and it was not done until he had died, nothing is to be done (for the reason said above). (R. Jehudah in the name of Samuel, however, said: They may write and give.*) But R. Johanan said (though the Halakha so prevails): It must, nevertheless, be investigated. What shall be investigated? When R. Dimi came from Palestine, he said the following two things: (a) A will which is written at a later period abolishes a will written previously (if title was not given by a ceremony of a sudarium). (b) If a sick person said, "Write, giving a mana to so and so," and died, it must be investigated, whether with the expression "write" the testator meant to strengthen the act. In that case it may be done; and if not, it must not. R. Aba b. Mamel opposed from the following: If one in good health said to witnesses, "Write, giving a mana to so and so," and suddenly died, nothing is to be done. From which it is to be inferred that if this were said by a sick person it would be listened to? He himself answered thereafter: If the expression "write" was only to confirm the act, then it may be listened to. But how can we know what he meant? As R. Hisda said elsewhere: If written, and confirmed by the ceremony of a sudarium, no retraction can take place. So also in our case. If it was said by the sick person, "Give to him, and also write," then the last expression may be considered as a confirmation of this act; and it may be so done.

It was taught: R. Jehudah in the name of Samuel said: The Halakha prevails, they may write and give; and so also said Rabha in the name of R. Na'hman.

MISHNA X.: If one wishes to bequeath his estate to his children (*i.e.*, it speaks of one who remarries and does not wish that the children by his first wife should lose their share in his estate after his death), he must write: I bequeath my estate to them from to-day and after my death (*i.e.*, the estate belongs to them thenceforward, but not the products until after his death). So is the decree of R. Jehudah. R. Jose, however, maintains: It is not necessary to write "from to-day."

If one wrote: "I bequeath my estate to my son from to-day, and after my death," he has no longer any right to sell his estate, because it is bequeathed to his son; and his son, also, has

* Transferred from 152a.

no right to sell it because it is still under the control of his father. If, notwithstanding this, the father has sold, the products thereof are sold until he dies. If the son, however, sold, the buyer has nothing therein until the father dies.

GEMARA: But how if he has written "from to-day and after my death"? Have we not learned in a Mishna: If one wrote in a divorce, "from to-day and after my death," it is considered a doubtful divorce, so that after his death his widow cannot marry his brother, but must perform the obligation of Halitzah. (This is no objection) as there we are doubtful as to the explanation of his words. Does he mean by the words, "after my death," to be a condition (*i.e.*, if I die she shall be divorced from to-day), or as a retraction (*i.e.*, the last words retract the former), and therefore she cannot marry. Perhaps the divorce was valid, and it is prohibited to her to marry a brother-in-law. But she is under the obligation of Halitzah. Perhaps the divorce was invalid. In our case, however, it is to be explained, the body of the estate is bequeathed "from to-day," but the products, "after my death."

"*R. Jose . . . It is not necessary,*" etc. Rabba b. Abuhu became sick. R. Huna and R. Na'hman came to make him a sick call. Said R. Huna to R. Na'hman: Question him whether the Halakha prevails with R. Jose. And he answered: I am not aware of the reason of his statement. To what purpose, then, should I ask if the Halakha so prevails? Rejoined R. Huna: I will tell you the reason later, and meanwhile you may question him with whom the Halakha prevails. And he did so. And Rabba answered: So said Rabh: The Halakha prevails with R. Jose. When they went out from him, said R. Huna: The reason of R. Jose's statement is because the date of the deed testifies to whom from that day the estate belongs. And so also we have learned plainly in a Boraitha.

Rabha questioned R. Na'hman: According to R. Jehudah, who requires that there shall be written "from to-day," etc., how is it, if this was made with the ceremony of a sudarium? (Shall we assume that as the above ceremony was already performed title is acquired, and nothing further is to be added; or, even then, it must be written in the deed "from to-day," etc.?) And he answered: In such a case it is not necessary. R. Papa, however, maintains that there is a difference in the

tenor of the deed. If it was written: We have secured the ceremony of a sudarium, which he agreed to and made, then nothing is needed to be added. If, however, it was written: He agreed, and we performed the ceremony, then it is necessary to write, "from to-day," etc. (and the reason is, that the latter expression may be explained as intimating that he agreed that possession should come after death, and thereto we have joined the ceremony of a sudarium). R. Hanina of Sura opposed: Are there such things as we do not know, and we must rely upon the scribes? The scribes of Rabha and of Abayi were questioned, and it was found that they were aware of the difference mentioned above. R. Huna b. R. Joshua, however, said: There is no difference between the two versions mentioned above; as to either of them, nothing is to be added. But if "sudarium" was not mentioned in the deed at all, and there was a memorandum: *e.g.*, "The undersigned testify that a memorandum was made by so and so," etc., then, according to R. Jehudah, "from to-day," etc., is needed. Said R. Kahana: I repeated this discussion before R. Zebid of Nahardea, and he told me: You have learned this so. We, however, have learned it as follows: Said Rabha in the name of R. Na'hman: If a sudarium is mentioned, no matter what version was used, nothing is needed to be added; but in respect to a memorandum (illustrated above) R. Jehudah and R. Jose differ.

"*I bequeath my estates to my son,*" etc. It was taught: If the son sold out and then died while the father was still alive, according to R. Johanan the buyer has nothing in it; and according to Resh Lakish, title is given to the buyer after the father's death. The reason of their difference is, because the former holds that the sale of the products ought to be held similar to the sale of the body; and as the products could not be sold by the son, as he had nothing in them so long as the father was alive, so he could not sell the body. And the latter holds that the body is not subordinate to the products; as the body belonged to the son, the sale is valid.

R. Johanan objected to Resh Lakish from the Boraitha stated above, p. 289, which says: The estate must be turned over to the heirs of the first; and according to you, it ought to be to the heirs of the testator. And he answered: It was already ex-

plained by R. Hoshua in Babylon that there was a difference when the testator said plainly "and after you." And so also it was answered by Rabh, to a contradiction made before him by Rabha b. R. Huna. But have we not learned in a Boraitha that the estate must be turned over to the heirs of the testator? In the resolution of this case, Tanaim differ: "My estates are bequeathed to you, and after you to B; A sells out, and consumes the amount. B has a right to recover it from the buyers after the death of A. So is the decree of Rabbi. R. Simeon b. Gamaliel maintains B has a right only to what remained from A." A contradiction was made from the following: My estate is bequeathed to you, and after you to B; A may sell and consume it. So is the decree of Rabbi. R. Simeon b. Gamaliel, however, maintains that A has a right to the products only. Hence Rabbi and R. Simeon contradict themselves in the two Boraithas. This presents no difficulty. The statement of Rabbi in the later Boraitha is concerning the products only; and the statement in the first Boraitha is concerning the body. There is also no contradiction in R. Simeon's statements, as his statement in the last Boraitha means that so is the law to start with; and his statement in the former means, if it were already done.

Said Abayi: Who is called a crafty villain? He who advises A to sell the estate (bequeathed to him for his life only), relying upon R. Simeon b. Gamaliel's decision. Said R. Johanan: The Halakha prevails with R. Simeon b. Gamaliel. He, however, admits that if A gives the same as a present to C, when he is dying, he has done nothing. And what is the reason? Said Abayi: Because C ought to acquire title to it only after the death of A. But at that time B had already acquired title, as it was bequeathed to him after A's death. But did Abayi say so? Was it not taught: To a gift presented by one who is dying, at what time is title given? According to Abayi, with the death; and according to Rabha, after death. Hence C ought to have the preference, according to Abayi's last statement, as to B it is bequeathed after death? Abayi has retracted from his last statement. But do you know where he has retracted from the last statement? Perhaps he has retracted from the first. Yet it cannot be borne in mind that there is a Mishna which states as follows: If one should say:

"This shall be your divorce if I should die"; or, "It shall be yours if I should not recover from this sickness"; or, "After my death," he said nothing. (Hence this Mishna is a direct contradiction to Abayi's statement that title is given *with* the death. If it were so, the divorce would be valid when he said: This shall be your divorce when I die. And therefore it must be supposed that he retracted from the later statement.)

Said R. Zera in the name of R. Johanan: The Halakha prevails with R. Simeon, even in case in the estate in question there were included bondsmen, and they were freed. Is this not self-evident? Lest one say that the testator may claim: "I did not bequeath to you my estate, you shall transgress * with them," it came to teach us that it does not matter. And R. Joseph said in the name of the same authority: Even if he had made of them shrouds for a corpse. Is this not self-evident? Lest one say that the testator may claim: "I did not give it to you for the purpose that you should make from it things from which it is prohibited to derive any benefit," he came to say it does not matter.

R. Na'hman b. R. Hisda lectured: If one said: "This citron is given to you as a gift, and after you to B," and A became seized of it, and performed his duty as owner on the first day of Tabernacles, it depends upon the difference between R. Simeon and Rabbi whether it was done lawfully. R. Na'hman b. Itz'hak opposed: The above Tanaim differ in the case whether the sale of the products be considered the same as the sale of the body (explained above), or not? But in our case, if it was not presented to him to the end that as owner he should perform the duty of that day, for what, then, was it given to him? Therefore it must be said that all agree that A, who did as owner his duty of that day, acted lawfully. But if he has consumed or sold it, it depends upon the difference between the Tanaim mentioned above whether the sale is valid, or A has to pay for it.

There was a woman who had a tree on the estate of R. Bibbi b. Abayi; and each time she went to gather the products of the tree, it made him angry. She then sold it to R. Bibbi for his life, with the condition that after his death it should be

* The ancient Hebrew as well as the Roman law prohibits the freeing of a slave without good reason; and also the deriving of benefit from shrouds, or anything else belonging to a corpse.

turned over to her or her heirs. He, however, transferred it to his minor son (to the end that the tree should remain his for a long time, as according to the law a minor acquires but cannot give title, and this act was according to R. Simeon b. Gamaliel). Said R. Huna b. R. Jehoshua: Because you are weak you speak weak words.* Even Simeon b. Gamaliel admits that his statement holds good only when he transferred it to some one else; but not if to himself.

Rabha said in the name of R. Na'hman: If A said to B, "I give you this ox as a present, with the stipulation that you shall return it to me," and B consecrated it and afterward returned it, the ox is consecrated, and B has fulfilled his duty. Said Rabha to R. Na'hman: But, after all, what has he returned to him? The ox being consecrated, he cannot derive any benefit from it. Rejoined R. Na'hman: But did B depreciate the value of the ox? Has he not returned it as he got it? R. Ashi, however, said: It must be investigated how the stipulation reads. If "You shall return it," then he acted correctly, as he did return it. But if "You shall return it *to me*," which means it shall be fit for me, but if he has consecrated it, it is no more fit for him. Consequently it cannot be considered returned.

R. Jehudah said in the name of Samuel: If A has bequeathed his estate to B, and B says "I do not want it," he nevertheless acquires title, even if he still protests he does not want it. R. Johanan, however, says: He does not. Said R. Abba b. Mamel: And they do not differ. If B protests at the very time the deed of gift was given to him, he does not acquire title; but if he first kept silent, and afterward protested, title is acquired.

The rabbis taught: If a sick person said, "Give two hundred zuz to A, three hundred to B, and four hundred to C," it must not be understood that he who is mentioned first in this deed acquires title to that amount; and, therefore, if a creditor comes with a promissory note of the deceased, it may be collected from all of them. If, however, it reads, "Two hundred zuz to A, and after him three hundred to B, and after him four hundred to C," then the one who is mentioned first in

* The commentators' explanation of this is that Abayi was of the family of Eli, who according to tradition were short-lived. Therefore the word "weak."

the document acquires title to that amount; and the promissory note must be collected from the last. And if the money he receives does not suffice, it must be collected from the one mentioned before him; and if his does not suffice, it must be collected from the first.

The rabbis taught: If a sick person said, "Give two hundred zuz to my first-born son so and so, who is worthy to have them," he may take them, and also the double share belonging to a first-born. If, however, the sick person said, "Give him such an amount for his first-born privilege, the son has the preference to choose which is better for him—the amount bequeathed or the double share prescribed for him. The same is the case if the sick person said, "Give two hundred zuz to my wife, who is worthy of them." She takes them and also what belongs to her according to her marriage contract. If, however, he said, "Give them to her for her marriage contract," she has the choice of taking them or that which belonged to her according to her marriage contract. If a sick person said, "Give two hundred zuz to my creditor B, who is worthy of them," he may take them, and also collect what the deceased owes him. But if he said, "Give them to him for my debt," then he takes it for the debt.

How is the last sentence to be understood—because he said he is worthy of them, he shall take both the two hundred zuz and his debt? Why not explain, as he had a right to them because of my debt? Said R. Na'hman: Huna told me that this Boraitha is in accordance with R. Aqiba, who is particular concerning the version as it is said (Chap. IV., Mishna 2): R. Aqiba admits, etc. From which we see that he gives his attention to a superfluous word. The same is it with the case in our Boraitha—that the words, "as he is worthy of them," are superfluous; and according to R. Aqiba they are said because he wants to add them to his debt.

The rabbis taught: If a sick man said, "I have a mana with so and so," the witnesses may write this, although they are not aware that such is the case. And therefore, when his heirs come to collect from the debtor, it is for them to bring evidence. So is the decree of R. Meir. The sages, however, maintain that the witnesses must not write unless they are aware that so it is. And therefore, the heirs may collect this debt without any

other evidence. Said R. Na'hman: Huna told me: The Boraitha must be so understood. R. Meir said: They must not write; and the sages: They may. And even R. Meir said so because he feared that the court, before which the case of "collection" should come, would err, and approve the deed without any investigation, if the witnesses who signed the deed testified only to what the deceased said, or they were aware that the contents were true. And the sages maintain: Usually a court does not err, and can be relied upon to give proper attention to this matter. Said R. Dimi of Nahardea: The Halakha prevails that it must not be feared the court will err. But why should this differ from the following case stated by Rabha: The ceremony of Halitza must not be made by the court, unless they know the persons? And the same is the case with a denial (of a woman, betrothed in childhood, who on arriving at majority denies the marriage before the court; and according to the law she may remarry without any other act). And therefore the witnesses who were present may write a testimony of this act, although they themselves did not know the persons. And the reason why the court must not perform the ceremony of Halitza, unless they know the persons, is because it is to be feared that the court before which she may come to remarry will not investigate whether she is the same person who had to take Halitza. (Hence we see that error by the court is to be feared?) This is no objection. A court usually does not investigate the act of a former court; but the acts of witnesses, it does.

MISHNA XI.: The father has a right to pluck the products of trees which are found on the estate bequeathed to his son, after his own death, and may present them to whom he pleases. If, however, the plucked fruit remains after his death, they belong to his heirs.

GEMARA: The plucked fruit only, but not that which is attached to the trees, although ready to be plucked (*i.e.*, such belongs to the son, to whom the estate is bequeathed after his father's death)? Have we not learned in a Boraitha that in case the fruit was ripe, under the control of the bequeather, it belongs to the buyer if he sold it before his death? Said Ula: This presents no difficulty. Our Mishna treats of when he bequeathed to his son, and it may be supposed that his last will

was that from that remaining on the tree his son should derive benefit; and the Boraitha speaks of when he has bequeathed his estate to a stranger.

MISHNA XVII.: If he left grown-up and minor sons, the grown ones have no right to derive any benefit on account of the minors, nor have the minors a right to same on account of the older brothers (*e.g.*, the older ones have no right to dress themselves at the expense of the inheritance before the division, nor should the minors be supported from the inheritance); but they must divide the inheritance equally. If the older ones have married at the expense of the inheritance, the same amount must be added to the shares of the minors. However, the latter have no right to claim for any addition if their older brothers have married while their father was still alive, as the amount expended for their marriages is considered a gift from their father.*

The very same is the case with grown-up and minor daughters. All of them must receive an equal share. However, in one respect preference is given to daughters who were left together with grown-up sons. The daughters must be fed from the inheritance at the charge of the sons, which is not the case with minor daughters who were left together with grown-up ones.

GEMARA: Rabha said: In the case of the oldest brother who has dressed himself at the expense of the house before division, his act is lawful (and nothing is to be deducted from his share). But does not our Mishna state: "Grown-up ones have no right to derive any benefit," etc. Our Mishna speaks of when they are idle, and do nothing for the benefit of the house. If idlers! Is it not self-evident? Lest one say that, nevertheless, they would be pleased that their brother should be nicely dressed, it comes to teach that it is not so.

"*Grown-up and minor daughters*," etc. R. Abuhu b. Genibh sent a message to Rabha: Let the master teach us: How is it if a woman has borrowed money, consumed it, and thereafter she married without paying her debt, and brought estates with her at marriage? Must her husband pay her debt, or not? Shall we assume that the husband is considered a buyer of the estates brought, consequently he has not to pay, as the law

* So is it explained in the Gemara by R. Jehudah.

dictates that a loan made without a deed cannot be collected from a buyer; or is he considered an heir, and must pay his wife's debts, even when contracted without any deed? And Rabha answered: This we have learned in our Mishna: If the grown-up daughters have married, the minors may do the same. Is this not to be interpreted that if the grown-up daughters have borrowed money from the estate also belonging to the minors, the minors shall do the same by collecting the debts from their sisters' husbands? Nay! The Mishna means to say that they take the same amount from the inheritance as their sisters did. But this is not so. As R. Hyya taught plainly: If the older ones have married at the charge of the inheritance, the minors may collect the amount from their husbands? (Hence we see that the husband is considered an heir, and must pay?) This cannot be taken for support, as a law made in connection with an inheritance for the purpose of marriage is considered as public and known to the people, and also in the light of a deed which is to be collected from encumbered estates.

Said R. Papa to Rabha: Why did you try to decide the question from R. Hyya's Boraitha? Was the same not decided by Rabbin's letter: If one dies leaving a widow and a daughter, the widow must be supported from the deceased's estate. If the daughter has married or dies, the widow is still to be supported from the estate. Said R. Jehudah the son of R. Jose's sister: Such a case came before me, and it was decided that a widow must still be supported from the estate. Now, if the husband is considered an heir, it is correct that his widow should be supported from his estate; but if he is considered a buyer, why should she be supported from his estate? Does not a Mishna state that for the support of a widow and daughters, encumbered estate must not be taken away? Said Abayi: What news has Rabbin sent in his message? Have we not learned this in a Mishna: "The following is not to be returned in the jubilee year: The double share taken by a first-born and the inheritance of a woman taken by her husband"? Hence we see that the husband is considered an heir? Said Rabha to him: And even after he has sent the message, do we then know that it is in accordance with the law? Did not R. Jose b. Hanina say (Middle Gate, p. 255) that the husband takes away

from the buyer? Therefore said R. Ashi: The rabbis have enacted that in some respects the husband should be considered as an heir, and in some respects as a buyer; and have so done on his account. Concerning the jubilee year, it is better for him that he should be considered an heir, for the purpose that he should not be compelled to return the inheritance of his wife, and concerning the case of R. Jose b. Hanina (stated above) he is to be considered as a buyer, that he should not suffer any damage; and in the case of Rabbin they have considered him as an heir, to the end that the widow should not suffer any damage. But why did the sages consider him as a buyer in the case of R. Jose b. Hanina? Do not the buyers (from whom he takes away the property) suffer? Therein they themselves cause that they should suffer, as they ought not to have bought goods from a married woman, who lives with her husband, without his consent.

CHAPTER IX.

RULES AND REGULATIONS CONCERNING THE SUPPORT OF UNMARRIED DAUGHTERS AFTER THE DEATH OF THEIR FATHER, IF AMONG THE CHILDREN WERE AN HERMAPHRODITE OR AN ANDROGYN. MAY OR MAY NOT ONE BEQUEATH HIS ESTATE TO STRANGERS IF HE HAS CHILDREN? DOES THE SECOND WILL ABOLISH THE FIRST? IF A SICK PERSON RECOVERS AFTER MAKING A GIFT WHILE SICK, MAY HE RETRACT OR NOT? IF SUDDEN DEATH OCCUR TO MANY PERSONS, AND IT IS NOT KNOWN WHO DIED FIRST, AND EACH OF THE HEIRS CLAIMS FOR HIS BENEFIT.

MISHNA I.: If one dies, and leave sons and daughters, if the inheritance is of great worth, then the sons inherit, and the daughters must be supported from it; and if a moderate one, the daughters must be supported, and the sons may go a-begging. Admon, however, said: Because I am a male shall I suffer? Said Rabban Gamaliel: It seems to me that Admon is right.

GEMARA: What is to be considered great worth? Said R. Jehudah in the name of Rabh: It shall be sufficient for all of them to be supported for twelve months. And he (Jehudah) added: When I told the Halakha before Samuel, he said: Such is the decree of R. Gamaliel b. Rabbi. The sages, however, maintain: It shall suffice to support all of them until the daughters become of age. So also it was taught by Rabbin, according to others by Rabba b. b. Hana, when he came from Palestine, in the name of R. Johanan: If the inheritance suffices to support all of them until the daughters become of age, it is considered of great worth; and if less, it is considered moderate. How is this to be understood? If it does not suffice to support all of them, shall the daughters take the entire inheritance, leaving nothing for the sons? Therefore said Rabha: There must be deducted from the inheritance the amount which will suffice for the daughters until they become of age; and the remainder shall be given to the sons.

It is certain that if for some reason the estates become less

in value after the father's death, and do not suffice for the support of the daughters until they become of age, and also for the sons' support, both have already acquired title, and must be satisfied with that which falls to their lot (*i.e.*, the daughters have no right to claim that they shall be supported until of age from the share of their brothers). But how is it if the estate increased in value after death? Shall we assume that the increase belongs to the heirs, and therefore the sons may have the benefit of it? Or, as they had nothing in it when their father died, they are considered entirely cut off from this inheritance, and have nothing to do with the increase? Come and hear what R. Assi said in the name of R. Johanan: If orphans hastened and sold out from this inheritance before the daughters summoned them, the sale is valid, and the daughters have no right to take it away from the buyers, according to the rule that it cannot be collected from encumbered estate for the support of the daughters. (Hence we see the sons are considered heirs, notwithstanding that the estate was not of great worth.) Consequently they have a share in the increase.

R. Jeremiah was sitting before R. Abuhu, and questioned him as follows: If the estates were of great worth, but there was a promissory note in the hands of a creditor, which ought to be collected from the estates, should the estates, because of the note, be considered moderate, so that the support should be for the daughters and the sons should go a-begging? Or, until collected, should all of them be supported, without taking into consideration that after collecting nothing might remain for the support of the daughters? And should you decide that the promissory note, although not yet collected, diminishes the value of the estates, for the reason that the amount due will be collected in any event, even should the creditor die, how is it if the deceased left a step-daughter whom he has to support, according to the marriage contract of his wife, until she shall become of age, and the amount of her support diminishes the estate from being of great worth, and stamps it moderate? How, then, should the inheritance be considered, should the step-daughter die, and then, the obligation being gone, the estates remain of great worth. There is still another question. If the deceased left a widow and a daughter, and the estates left could support only one of them, who

has the preference? And R. Abuhu answered: Go to-day, and come to-morrow. And when he came he said to him: Of all the questions, I can decide the last one. As R. Aba said in the name of R. Assi: The sages have enacted that when there is a widow with a daughter she shall have similar treatment to that of a sister who remains with her brother. As in the latter case, if the estate is moderate she must be supported, although her brothers remain beggars, so also the widow as against a daughter—the widow must be supported and the daughter may go a-begging.

"Admon, however, said: Because I am a male," etc. How is this to be understood? Said Rabha: He means to say: Because I am a male, and ought to inherit all the estates where the inheritance is of great worth, leaving for my sister only the support for her livelihood until of age, shall I remain a beggar when there is a moderate estate?

MISHNA II.: If one leave sons, daughters, and an hermaphrodite (if it is doubtful whether male or female), and the inheritance is of great worth, the males may count same among the females; but when the inheritance is moderate, the females may count same among the males.

If one say: "If my pregnant wife should bear a male, he shall take a mana," and she bears a male, the mana is to be given to him; "If a female, she shall take two hundred zuz," she takes two hundred. If a male a mana, and a female two hundred zuz, and she had born a male and a female? The male takes one hundred and the female two hundred zuz. But if she bears an hermaphrodite, he takes nothing. If, however, he said: "What she shall bear shall take," then he takes accordingly. And the same is the case if there were no heirs but he—he inherits all.

GEMARA: The Mishna states: They count same among the daughters, which means he shall be treated like them. But does not the later part state: If she bears an hermaphrodite, he takes nothing? Said Abayi: It means that the males counted him among the females; but the latter have the right not to accept him, and he remains without any support. Rabha, however, maintains: They pass him and he must be similarly supported. And the latter part of our Mishna is in accordance with Rabban Simeon b. Gamaliel of the following Mishna: If

she bears an hermaphrodite or an androgyn, which is at times a male and at times a female, R. Simeon b. Gamaliel said: No sanctity rests upon them. (The cited Mishna treats: If one made a vow for the offspring of a gravid cow—if a male, it shall be a burnt-offering; and if a female, a peace-offering.)

An objection was raised from the following: "An hermaphrodite inherits like a son, and is supported like a daughter." And this can be correct only according to Rabha: That he is considered an heir, like a son, in a moderate inheritance; and is supported, like a daughter, in one of great worth. But according to Abayi, who said above that he takes nothing, how do you find that he shall be supported like a daughter? Even according to your theory, how do you explain Rabha's statement, that as an heir, like a son, he takes something of a moderate inheritance? In such a case the sons take nothing; hence he means to say that he is *considered* an heir like a son—to be a beggar. So also you can explain the Mishna: He is in condition to have support like a daughter, but, nevertheless, he does not get any.

"*If one says: If my pregnant wife shall bear a male,*" etc. Shall we assume that a daughter is better to him than a son (as the Mishna says, "If a male one hundred, and a daughter two hundred")? Concerning inheritance, a male is better to him, as he bears his name; and concerning a gift, a daughter is better to him, as it is more difficult for her to make a living than for a male. Samuel, however, maintains that the Mishna treats of when his wife was pregnant with her first child; and it is in accordance with R. Hisda, who said elsewhere: If the first child is a female, it is a good sign for future sons, according to some because she will educate the sons; and according to some, that she should not be afflicted by a covetous eye. Said R. Hisda: As for me, I always give preference to females over males. And if you wish, it may be said that our Mishna is in accordance with R. Jehudah in the following Boraitha: It is a meritorious act for one to support his daughters, and so much the more his sons who occupy themselves with the Torah. So is the decree of R. Meir. R. Jehudah, however, said: It is a meritorious act to support the sons, and so much the more to support the daughters, because of their humiliation (if they should have to beg).

There was one who said to his wife: I bequeath my estate to the child with which you are pregnant. Said R. Huna: This means that he designed to give title to an embryo, and an embryo cannot acquire title. R. Na'hman objected to R. Huna from our Mishna, which states: If my wife shall bear a male, he shall take a mana, etc. And he answered him: I do not know who has taught our Mishna (*i.e.*, I do not find our Mishna to be in accordance with the majority, nor a single one of the sages). But let R. Na'hman say that the Mishna treats of when the bequeather said: I bequeath the estate to the child after my wife has borne it? R. Huna is in accordance with his principle that the child does not acquire title even after birth. (As it was taught:) R. Na'hman said: If one bequeaths to an embryo, title is not given; but if he said, "after he is born," title is given. R. Huna, however, maintains that even then title is not given. But R. Shesheth is of the opinion that in either case title is given. And he added: I deduce my statement from the following Boraitha: "If a proselyte supposed to be childless dies, and Israelites have robbed his estate, and thereafter they hear that he has a son, or that his wife is pregnant, they are obliged to return it. If, however, they have returned it, and thereafter they hear that the son is dead, or that his wife has had a miscarriage, and they again take the estate, he who made a hazakah in the second instance has acquired title, but he who made the same in the first instance has not." Now, if it be remembered that an embryo does not acquire title, why should title not be given to them who made a hazakah in the first instance? Said Abayi: There is a difference with an inheritance which came of itself: In such a case the embryo acquires title. Rabha, however, said: Even in case an inheritance came by itself, the embryo does not acquire title; and the reason why title is not given to them who made a hazakah in the first instance is because they were still uncertain whether the property taken would remain with them, as there was still a doubt whether children were left. But in the second instance they were sure of their ground.

Come and hear another objection: "A child of one day inherits and bequeaths (*e.g.*, if his father dies when he was even one day old, he inherits from his father; and if at birth the estate of his deceased father came to him, and he dies when he was

one day old, his relatives inherit from him). We see, then—only when he was one day old, but not when in embryo. This was explained by Rabh Shesheth: He inherits the estate of his mother, to bequeath to his brothers on his father's side. And this can be only when he was alive one day after his mother; but not when he was in embryo, as he died before his mother. And a son does not inherit from his mother, when once in his grave, so that his brothers on his father's side could inherit from him.

Shall we assume that in case the mother dies while pregnant the embryo dies first? Perhaps she dies first? There happened such a case, and the embryo moved convulsively, thrice. Said Mar b. R. Ashi: Such a movement was without any life, such as the movement of the tail of a lizard. Mar b. R. Joseph in the name of Rabha said: The cited Boraitha means to say that a child of one day diminishes the share of a first-born. *E.g.*, a first-born takes a double share—*i.e.*, twice as much as each of his other brothers. But if there were added a male child of one day, the estate must be divided into five parts, if there are four brothers, of which the first-born takes a double share. And if this child dies afterwards, his share is to be divided equally among the four brothers. This is only when he was old one day, but not when an embryo; because [it is written, Deut. xxi. 15], "and they *bear* him children." As the same said also on the same authority: A son who was born after the death of his father does not diminish the share of the first-born, as it reads in the verse just cited "*bear him*"; but when born after his death, it was not born to him.

All that was said here was taught in the city of Sura. In Pumbeditha, however, it was taught as follows: Mar b. R. Joseph said in the name of Rabha: A first-born who was born after the death of his father does not take a double share. As it is written [ibid., 17]: "Shall he acknowledge," and when he is dead he cannot acknowledge. The Halakha prevails in accordance with all the versions said by Mar b. R. Joseph in the name of Rabha.

R. Itz'hak in the name of R. Johanan said: He who bequeaths to an embryo, title is not acquired. And should you object to this statement from our Mishna, which states: "If one bequeaths a mana to the embryo, he takes it after he is born,"

I may tell you that this is said only of a father, whose mind is near to his son; but it cannot be done by a stranger. Said Samuel to R. Hana of Bagdad: You may bring to me ten persons, and I will teach in their presence that title is given if one bequeaths to an embryo. The Halakha, however, prevails that title is not given.

There was one who said to his wife: I bequeath my estate to the children who shall be born of you by me. And his elder son came and said: What becomes of me? And the father answered: You will take a share as one of the brothers. Now, the children which are to be born can certainly not acquire any title; but the question is, does the elder son, when he came to share with his brothers born thereafter, take a double share, as his father bequeathed to him a part of his estate when his brothers were not yet in existence? Or does he share with them equally? According to R. Abbin, R. Miicha, and R. Jeremiah, he is entitled to a double share; and according to R. Abuhu, Hanina b. Papi, and R. Itz'hak of Naf'ha, he is not. Said R. Abuhu to R. Jeremiah: With whom should the Halakha prevail—with us or with you? And he answered: Certainly with us, as we are older than you; and not with you, who are still young scholars. And R. Abuhu rejoined: Does this depend upon age? It depends upon reason, and our reason is better than yours. And what is it? questioned R. Jeremiah again. And he answered: Go to R. Abbin, and ask him, as I have already explained to him the reason at the college; and he shook his head in sign of assent. He went to him, and he told him: Because this case is similar to that of one who says: "You and this ass shall acquire title to this article," would title be given to him? Is this not to explain: You shall acquire title as the ass? The same is the case if one says: You shall share with the children, which are not yet in existence even in pregnancy. Hence title is not acquired in either case. It was taught: If one says: "Acquire title to this as the ass," certainly title is not given; but if he says: "Acquire title, you and the ass," according to R. Na'hman title is given to a half. And R. Huna said: This man said nothing. R. Shesheth, however, said: He has acquired title to the whole of it. Said R. Mordecai to R. Ashi: R. Ivia raised an objection from a Mishna in Tract Kiduchin: It happened with

five women, among them two sisters, that one presented to them a basket with dry figs, saying: You are all betrothed to me with this basket. And one of the women accepted the basket for them all. And when the case came before the sages, they said: The sisters are not betrothed. Hence—only the sisters? But the strangers were. Why? Is this not similar to the case: You and the ass shall acquire (*i.e.*, as the sisters could not under any circumstances be betrothed to one person, the other women must also be treated similarly)? And he answered: That is what R. Huna dreamt—that R. Ivia was going to raise a question (and now I see that R. Huna's dream was true). However, the objection does not hold good, as that Boraitha was explained: In case the man has added: All of you who are fit to be my wives.

There was one who said to his wife: My estate shall be for you and your children. And R. Joseph decided: One half of the estate belongs to her, and the other half to her children. And he added: I deduce my decision from the following Boraitha: Rabbi said: It is written [Lev. xxiv. 9]: "And it shall belong to Aaron and to his sons," meaning a half shall be for Aaron and a half for his sons. Said Abayi to him: What comparison is this? Aaron was fit to receive a share; and therefore the Merciful One mentioned him, that he should take a half. But in this case a woman is not fit to be an heir at all, when there are male children. Would it not be sufficient that she should take an equal share with her children? Is that so? Did not such a case happen in Nahardea, and Samuel collected for the woman a half; and also in Tiberias, and Johanan collected for her a half? Furthermore, when R. Itz'hak b. Joseph came from Palestine, he told: It happened that the government had taxed the citizens of the city and those who had real estate for the manufacture of a crown for the ruler, and Rabbi decided a half should be collected from the citizens, and the other from the owners of real estate. But what comparison is that with what was told by R. Itz'hak? As to that one, it is known that in previous orders from the government they applied only to the rich citizens, and those who possessed real estate only assisted them, with the consent of the government. But the order in question was written: Both the rich, and real-estate owners are taxed. Therefore Rabbi's decision.

R. Zera objected from the following: If one said: I intend to bring a meal-offering, of one hundred tenths of an ephah—to bring it in two vessels—he may bring sixty in one vessel and forty in the other. However, if he brought fifty and fifty, in two vessels, he has fulfilled his duty. We see, then, that only when he does so it is valid; but the law prescribes that he must bring sixty in one and forty in the other. Hence we see that equal halves is not to be understood when he says in two parts? Nay, this cannot be compared. We are witnesses that he intended to bring a great offering; and the expression “in two vessels” was because he was aware that it could not be put into one. Therefore there must be put in one vessel as much as it can contain, and the remainder in the other one.

(Says the Gemara:) The Halakha prevails in accordance with R. Joseph in the three cases: the case of a field, mentioned in the eighth chapter (p. 254), in the case of a sudarium mentioned in the preceding chapter (p. 253), and in this case of the half. There was one who had sent home pieces of silk, without any order to which member of his household they belonged, and R. Ami decided: Those which are fit for the sons, they shall use; and those which are fit for the daughters, shall be used by them. This law, however, holds good only in case he had no daughters-in-law; but if such a case should happen when there are daughters-in-law, and his own daughters are married, it is to be supposed that he sent them to the daughters-in-law. If, however, his own daughters were unmarried, he would not neglect his daughters, and it is to be supposed that he sent them for them.

There was one who said in his will: My *sons* shall inherit my estate. However, he had only one son, and some daughters. And the question arose: By the expression “sons” in the plural, does he mean the one son only, excluding the daughters, or does he mean to include them? Said Rabha: There is a verse in Num. xxvi. 8, “And the *sons* of Pallu: Eliab.” And R. Joseph said: There is another verse in I Chron. ii. 8, “And the *sons* of Ethan: Azaryah.” There was another, who said: “My estate shall belong to my sons,” and he had only one son and a grandson. And the question arose: Whether people are used to call grandsons also sons? R. Hbiba said:

They are. And Mar b. Ashi maintains: They are not. And there is a Boraitha in accordance with the latter, namely: If one vowed not to derive any benefit from his sons, he may derive it from the grandsons.

MISHNA III.: If one left grown-up and minor sons, and the former improved the estate, the improvement shall be divided equally. If, however, they said: "Observe in what condition the estate was left by our father, and it shall be known that we are going to improve it for our own sake," they have a right to take the benefit for themselves. The same is the case with a widow. If she had improved it without any remark, the improvement belongs to all the heirs. But if she remarked, "Seeing in what condition my husband left," etc., the benefit belongs to her.

GEMARA: Said R. Hbiba, son of R. Joseph b. Rabha in the name of his grandfather: The Mishna means to say that they have improved the estate, not at their own expense, but at that of the estate (i.e., they went only to the trouble of hiring laborers for improving, but at the expense of the estate). But if they had expended from their own, then the benefit belongs to them without any remarks. Is that so? Did not R. Hanina say: If their father left them only covered wells (which are usually higher for watering fields), the improvement is for all? We see, then, that although the wells required much trouble to preserve them from pollution, and they should be always covered, the improvement is nevertheless for all? This case is different. It requires only that they shall be watched; and this can be done by minors also.

"Observe in what condition," etc. R. Saphra's father left money, and R. Saphra took it for business purposes. His brothers summoned him before Rabha (demanding a share from the profits). Said Rabha to them: R. Saphra is a great man, and would not leave his study to trouble himself for the sake of others.

"If she had improved it," etc. But what has a woman to do with the estate of orphans? (The law dictates as to whether she shall take what belongs to her according to her marriage contract, and depart; or shall take upon herself the trouble of the orphans, and be supported from the estate. But she has no right to any profit.) Said R. Jeremiah: It treats in case

the woman were an heir (*i.e.*, if the will reads: She shall share equally with the orphans).^{*} But if so, it is self-evident. Lest one say: As it is not usual for a woman to occupy herself with business, therefore it should be considered as she remarked—she is doing it for herself, it comes to teach us that it is not so.

"In what condition my husband left it," etc. Is this not self-evident? Lest one say: Because of the pleasure she takes in thinking that people praise her for troubling herself for the orphans' sake, she relinquishes the benefit in spite of her previous remark, it comes to teach us that it is not so.

R. Hanina said: If one has made the wedding of his son in one of his houses, the son acquires title to the house: provided the son was of age, married a virgin, and she was his first wife, and this wedding was the first of his house. It is certain that when the father has separated for this wedding a house with an attic, the son acquires title to the house, but not to the attic. But how is it if on the house was a balcony? or there were two houses, one inside of the other? Is title given to both, or only to that in which the wedding took place? These questions remain undecided. An objection was raised: If the father had separated for his son a house and furniture, the son acquires title to the furniture, but not to the house? This Boraitha treats of when the treasurer of his father was still in the house. So said R. Jeremiah. And the Nahardean said: Even when there was left his pigeon-coop. And both R. Jehudah and R. Papi said: It suffices if his father left there a vessel with roasted fish (*i.e.*, this shows that he has not relinquished his right to the house). Mar Zutra left his sandals in the wedding house which he separated for his son, and R. Ashi a bottle of oil (for the purpose said above). Said Mar Zutra: The following three things the rabbis enacted as laws,[†] without giving any reason: The case just mentioned; and that which was said above in the name of Samuel: If one has be-

^{*} The commentators Rashbam, Tosphath, and Bach discuss at length how the widow is an heir also, illustrating, *e.g.*, if one has married the daughter of his brother, who has no other children besides her, and the brother has inherited the estate of their father, and thereafter both brothers die, then the widow of the one brother is also an heir to the estate of her grandfather, which belonged to her father, who had no heirs except her. There are also some other illustrations, but all are complicated. We give the last, which is simple.

[†] Gershom explains *Sineic* laws, with which Rashbam does not agree.

queathed all his estates to his wife, she is considered a guardian only; and also that which was said by Rabh. If A said to B: You owe me a mana, give it to C, and all the three were present, title is given to C.

MISHNA IV.: Brothers partners in business. If one of them was taken by the government to work for it, the damage caused by his absence, and also the profit for the business during that time, must be counted to the partnership. If, however, he becomes sick, and has to be cured, it is at his own expense.

GEMARA: The rabbis taught: If the government had appointed one of the brothers as a collector, or a military purveyor, if this was because of the duty of the house, it must be counted for all of them, but if it was because of his personal fitness, then it is for himself. Is this not self-evident, because the duty of the house must be counted for all? It treats of when he was a genius. Lest one say: In such a case it must not be counted for the house, because he was taken on account of his genius, it comes to teach us that it is not so.

The rabbis taught: If one of the brothers took two hundred zuz, to begin the study of the Torah, or to learn a trade, they may say to him: If you are with us, you have to be supported; but not otherwise. But why not support him, by deducting what his labor was worth to the house? This may be a support to R. Huna's statement, who said elsewhere: The blessing of the house increases when there are more people (i.e., because the expenses of the house do not decrease when there is one person less). But, after all, let them support him even in his absence for the profits, owing to his share after deducting his labor and the expenses. Yea, this in reality they have to do.

"If, however, he becomes sick," etc. Rabbin sent a message in the name of R. Ilah: The Mishna means to say: In case he himself causes his sickness; but if he was occasionally sick, the cure must be at the expense of the house. What does it mean: "Caused by himself"? As R. Hanina says: All sickness comes from Providence, except cold. As it is written [Prov. xxii. 5]: "Thorns * and snares are in the way of the perverse man; he that doth guard his soul will keep far from them."

* The term in Hebrew is "zinim," and "zinha" means cold; and so it is taken by the Talmud. The basis of Leeser's translation is unknown.

MISHNA V.: If, while the father of the house was still alive, he sent through some of the brothers presents to weddings of his friends, and after his death some of the brothers married and the presents were returned to them by the same friends, it is to be counted to the income of the house; as the wedding presents may be replevined by the court. If, however, one presents to his friends pitchers of wine or oil, it is not to be replevined by the court, as this is reckoned a bestowing of favors only.

GEMARA: There is a contradiction from the following: "If the father sent, through one of his sons, a present to the wedding of his friend, and told him to remain there during the wedding, then, when this present returns to the son's wedding, it belongs to him only. If, however, a wedding present was sent to the father, the returning must be at the expense of the house." Hence we see that the son may preserve the returning present for himself; and this contradicts our Mishna. Said R. Assi in the name of R. Johanan: Our Mishna also treats: When the wedding present was first sent to the father. But does not the Mishna state: Through some of the brothers? Read *to* some of the brothers. But the Mishna states farther on: If it was returned? It means: If this came to be returned by the brothers, it must be returned at the expense of the house. R. Assi himself, however, said: It presents no difficulty (there is no necessity for such a complicated explanation of the Mishna, as it can be explained thus). Our Mishna treats: When the father sent the present through one of his sons, without designating that the returns should belong to him, then the returns belong to the house. And the Boraitha treats: When the father has nominated one of his sons to deliver the present, so that the returning should belong to him. Samuel, however, said: The law is to be practised in accordance with the Boraitha. And our Mishna treats: In case the son through whom the present was sent dies childless, and his brother came to marry his wife, who according to the law is also his heir. However, this present he does not inherit from him; because there is a rule that this brother does not inherit property which was not yet in the deceased's possession, but has to come to him in the future. (Says the Gemara:) From Samuel's statement is to be inferred that the one who has re-

ceived the present is obliged to return, even if the donator were dead. Why, then, let him say: Give me my friend who presented it to me, and I shall enjoy myself and give him a present, as he did to me. But as this cannot be, I am not obliged to anything. As we have learned in the following Boraitha: At those places where it is customary to return the presents which the bride has given to her groom at the time of betrothal, and she dies before marriage, they must be returned. At the place where it is not customary, they must not. And R. Joseph b. Abba in the name of Mar Uqba, quoting Samuel, said: Even at those places where it is customary to return, it is only in case the bride dies; but when the groom, it must not be returned, for the reason that she may say: Give me my husband, and I will enjoy myself with him, as for that purpose he gave them to me. Hence he may say also: Give me my friend, and I will enjoy with him. Said R. Joseph: It speaks of when his friend was at the wedding and had enjoyed himself with him all the seven days of the wedding, and the groom suddenly dies before the present was returned to him.

Shall we assume that in the above-mentioned claim of the bride, "Give me my husband," etc., the Tanaim of the following Boraitha differ: If one has betrothed a woman, and dies before marriage (and the marriage contract was already written), a virgin collects two hundred and a widow one hundred zuz. Concerning the presents given at the betrothal, however, it is to be practised as is customary at that place. So is the decree of R. Nathan. R. Jehudah the Prince, however, said: In reality, it was decided that in the place where it is customary to return, it must be returned; and where it is not customary it must not. Now does not R. Jehudah repeat what was said by the first Tana? It must then be assumed that the point of the difference is: If the bride may claim: "Give me my husband," etc., and the Boraitha is not complete and should read thus: If one betroths a woman, a virgin collects two hundred and a widow one hundred zuz, provided he has withdrawn from the contract. But if she dies, if it was in a place where it was customary to return, it must be done so; and if where it was not, it must not. But all this is in case she dies. But if he dies, there is to be no return, as she may claim: Give me my husband, etc. And to this R. Jehudah the Prince came to say:

Even in the latter case it must be done according to the custom of that place, as such a claim is not to be considered? Nay! All agree that the claim in question is to be considered; and there is no difference between them in case he dies. But in case she dies, they differ. And the point of their difference is: Whether the presents with which she was betrothed should be considered lost forever. According to R. Nathan, they are not so considered; and according to R. Jehudah, they are. But does not the Boraitha state that where it is customary to return, it must be so done? This means presents which were given by him aside from the betrothal. And the Tana'im of this Boraitha are in accordance with the Tana'im of the following: If one has betrothed his bride with a talent (a coin—according to some one hundred and twenty manas, and to others sixty, and according to Rashbam twenty-five), a virgin collects two hundred zuz besides the talent, and a widow one hundred. So is the decree of R. Meir. R. Jehudah, however, maintains: A virgin two hundred, and a widow one hundred of the talent; and the remainder must be returned. But R. Jose said: If he has betrothed her with twenty, he may give her thirty halves; and if with thirty, he may give her twenty halves. Let us see of what kind of case this Boraitha speaks. In case *she* dies, there is no longer any marriage contract; and if he dies, why should she return the remainder? Is it not said above that all agree that the betrothal money must not be returned, as the claim: "Give me my husband," etc., is to be considered? And if you should say: It speaks in case she had sinned; then if intentionally, has she still a right to her marriage contract? And if unintentionally, he may marry her if he be a commoner. It must be then said that it speaks of when the groom was a priest, and she was *forced* to sin (and in such a case a commoner may, and a priest may not marry her). And the point of their difference is, that R. Meir holds the money of betrothal to be lost forever, and R. Jehudah holds that it is not; and to R. Jose it was doubtful whether yes or no. And therefore he maintains that, according to the rule, doubtful money is to be divided. If he has betrothed her with twenty selas (eighty zuz), she has to return to him forty zuz. However, he has to complete the amount belonging to a widow as a marriage contract, which is one hundred zuz; therefore he gives her thirty half-selas, which

are sixty zuz, and this completes the mana to which she is entitled. And if he betrothed her with thirty selas, she has to return to him fifteen, and he must give her twenty half-selas more. Said R. Joseph b. Minumi in the name of R. Na'hman: Babylon is the place where it is customary to return. And by Babylon he meant the city of Nahardea. But how is it with the other cities in Babylon? Both Rabba and R. Joseph say: The betrothal money is not to be returned; but the presents are. Said R. Papa: The Halakha prevails, whether he or she dies, or he has retracted, the presents only are to be returned, but not the betrothal money. And in case *she* has retracted, the betrothal money also. Amimar, however, maintains that even in the latter case the money must not be returned, for the reason that one may say that he is then allowed to be betrothed to her sister (*i.e.*, if one should see the betrothal money returned, he might think the betrothal cancelled, and he might marry her sister, which is biblically prohibited so long as she is alive). But according to R. Ashi: This is not to be feared, as the divorce in her hands testifies that the betrothal was not cancelled. (Said the Gemara:) R. Ashi's statement is not to be taken into consideration at all; as one may be aware that she has returned the betrothal money, and not be aware that she took a divorce.

"*May be replevined*," etc. The rabbis taught: The following five things were said about wedding presents: (a) They may be collected by the court; (b) they are returned at the time when the donator marries; (c) they are not considered usurious (*i.e.*, if the return was of a greater value than presented); (d) the Sabbatic year does not release them; (e) a first-born has no double share in them. They are collected by the court, because they are considered a loan. They are not usurious, because they were not presented with this intention. The Sabbatic year does not release them, because the verse Deut. xv. 2 does not apply to them. And the first-born does not take a double share in them, because they are not as yet in existence, and he is not entitled to that which will be an inheritance in the future.

R. Kahana said: The following is the rule: If one came into the city, and heard that his comrade, who was at his wedding, marries, he must come and make a present. The same is the

case if he heard the voice of the drum which announced the marriage of his comrade; but if it was not drummed, the groom ought to let him know. However, if he failed to do so, although he may be away, he nevertheless must pay. In such a case, however, he may deduct for the meal of which he has not partaken. And how much may he deduct? Said Abayi: The inhabitants of the city of Ganna used to deduct one zuz. However, this depends upon the value at which one would appraise the respect and honor of attendance at the wedding banquet. The rabbis taught: If one has married publicly, and thereafter, by returning the presents, he wishes to be married privately, he has a right to say: As you did with me publicly, I will do with you; but not when privately. The same is the case if one has married a virgin, and the other marries a widow; or, if one has married a second wife, and his comrade marries his first wife, the former may say: As you have done with me, I will do with you. The same is the case if to him it was done once, and his comrade demands from him he shall do twice.

The rabbis taught: Who is like unto a wealthy man who is known to be rich by his many cattle and estates? The one who is a master in Haggadah (as he lectures everywhere, and becomes known to all). Who is like unto a broker who does business at his home only and is not well known to the community? The one who occupies himself with pilpulistic (dialectology, one who is a master in dialectics). Who is like unto one who makes his living by selling things which are to be measured—who gathers his money little by little, which finally becomes a considerable amount? The one who gathers the decisions of the rabbis, little by little, and finally possesses a great deal of wisdom. However, all are dependent to the owner of wheat, which is the Gemara, as only by the studying of it are we able to understand the Mishnayoth and the Boraithas.

R. Zera in the name of Rabh said: It is written [Prov. xv. 15]: "All the days of the afflicted are evil." It means: The masters of Gemara (because they must find out how to decide the laws from the Mishnayoth, which always need an explanation). "But he that is of a cheerful heart," etc., means: the one who is a master in Mishnayoth. Rabba, however, maintains the reverse. He who is a master in Mishnayoth cannot come to any conclusion about Halakha; but he who is a master in

Gemara knows how to decide Halakhas. And this is what R. Mesharshia said in his name: It is written [Eccl. x. 9]: "He that moves stones will be hurt through them," meaning the masters of the Mishna. "He that cleaveth wood will be endangered thereby," means the masters of Gemara (because they do not always succeed in finding out the correct decisions). R. Hanina said: "All the days of the afflicted," etc., means him who has a bad wife. "But he who is of a cheerful heart," etc., means him who has a good wife. R. Janai said: "All the days of the afflicted," etc., means one who is effeminate. "And he that is of a cheerful heart," etc., means him who is hardened to the ways of the world. R. Johanan said: By the first is meant him whose nature is merciful, and who takes to heart everything which happens to his fellow-men; and by the second is meant him who is callous. R. Jehoshua b. Levi said: The first means him who is a pedant; and the second, him whose mind is worldly.*

MISHNA VI.: If one sends presents to the house of his betrothed's father, to the value of one hundred manas, and has partaken of the betrothal meal, even for one dinar, they are not to be returned. If, however, he did not partake, they may be returned in case of retraction. If the presents were given for the purpose that the bride should bring them, after her marriage, to her husband's house, they are to be returned. But if such is to be used while she is yet in her father's house, they are not.

GEMARA: Said Rabha: It means if he has partaken of no less than the value of a dinar; but if less, he has a right to demand a return. Is this not self-evident? The Mishna states a dinar? Lest one say this statement is only general, but not particular, he came to say that this is to be taken literally. Here in the Mishna it is eating. But how is it if he drank, or his substitute had partaken? Also, how is it if they had sent *to him*? Come and hear. R. Jehudah in the name of Samuel said: It happened with one who had sent to his betrothed's father one hundred *carrums* containing pitchers of wine and oil, and vessels of silver and gold, and silk garments; and while he was joyful over the act, he rode on his horse to the gate of

* The second explanation to this verse by the same authority will be in Chapter XI. of Tract Sanhedrin as the proper place.

his betrothed's father, where they gave him a goblet of a warm beverage which he drank while sitting on the horse. Thereafter he died before marriage. And R. Aha, the mayor of that city, brought this case up before the sages in the college of Usha, and they decided: Such presents as may become spoiled before marriage are not to be returned, but such as are in good condition may. Hence we see even if one has not eaten, but drunk, it is the same. Infer from this also that the value of what he had drunk was less than a dinar (as a goblet of warm beverage cannot amount to a dinar). Said R. Ashi: Who can assure us that the goblet to which they treated him was not worth a thousand zuz, as perhaps they had ground a pearl * of that value in the goblet? But infer from this that if they had sent to his house, it is the same as if he had partaken of it at the house of his betrothed's father? Nay! Perhaps at the gate of his betrothed's father is the same as if he had partaken of it *inside* the house. The schoolmen questioned: How is it when the presents have improved—e.g., if he had made presents in cattle and they brought offspring? Shall we say, because they have to be returned to him, they are to be considered under his control, and belong to him; or, because if they should be lost, payment for them would be demanded, they are considered under the control of his betrothed's father? This question remains undecided.

Rabha questioned: The presents which are usually spoiled during the time from the betrothal to marriage—how is it if they were in good condition; must they be returned, or not? Come and hear the Boraitha cited above: "R. Aha, the mayor of that city, brought the matter up before the sages of Usha, who decided: If they are liable to be spoiled, they are not to be returned." Does it not mean although they are in good condition? Nay, it may mean if they *were* spoiled. Come, then, and hear the last part of our Mishna: "But if they be used while she is yet in her father's house they are not?" This was explained by Rabha to be nets and veils. R. Jehudah in the name of Rabh said: It happened with one who sent to the house of his betrothed's father, wine, oil, and garments of flax; all of them new of that year at the time of Pentecost.

* In ancient times they used to grind pearls and diamonds in medicine.

But what news came he to tell us? If you wish, he tells us the great value of the land of Israel; and if you wish, it may be said that he came to teach us: If one claims that he had done so at such a time, his claim is to be considered. The same said again in the name of the same authority: It happened with one, that he was told that his betrothed wife could not smell. He went after her into a ruined building to test her, and said: I perceive a smell of radishes (*i.e.*, he kept in his pockets some for the purpose of testing her, whether she would smell them), and she answered him sarcastically: If one should furnish me with the dates of Jericho, I would eat them with the radishes I smell. Thereupon the ruined building fell and she died. And the sages decided: Because her husband entered the ruin only for the purpose of testing, he has no right to inherit from her.

"But if they be used while in her father's house," etc. Rabbin the elder was sitting before R. Papa and said: This is only in case death occurred to one of them; but if *he* had retracted, the presents are to be returned, but not what he had expended for the banquets. If, however, *she* had retracted, even the value of a bundle of herbs is to be returned. Said R. Huna b. R. Jehoshua: The value of the meat used at the banquets must be appraised at the cheapest price. How cheap should it be? A third of the existing price.

MISHNA VII.: If a sick person had bequeathed all his estates to strangers, leaving some ground for himself, his gift is considered valid. If, however, he left nothing, it is invalid.

GEMARA: Who is the Tana who holds that we may act in accordance with the supposed intention of the bequeather (as the Mishna states, "If he left nothing for himself it is invalid," which means, if the sick person becomes cured, he may retract: because if he could know that he would remain alive, he would not do so)? Said R. Na'hman: It is according to Simeon b. Menasia of the previous chapter (p. 291). R. She-sheth, however, maintains: This is in accordance with R. Simeon of Shizuri of Tract Gittin (Chapter VI., Mishna 6), who said: Also who is dangerously sick. Who is the Tana of what the rabbis taught in the following Tosephtha: If one was sick in bed, and he was questioned to whom he bequeathed his estates, and he said: "I thought that I had a son, but now that I am

convinced I have not, I bequeath my estates to so and so"; or, "I thought that my wife was pregnant, but now that I know she is not, I bequeath them to so and so"; and thereafter it became known that he left a son, or that his wife was pregnant, this bequeathing counts nothing—shall we assume that it is in accordance with R. Simeon b. Menasia and not with the rabbis? Nay! It may be even in accordance with the rabbis, as when he said: "I thought," etc., it is different. Why was it supposed previously that this should not be in accordance with the rabbis? Lest one say that the sick person said it only to mention his sorrow, but he did not think that it should not be bequeathed if he did have a son, it comes to teach us that it is not so. R. Zera in the name of Rabh said: Whence do we deduce that a gift of a sick person must be *biblically* considered? Because it is written [Num. xxvii. 8]: "Then shall he cause to pass unto his daughter" (*i.e.*, it should be written as elsewhere: You shall give the estates), it comes to teach that there is another case which we have to pass, and this is the gift of a sick person. R. Na'hman in the name of Rabba b. Abuhu, however, maintains from [ibid., verse 9]: "Shall ye give his inheritance unto his brothers" (which is also superfluous, as it should read: If no daughter, then to the brothers), which teaches that there is another gift which is to be considered valid, and that is, of a sick person. R. Menasia b. Jeremiah said: It is deduced from [II Kings, xx. 1]: "Give thy charge to thy house," etc., from which we see that concerning a sick person it is sufficient when he charges without any writing. And Rami b. Ezekiel said: From the following [II Samuel, xvii. 23]: "And Achithophel . . . and gave his charge to his household," etc., we see that charging is sufficient without any writing.

The rabbis taught: The following three things has Achithophel charged his sons: You shall not quarrel with each other; you shall not rebel against the kingdom of David; and if the Day of Pentecost be a clear one, you may begin to sow wheat. Mar Zutra, however, said: It was taught that he said: If it should be cloudy. Nahardeans said in the name of R. Jacob: Not exactly clear, and not exactly cloudy; as, if it should be a little cloudy, with a north wind blowing, it is also considered clear. Said R. Abba to R. Ashi: We, however, do not rely

upon the cited Boraitha, but on what is said by R. Itz'hak b. Abdimi in Tract Yoma (p. 29, lines 14, 15, etc.).

[There is a Boraitha by Abba Shaul: If the Day of Pentecost be clear, it is a good sign for the whole year. R. Zebid said: If the first day of the new year is a warm one, the whole year will be warm; and if cold, the whole year will be so. And to what purpose was it said? Concerning the prayer of the high priest on the Day of Atonement (that he should pray accordingly).] Rabha, however, in the name of R. Na'hman said: The gift of a sick person is rabbinical. And it was so enacted that a sick person should not become exhausted, being aware that, because he is sick and cannot write down or sign his will, he can do nothing with his property. But did, indeed, R. Na'hman say so? Did he not say: Although Samuel decided: If one sold a promissory note to his neighbor, and thereafter relinquished his right in it, his act is valid; and even his heir may do so? He (Samuel) nevertheless admits that if he gave this note to some one as a gift, he has no longer right to relinquish his debt, even if he becomes cured. Now, this would be correct if the gift of a sick person were biblical; but if it is rabbinical, why should he not be able to relinquish it when cured? It is true it is not biblical, but the rabbis have enacted that this law should be equal to a biblical one.

Rabha in the name of R. Na'hman said: If a sick person said: "A shall reside in such a house," or, "B shall consume the products of such and such a tree," he said nothing, unless he said: "Give such and such a house to A, that he may reside there"; "Give such and such a tree to B, and he shall consume its products." Is it meant to say that R. Na'hman holds that a sick person who verbally wills has no more right than one who is in good health—i.e., if one who is in good health should say: "He shall reside there," it would not be considered a gift even if it were done with the ceremony of a sudarium; then it would contradict another saying of Rabha's in the name of R. Na'hman: If a sick person said: "The loan made by me to A shall be given to B," he is to be listened to, which is not the case with one in good health, as title cannot be given to a loan which is made with the intention that the borrower shall expend it. (Hence we see that a sick person has more right than one in good health.) Said R. Papa: The reason of this law is,

because an heir inherits it, it is considered as if it were under the control of the borrower. And farther on it is said that the gift of a sick person is considered as an inheritance. R. Aha b. R. Aiqua, however, said: To transfer a loan is lawful, even for him who is in good health in case it were made in the presence of all three, as is said above by R. Huna.

The schoolmen propounded a question: If the sick person bequeaths a tree to A and the products of it to B, should it be considered as if he reserved it for himself, in such a case it being said above that he cannot retract when cured, or is it not so considered? And should you decide that it is not so considered when he bequeaths the products to another, how is it if he said: I bequeath the tree to A, except the products. Is this considered as if he reserved some of the ground for himself, or not? Said Rabha in the name of R. Na'hman: Even if it should be decided, the products to another, it cannot be counted that he reserved some of the ground for himself, it is to be counted as if he left the products to himself, for the reason that if one left to himself, he does it with a good eye. Said R. Abba to R. Ashi: We taught R. Na'hman's statement as to what was said above (p. 153) by Resh Lakish concerning a house and an attic; and in accordance with R. Zebid's explanation there.

R. Joseph b. Minumi in the name of R. Na'hman said: A sick person who has bequeathed all of his estates to strangers, it must be investigated how was the case (*i.e.*, if he had divided them at one time). *E.g.*, of my property such and such shall belong to A, and such and such to B, etc.—as he could not do otherwise if he had made up his mind to divide his estates in such a manner as if he were to die of his sickness, so the last ones are not considered as if he would reserve some of his estates for himself—all of them acquire title after his death. But in case of cure he may retract from all of them, even from the first, but if he so does after deliberating (*i.e.*, “Such and such shall be to A,” then stops, and some time thereafter adds: “Such and such to B,” etc.), in case he was cured of this sickness he may retract only from the last one, as he left nothing for himself—for it is to be supposed that if he knew he would be cured he would not give away the last of his estate so that he should remain a beggar—but not from the previous one.

But why should not we suppose, even in the latter case, that his intention was concerning all of them, in case he should die, and the deliberation was as to who was more worthy to be his inheritor? Usually a sick person who expects to die makes up his mind for all his estates before he mentions any name.

R. Aha b. Minumi in the name of R. Na'hman said: If a sick person has bequeathed all his estates to strangers, and thereafter is cured, he cannot retract, as it may be feared, perhaps, he has estates in another country. But does not our Mishna state: In case he left nothing for himself, he may? And according to this theory, how can such a case occur? Said R. Hama: It may occur, if he said: *All* my estates, wherever they may be found. Mar b. R. Ashi said: Our Mishna means to say: In case it was clear to the people that he had no estates elsewhere.

The schoolmen propounded a question: Should a retraction in part be considered a retraction of all, or not (*e.g.*, if he first bequeaths all his estates to A, and thereafter he bequeaths a part of same to B, which, according to the law, he may do, the question arises whether A has still the right to what was bequeathed to him at first, or the retraction of a part annuls the first entirely)? Come and hear: "If one bequeaths all his estates to A, and thereafter a part of them to B, B acquires title, but A does not." Is it not to be assumed that it means in case he dies? Nay! It means in case he was cured. And so it seems to be from the latter part stated in the same Boraitha: "If he wrote, 'A part of my estate shall belong to A and all the remainder to B,' the latter acquires title, but not the first." And this statement is correct in case he was cured; as then, bequeathing all the remainder to B, he reserved nothing for himself; but if it speaks in case he dies, why should both of them not acquire title? Said R. Yemar to R. Ashi: The same might be said even when he was cured. If you decide that a retraction in part is considered a retraction to all, it is correct that title is given to B, as the first bequeathing to A is entirely annulled with that which he has separated from it to B. But if you should decide that a retraction in part does not annul the first, let this case be considered as the case of "dividing" mentioned above, and title should not be given to any of them.

The Halakha, however, prevails: "That a retraction in part

is considered entirely." And the first case mentioned in the just cited Boraitha holds good for both, whether he dies or is cured; and the latter case holds good only when he was cured.

R. Shesheth said: The expressions, "He shall take," "shall be rewarded," "shall make a hazakah," and "shall acquire title" are to be considered a *gift*, from which he has no right to retract. A Boraitha adds: "Also the expression 'shall inherit,' to him who is fit to be his direct heir." And it is in accordance with Johanan b. Beroka.

The schoolmen questioned: How shall it be done, if he expresses himself: A is the one who shall derive benefit from my estates? Does he mean all of them shall belong to him, or that he shall derive *some* benefit from them, but not all? This remains undecided. The same propounded another question: How is it if he had sold all his estates while he was sick—may he retract when cured, or not? And in answering this question, at one time it was said by R. Jehudah in the name of Rabh: He may retract; and at another time it was said by the same in the name of the same authority: He may not. However, they do not contradict each other, as the first decision holds good in case the money obtained was still in his hands, and the second applies in case the seller had expended it by paying his debts.

The schoolmen propounded another question: If a sick person has confessed, "I owe so much to so and so," shall it be taken for granted, and his creditors acquire title to the cash or estates left; or, probably, that he said this for the purpose that, should he be cured, his children should not think that he was rich, and therefore the man whom he mentioned in his confession takes nothing? Come and hear: Aisur, the proselyte, had thirteen thousand zuz with Rabha. R. Mari was his son (whose mother Rachel, daughter of Samuel, who was in captivity, was pregnant with him from the same Aisur when he was still a heathen before marriage, and although he was born after the father had embraced Judaism, according to the law he was not considered his son concerning inheritance, and also must not be named after him, therefore Mari was named Mari b. Rachel, after his mother). Said Rabha: I do not see any lawful case which could make R. Mari inherit the money deposited with me. By inheritance he cannot, as, according to the law, he is not considered an heir. Should his father while sick make

it a gift to him, there is a rule that he who can be an heir is fit to receive the gift, but not he who is not fit to be an heir. There is also a rule that to coins title cannot be given by exchange; and if his father would present him with real estate, which is lawful, his father does not possess it; and if by transferring them from me to him in the presence of all three of us; then certainly, if he would send after me, I would not listen. Which R. Aiqua b. R. Ami opposed, saying: Why, then, let Aisur confess that the money in question belongs to Mari, and with his confession title would be given to him. While so discussing, Aisur got wind of it, and confessed. Rabha became angry, saying: They are instructing people how to make their claims good and do harm to me.

"Reserving some ground for himself," etc. But what is meant by this? Said R. Jehudah in the name of Rabh: It means real estate, or ground by which his livelihood is assured. And R. Jeremiah b. Abba maintains: The same is the case when he left movable property. Said R. Zera: See how the decisions of our elders correspond. Why is it said real estate? Because it is supposed that a sick person would think, "If I should be cured, I shall get my livelihood from this estate." The same is the case if he left movable property; he relies upon it. R. Joseph, however, opposed: I do not see such a correspondence at all. He who says "movable property" does not correspond with our Mishna, which states plainly, "ground" (real estate); and he who said "to be sufficient for his livelihood" also does not correspond with it, which states "some real estate," which cannot be explained that it should suffice for a livelihood. Said Abayi to him: Does the Mishna mean in each case when it mentions ground, that it is not changeable for movable property? Did not R. Dimi b. Joseph say in the name of R. Elazar, referring to a Mishna in Tract Gittin, in which also some ground is mentioned: Movable property is also considered a remainder in that case? There it is different. It should not state "ground" at all; but because it begins with the law of Peah, which applies to ground no matter how small it is, etc., it uses the same expression at the end. But in reality there is a difference between real estate and movable property. It was also questioned: Is this a rule—that wherever the expression, a trifle, is mentioned

in the Mishna, it does not mean a certain quantity? Is there not a Mishna in Chulin: "If five sheep give some wool, the law of the first shearing applies to it"? and to the question: What does "some wool" mean? said Rabha: No less than a litra and a half, etc. Hence we see the expression "some" means a certain quantity? There also it should not state "some wool"; but because in the beginning it states: If each sheep gives a litra and a half, it expresses in the latter case "some wool," as the quantity from every five sheep is only one litra and a half.

It is certain that if one says, "I bequeath my movable property to so and so," he acquires title to all vessels or garments which are useful, except wheat and barley. And if he says, "*All* my movable property," wheat and barley are also included; and even the grinder of a handmill, but not the grindstone. And if he say, "All that is movable," even the latter is included. But the question arises: If among his properties were also bondsmen, is title given to them also, as they are also considered movable property; or are slaves under the category of real estate and title is not given?

Said R. Aha b. R. Ashi to R. Ivia: Come and hear Mishna 7 in Chapter IV. of this tract, which states: If he said, "I sell the town, with all its contents," slaves are included. From which it is to be inferred that slaves are considered movable property; as if they were considered real estate they ought to be included, even if he did not mention "with all its contents." But can you infer from it that they are considered movable property? Does not the Mishna express itself "even bondsmen"; and if they should be considered movable property, why "even"? We must then say that there is a difference between movable property which must be carried and that which is self-moving. The same answer can also apply to the theory that slaves are considered real estate. (See previous vol., p. 59.)

Rabha in the name of R. Na'hman said: In five cases the act of a gift is not considered unless the bequeather writes "all my estates," and they are: A sick person, his bondsmen, his wife, his children, and the estates of a woman who has bequeathed them to some one for the purpose that her future husband should not demand them at the marriage. "A sick

person"—as our Mishna states: If he reserved nothing for himself, the bequeathing is not considered. "A slave"—as there is a Mishna which states: If one has bequeathed all of his estates to a slave, the latter becomes free. If, however, he reserved some for himself, he does not. "His wife"—as is said above: If one bequeaths all his estate to his wife, it is considered that he has appointed her as a guardian only. "To his children"—as stated above: If one bequeaths all his estate to his children, but reserves for his wife some ground, she loses the right of her marriage contract. "And the estate of a woman who desires to hide it from her future husband"—as the Master said elsewhere: In such a case she must write *all* her estates, as only then she may retract after her marriage. But if she reserved something for herself, she loses the right. And in all those cases where they reserved for themselves movable property, their acts were invalid, except in the case of a marriage contract, to which the enactment of the rabbis was made for real estate only. Amimar, however, maintains: If the movable property in question was mentioned in the marriage contract, and while bequeathing all his estate to his children he reserved it for himself, it is considered, and his wife does not lose her right in the marriage contract.

If A bequeaths his estates to B, and among them were slaves, they are included, as they are also called estate, as said above. Earth is considered estate, as there is a Mishna: Estates which one can rely upon can be acquired with money, with a bill of sale, and with hazakah. Garments are also considered estate, as the same Mishna adds: And to that which cannot be relied upon, title is given only by drawing. Coins are also considered estate, from the same Mishna, which adds: Such estates which cannot be relied upon may be obtained with that which may be relied upon.* [Here is repeated from Baba Kama (p. 236) what happened to R. Papa when he had to collect twelve thousand zuz, as evidence that coins are considered estate.] Deeds are also considered estate. As Rabba b. Itz'hak said: There are two kinds of deeds. If one said to witnesses: "Give title of this field to so and so by a ceremony of a sudarium, and

* In the Talmud, wherever it means real estate, the expression is estates which one can rely upon—which means that if they are mortgaged for a loan the lender may rely upon them, as they cannot be lost by fire, etc.

write him a deed, he may retract as to the deed," but he cannot retract as to the field itself, as title was already given. But if he said: "Give title," etc., with the stipulation, "You shall write him a deed also," he may retract from both. And R. Hyya b. Abbin in the name of R. Huna said: There are three kinds of deeds: the two just mentioned; and the third, if the seller hastened and wrote the deed. As is said above: If the seller desire to write a bill of sale, he may do so even in the absence of the buyer; as after the buyer makes a hazakah on the estate, title is given to the deed wherever it may be found. As we have learned: Estates which cannot be relied upon are obtained with that which is to be relied upon, etc. (We see, then, that deeds are considered estate.) Cattle are also so considered, as we have learned (Tract Shekalim, Chapter IV., Mishna g): "If one devote his possessions, and there are among them cattle fit for the altar, male or female," etc. Fowl are also so considered, as we have learned [ibid., h]: "If one devote his possessions, and among them . . . oils and birds," etc. Tephilin are also so considered, as we have learned: "If one devote his estates, among which tephilin were found, they must be left for him."

The schoolmen propounded a question: How is the case with the Holy Scrolls—as they must not be sold, are they considered estate or not? This remains undecided. The mother of R. Zutra b. Tubhia had transferred to Zutra her estates because she was about to marry R. Zebid. However, after marriage, Zebid divorced her. Then she came before R. Bibi b. Abayi, claiming that she retracted from her transfer, as she told R. Zutra plainly that only for the purpose of marriage had she transferred her estates to him. But he said: You transferred them on account of marriage, and you did marry. Said R. Huna b. R. Jehoshua: Because you are weak you speak weak words (see above, p. 306). Even according to him who said: "If she wishes to hide her estates from her future husband, title is given," it is only in case she does it without any remark; but in this case she said plainly to her son that she did it because of marriage. But now she is divorced.

The mother of Rami b. Hama bequeathed to him her estates on one evening, and in the morning she bequeathed them to her son R. Uqba. Rami then went to R. Shesheth,

who turned over the estates to him. And R. Uqba went to R. Na'hman's court, and he decided that the estates belonged to him (Uqba). R. Shesheth then went to R. Na'hman and questioned him: Why such a decision? If it is because she retracted from the first, this would hold good only should she be cured; but she was dead from this sickness, and her first will ought to be listened to? And he answered: So said Samuel: In such a case where a retraction holds good in case of a cure, it is the same if the retraction was made while still sick. Rejoined R. Shesheth: Samuel said so in case he has retracted and reserved the estates for himself? But did he say also that he might bequeath to another? And R. Na'hman answered: Yea! Samuel said plainly: One may do so, whether for himself or for another.

The mother of R. Amram the Pious possessed a bundle of deeds, and while dying she said: They shall be given to my son Amram. His brothers, however, came to complain before R. Na'hman, claiming that Amram had not made any drawing on the deeds; consequently he had not yet acquired title to them. To which R. Na'hman answered: The words of a dying person are considered as if written and delivered.

The sister of R. Tubi b. Matna bequeathed her estates to him on one morning, and in the evening came R. Ahadbui, who cried before her, claiming that people would say: The one brother is a scholar and the other not, and she has bequeathed to him. When the case came before R. Na'hman, he decided as he said above in Samuel's name, that the retraction held good. The sister of R. Dimi b. Joseph owned a part of a vineyard; and every time she became sick, she used to present it to him, and when cured to retract. At one time she became sick and sent to him: Come and acquire title to my estates. And he answered: I do not want them. She, however, sent again to him: Come and acquire title to them, so that, according to the law, I shall not be able to retract. He then went, reserved a part thereof for her, and then the ceremony of a sudarium was made. She again became cured, and again retracted, and came to R. Na'hman requesting that he should return to her her estates. And R. Na'hman summoned R. Dimi before the court. But he was not willing to listen, saying: To what purpose shall I go? All that was done was in

accordance with the law. She reserved of the estates for herself in case she should be cured, etc. He then sent to him: If you will not appear before the court, I shall prick you so that blood will not run (*i.e.*, put him under the ban). Then R. Na'hman examined the witnesses how was the case. And they said: The woman said thus: "Woe is me! I am dying," and then she said her will. To which R. Na'hman gave his decision: In such a case it is considered that she made the will because she was afraid she would die; and a will made in the fear of death may be retracted.

It was taught: Concerning a gift in part of a sick person, it was said before Rabha, in the name of Mar Zutra the son of R. Na'hman, who said in the name of his father: In one respect it is equal to a gift by one in good health; it means he cannot retract if cured; and in the other to a will of a sick person, as it needs not the ceremony of a sudarium. Said Rabha to them: I told you several times, "Do not put a clay-pot (see Chapter I., p. 14) on the neck of R. Na'hman." R. Na'hman said thus: It is considered a gift of one in good health and must be done with the ceremony of a sudarium. Rabha, however, objected to R. Na'hman from our Mishna, which states: If he reserved some ground for himself the gift is valid. Is it not to be assumed that no sudarium is needed? And he answered: Nay! It must be done with the ceremony of a sudarium. But does not the latter part state: If he reserved nothing, title is not given? And if it is as you say, why should it not be the same when made by a sudarium? And he answered: So said Samuel: If a sick person has bequeathed all his estates to strangers, although made with a sudarium, he may retract, because it is certain he made it in the fear of death. R. Mesharshia objected to Rabha from the following: It happened with the mother of Rukhl's sons that while sick she said: My jewelry shall be given to my daughter, and is worth twelve manas. And she died; and the sages listened to her will. (Hence we see that, although it was a part of her estate, and it was not made with the ceremony of a sudarium, it was nevertheless considered.) The case was, because she had mentioned: I am certain I shall die, therefore I bequeath this to my daughter. R. Huna b. R. Jehoshua, however, said: If the sick person has commanded while dying, a sudarium is needed; and all Bo-

raithas cited treat when the sick person has divided all his estates among different persons. And in such a case it is said above that the rabbis consider them as a gift of a sick person. The Halakha, however, prevails that for a gift of a sick person in part a sudarium is needed, even when he dies of that sickness; but if he commanded while dying, no sudarium is needed in case he dies. But if he was cured he may retract, even if it was done with a sudarium.

It was taught: A gift of a sick person, in which it was written that it was made with a sudarium—it is considered based upon two sources, and must be listened to. So declared the school of Rabh in the name of their master. Samuel, however, said: I do not know what should be done in such a case. The reason of the school of Rabh is: Because the will was made on two bases, it is equal to both—a gift of one in good health, from which he cannot retract, and to a gift of a sick person who said, "The loan I have with A, shall be given to B." And the reason of Samuel, who was doubtful in such a case, is: Perhaps the sick person made up his mind not to give title without a deed, and such cannot be written after death.

However, there is a contradiction from the following statement of Rabh's, to his one decision just mentioned, and the same is it with Samuel—namely: The message which Rabbin sent in the name of R. Abuhu (above, pp. 300-1), in which both Rabh and Samuel contradict themselves? Nay! There is no contradiction at all. Rabh it does not contradict, because in one case he speaks where it was made with a ceremony of a sudarium, and in the other where it was not. And to Samuel also there is no contradiction, as his decision in the case cited speaks when the sudarium was made to strengthen the act. (This will be explained farther on.)

R. Na'hman b. Itz'hak was sitting behind Rabha, and Rabha before R. Na'hman, who questioned him: Did Samuel indeed say that it is to be feared the sick person had perhaps made up his mind to give title by a deed only? Did not R. Jehudah say in his name: A sick person who has bequeathed all his estates to strangers, although made with a sudarium, if he was cured he may retract? Because it is known that this bequest was only because he thought he would die. R. Na'hman gestured, and Rabha remained silent. After R. Na'hman went out,

questioned R. Na'hman b. Itz'hak: Rabha, what does R. Na'hman mean by his gesture? And he answered: He means that title is given when the act was strengthened. And to the question: How is it known that the act was strengthened? Said R. Hisda: If it was written: "In addition to his gift the ceremony of a sudarium was made."

It is certain that if one bequeathed first to one, and thereafter to another, it is as R. Dimi said above: The later will abolish the first. But how is it if he wrote and gave title with a sudarium to one, and thereafter he did the same to another? According to Rabh: Title is given to the first, as in his opinion it is similar to a gift by one who is in good health. But according to Samuel title is given to the second, as in his opinion it is similar to a gift of a sick person, and it is to be feared that he had perhaps made up his mind to give title only by a deed. So it was taught in the city of Sura. In Pumbeditha, however, it was taught as follows: R. Jeremiah b. Abba said: A message was sent from the college to Samuel: Let the master teach us—how is the law if one has bequeathed his estate to strangers with a sudarium? And his answer was: After a sudarium, nothing can be done. The schoolmen, however, understood that Samuel's decision was only if it was bequeathed to another; but if he became cured and wished to retract for the sake of himself, he might do so. Said R. Hisda to them: When R. Huna came from Khuphry, he explained that Samuel meant to say it holds good in any event (*i.e.*, he cannot retract even for himself). There was one who bequeathed his estates with a sudarium while he was sick, and thereafter became cured and wanted to retract, and brought up his case in the court of R. Huna. And R. Huna said to him: "I can do nothing for you, as you acted not in accordance with those who wish to retract after cure. They usually give title with one of the two—a document or a sudarium. You, however, have done both; and such an act can by no means be abolished." There was a deed of gift in which it was written: While I live and after my death. Rabh considered this as a will upon death, because death was mentioned. And Samuel considered it as a gift by one in good health, because while "I live" was mentioned—explaining that the word death is to be interpreted from time everlasting. Said Uhla: The

sages of Nahardea decided: The Halakha prevails with Rabh. Said Rabha: If, however, it was written: "While I *still* live," title is given. And Amimar said: The Halakha does not prevail with Rabha. Said R. Ashi to him: Is this not self-evident? Have not the Nahardeans decided: The Halakha prevails with Rabh? (And he rejoined:) One might say: When "*still* alive." Rabh also admits: I came to say that it is not so. There was such a case, which came before R. Na'hman in the city of Nahardea, and he sent the plaintiff to R. Jeremiah b. Abba in the city of Shum-Tamia, saying: Nahardea is the city of Samuel, and we cannot act against him, though the Halakha prevails with Rabh. There was also such a case which came before Rabha, and he decided in accordance with his own theory. And the plaintiff was a woman, who troubled him very much, saying: His decision was not in accordance with the law. He said then to R. Papa b. R. Hanon, who was his scribe: Write her a document that she won the case; but at the bottom write a few words from a Mishna in Middle Gate: "He may hire other laborers or deceive them" (that the court to which she shall bring my judgment will understand that I do not agree with it). And she exclaimed: I see you desire to fool me—may your ship sink! Rabha's followers dipped his clothes in water, to overcome the curse of the woman. However, they did not succeed, as Rabha was punished for this.

MISHNA VIII.: If in the deed it was not mentioned that he was sick, and he claims that he was sick at the time of writing and had a right to retract, while the plaintiff claims that he was in good health, it is for him to bring evidence that he was sick. So is the decree of R. Meir. The sages, however, say: There is a rule that it is always for the plaintiff to bring evidence.

GEMARA: There was a deed of gift in which it was written that it was done while he was sick in bed; but it was not mentioned that he died from that sickness. And Rabha said: It does not matter, as in reality he did die, and his grave is evidence. Said Abayi to him: But what evidence is this that he died from that sickness? Perhaps he was then cured, retracted, and thereafter died of another sickness? And that this is to be feared we may infer from a ship which sinks, when it is seldom that the men on board are saved. And, nevertheless, we apply

to such a case both the rigorous law concerning life and the rigorous law concerning death (*i.e.*, the wives of those who were on board are not allowed to marry, as perhaps their husbands are not dead, but have drifted to the shore at another place and remain alive, and also must not partake of Terumah in case their husbands were priests, as perhaps they are dead). So much the more in our case, in which the majority of sick persons become cured. Should we not fear that, because it was not mentioned in the deed that he died from that sickness, he was cured?

Said R. Huna b. R. Jehoshua: The decision of Rabha in this case is in accordance with R. Nathan of the following Boraitha (in such a case as stated in our Mishna, it depends on circumstances): Who has to collect from whom? If he, the bequeather, has to take out of their hands, he can do so without any evidence; but if they have to collect from him, evidence must be brought. So is the decree of R. Jacob. R. Nathan, however, maintains: If the case comes on while he is in good health, it is for him to bring evidence that he was sick when the deed was written. On the other hand, they have to bring evidence that he was in good health, if the case comes on while he is sick. (Hence we see that R. Nathan's decision is according to the circumstances at the time the case is before the court; and the same is Rabha's theory.)

"*The sages, however, say,*" etc. What kind of evidence is required? According to R. Huna: Witnesses shall testify that he was in good health when the deed was written. And according to R. Hisda and Rabba b. R. Huna: The evidence should be by approval of this deed (*i.e.*, the defendant claims that he was then sick, and consequently the deed is valueless; but if they bring evidence from the court that it was approved by it, he must not be trusted, as it is to be supposed that the court would not approve it if it was not aware that he was in good health). R. Huna, who required witnesses, maintains: R. Meir and the sages differ as R. Jacob and R. Nathan do. And R. Hisda and Rabba b. R. Huna maintain: They (Meir and the rabbis) differ as to whether a deed which is admitted by the signer must be approved by the court or not. According to R. Meir, it is not necessary; and according to the rabbis, it is.

Rabha is also of the opinion that the evidence in question

must be witnesses. Said Abayi to him: What is your reason? Shall we assume that because all other documents state it was done when he was on his feet and in good health, and here it is not so mentioned, it is to be assumed that he was then sick? Why not say to the contrary, as in all documents of a sick person it is written: "It was done while he was sick in bed," and here it is not mentioned, it is to be assumed that he was then in good health? (And he answered:) Since it can be so said, and also the contrary, therefore we leave the money or the article in the hands of its possessor; and it is for the plaintiff to bring evidence.

The decision of this question is still in discussion, as R. Johanan and Resh Lakish also differ. According to the former, witnesses are required; and according to the latter, the approval of the deed.

R. Johanan objected to Resh Lakish from the following: It happened in the city of Bene Brack that one sold the estate of his father, and died; and his relatives complained that he was not of age when he died. And they came and questioned R. Aqiba whether they had a right to examine the corpse. And his answer was: First, you are not allowed to disgrace the dead; and secondly, the signs of maturity are subject to change after death. Now, according to my theory that witnesses are required, it is correct: as the buyers required evidence from the relatives, which they could not give, they asked for permission to examine the corpse. But according to your theory that the evidence should be by approval of the deed, let them, then, approve the documents, and hold the goods without any examination? And Resh Lakish answered: Do you think that his estates were still in the possession of his relatives, and the buyers were the plaintiffs? On the contrary, the estates were in the hands of the buyers; and the relatives were the plaintiffs. (Says the Gemara:) It seems to be so, as his relatives kept silence when Aqiba told them they were not allowed to examine; and if the buyers were the plaintiffs, they would certainly claim: We gave him money—let him be disgraced and disgraced. However, this cannot be taken as a support, as it can be said that therefore R. Aqiba said to them: "And secondly, signs of maturity are subject to change," because of their claim: Let him be disgraced.

(It was taught:) Resh Lakish questioned R. Johanan: There is a Mishna among the Mishnayoth of Bar Kapara: If one worked up a field and consumed the products as if he were the owner of it, and then one came and claimed, "It is mine," but the occupant showed him a document, whether bill of sale or deed of gift, and the plaintiff said, "I do not recognize such a document at all," the signatures which are on the document must be approved by the court (*i.e.*, it is sufficient that the witnesses should testify before the court that they recognize their signatures, but it is not necessary that they should testify that the sale or gift was made in their presence). If, however, the plaintiff claims: "I recognize this deed, but it was written only upon your request for a special purpose; but I never sold"; or, "I sold to you and never took any money," if the plaintiff brings evidence, then it must be done accordingly; but if there is no evidence, the deed is in force. Shall we assume that it is according to R. Meir, who said: "If one recognizes his document, the approval of it is not necessary," and not in accordance with the rabbis? And R. Johanan answered: Nay! I say that all agree such a document does not need any approval. Said Resh Lakish again: But there is a Mishna that they do differ. And he answered: That Mishna treats that the witnesses themselves impair the deed (*i.e.*, they testified that they signed it illegally). But can he, the giver of the document, be supposed to impair it? Rejoined Resh Lakish: But in your name it was said that you would approve the claim of the relatives who asked permission for the examination (cited above), as it seemed to you they were right. To which R. Johanan rejoined: This was said by Elazar, but *I* never said such a thing. Said R. Zera: If R. Johanan denies what was said by Elazar his disciple, will he also deny what was said by R. Janai his master? The same said in the name of Rabbi: If one admits that he wrote this document, it must nevertheless be approved. To which R. Johanan said, answering him: Rabbi, is this not the same as our Mishna states? The sages, however, say: It is for the plaintiff to bring evidence. And there is no other evidence but the approval of the document. And therefore (adds R. Zera), it seems that our master Joseph is right when he states in the name of R. Jehudah, quoting Samuel, that the rabbis said approval is not needed to a docu-

ment which is admitted by the signer. And he who holds that he still needs an approval is R. Meir. Also, by the expression of R. Johanan, "All agree," is meant the rabbis, as R. Meir was only a single individual who so holds. But does not the Mishna state the reverse? And also the Boraitha, does it not state in the name of the sages that it must be approved? Reverse the names in the Mishna, as well as in the Boraitha. But was it not stated above that R. Johanan is the one who requires that the evidence mentioned in the Mishna should be witnesses? This statement is also to be reversed (*i.e.*, R. Johanan said: The evidence should be with the approval of the deed). Then the objection must be reversed also—not that R. Johanan objected to Resh Lakish, but the reverse? Nay! So said R. Johanan to Resh Lakish: According to my theory that I require the evidence should be by the approval of the deed, it is correct that the buyers took possession of the estate which was sold to them by the alleged minor. But according to your theory, how can there be such a case—that the buyers should possess the estate? Where could they find witnesses who should testify that he was of age? And Resh Lakish answered him: I admit to you that the claim of the relatives ought not to be taken into consideration; for what was their claim as against the deed in which witnesses signed that "he was of age"? And there is a rule that witnesses have the preference; as it is assumed that witnesses would not testify unless they were aware of the case. Hence concerning this deed they would not sign it if they were not aware that he was of age.

It was taught: What must be the age of one who has the right to sell the estates left him by his father? Rabha in the name of R. Na'hman said: Eighteen. And R. Huna b. Hinna in the name of the same authority said: Twenty. R. Zera objected from the above case which happened in the city of Bene Brack, to whom R. Aqiba said: The signs of maturity are subject to change after death. And this can be correct in him who said eighteen, as then his relatives questioned the law if the corpse might be examined. But according to him who said twenty, of what use could the examination be? At that time the signs of maturity are already unrecognizable, as we have learned in a Mishna: If one gets to the age of twenty,

and the signs of maturity are not visible, they have to bring evidence that he has reached the age of twenty; and he, the castrate, is a legal "saris," who does not perform the ceremony of Halitzah and also cannot marry his brother's wife. Hence we see that after twenty the symptoms of maturity are already unrecognizable. The answer was: Was it not taught in addition to the Mishna by R. Samuel b. R. Itz'hak in the name of Rabh: Provided the symptoms of a "saris" were visible. Said Rabha: It seems that this explanation is right, as the Mishna states: "He, the castrate, . . . 'saris,' " from which it is to be understood that such signs were visible on the body; as if not, why should he be named "castrate"? But how is it if neither the signs of maturity nor of a "saris" were visible? How many years are needed, that he should be considered of age? Taught R. Hyya: After he reaches the majority of life (*i.e.*, thirty-six years, as life is considered seventy). It happened that such cases were brought before R. Hyya by the mothers, questioning him: What must be done, that the signs of age should appear? And he used to answer: If the lad was thin, see he should become fat; and if he was fat, he would advise that they should make him thin, as sometimes the signs came earlier because of thinness, and sometimes because of fatness.

The schoolmen propounded a question: How is he to be considered during the nineteenth year—nineteen, which is still not of age, or twenty? Rabha in the name of R. Na'hman said: The whole twentieth year, is he considered nineteen? And Rabba b. R. Shila in the name of the same authority said: As twenty. The statement of Rabha, however, was not heard from him plainly; but it was so judged from the following act: There was a lad who was between nineteen and twenty, who used to sell his father's estate, and Rabha had annulled all his acts. People who saw this thought that it was because he considered him not of age. In reality, however, Rabha did so because signs of foolishness were seen in him, as he used to free all his slaves.*

Giddle b. Menarshia sent a message to Rabha: Let the mas-

* At that time it was prohibited to free a bondsman without a good reason, according to Roman and Persian, as well as to Jewish laws.

ter teach us! How should a girl of fourteen years and one day who has a knowledge of business be considered? And he answered: If she has a knowledge of business, then her sale is valid, but not otherwise. Why was the question for a female and not for a male child? Because so was the case.

There was one lad, less than twenty, who had sold the estate of his father, and his relatives instructed him that when he should be at the court of Rabha he should eat dates and throw the pits at Rabha's person (for the purpose that Rabha should see he was a fool, and so annul his sales). He did so, and Rabha did indeed annul the sales. When the judgment was written, the buyers instructed him to go into court and say: The Book of Esther can be bought for one zuz, and the same is the price for Rabha's judgment. And he did so. Rabha then decided: His sales are valid. And when his relatives told him he was so instructed by the buyers, Rabha answered: He understands business if it is explained to him, and in such a case his acts are valid; and his previous act, that he threw the pits at me, was because he is too much of a scamp.

Said R. Huna b. R. Jehoshua: Concerning witnesses—his testimony may be considered at such an age (between nineteen and twenty). Said Mar Zutra: But only concerning movable property, and not real estate. Said R. Ashi to him: What is the reason that he is fit to be a witness for movable property—because his sales are valid? If so, let children of six and seven years be fit for this, as there is a Mishna: The purchase or sale of movable property by minors is valid. And he answered: Witnesses must be men, as it is written [Deut. xix. 17]: "Then shall both the men who have the controversy stand before the Lord," etc., which cannot be applied to children.

Said Amimar: If a lad of thirteen years and one day presented a gift to some one, his act is valid. Said R. Ashi to him: Why? Even concerning a sale where he should receive money, the rabbis enacted that it should be annulled, because he might sell too low. Shall we say, if he presents a thing without any money his act is valid? (Said Amimar to him:) And according to your theory, if such a lad bought a thing which is worth six zuz for five, should this be considered? This is certainly not so, because there is no difference whether it was worth more or less, as the rabbis annulled all sales made by such a lad who

does not understand business. And the reason is that the rabbis were aware that lads at such an age have an inclination for money; and if you should allow one to sell, he would sell all the estates of his father for a small amount. But concerning a gift it is different, as if he would not have any benefit from it, he would not do so; and therefore the rabbis enacted that his gift should be considered, so that others should also please him. R. Na'hman in the name of Samuel said: A young man before twenty may be examined for the signs of maturity concerning betrothals, divorces, the ceremony of Halitzah, and protesting against marriage, and as to selling the estates left him by his father. The Halakha, however, prevails, that between nineteen and twenty he is considered as before nineteen; and it prevails also in accordance with Giddle b. Menarshia, with Mar Zutra, and also with Amimar, and with all the laws which are stated by R. Na'hman in the name of Samuel.

MISHNA IX.: If one divides his estates verbally, no matter if he was in good health or dangerously sick, according to R. Elazar to real estate title is given by money, by a deed, and by a hazakah; and to movable property, title is given by drawing only. He was then told that it happened with the mother of the sons of Rukhl, who was sick and said: Give my jewelry, which is worth twelve manas, to my daughter, that the sages had listened thereto. And he answered: The sons of Rukhl ought to have been buried by their mother while they were still young (*i.e.*, they had bad habits, and therefore the sages fined them, that they should not inherit from their mother).

GEMARA: There is a Boraitha: R. Eliezer said to the sages: It happened with an inhabitant of the city of Mruni, who was in Jerusalem, that he possessed much movable property which he desired to present to different persons; and he was told that he could not give them title, unless he did so together with some real estate. He went then and bought a rock near Jerusalem, and said: The north side of the rock shall belong to A, and with it one hundred sheep and one hundred barrels; and the south to B, and with it one hundred sheep and one hundred barrels. And when he was dead, the sages approved his will. Hence we see that, though the rock could not be considered real estate, as it could not be used for anything, nevertheless title was given. And he was answered:

This is no support, as the Mrunian was in good health when he did so; but this cannot be done by a sick person.

R. Levi said: It is allowed to make the ceremony of a sudarium with a sick person even on Sabbath, lest he become exhausted; but not because the Halakha is in accordance with R. Eliezer of the following Mishna.

MISHNA X.: R. Eliezer said: If it happens that a sick person divides his estates verbally on Sabbath, it may be listened to, because it is prohibited to write; but not on week days. R. Jehoshua, however, maintains: It was said on Sabbath, *a fortiori* when it happened on week days. Similar to this is: One may acquire title for a minor, but not for adults. So is the decree of R. Eliezer. R. Jehoshua said: For a minor, and *a fortiori* for an adult.

GEMARA: Our Mishna is in accordance with R. Jehudah, as we have learned in the following Boraitha: R. Meir said: The reverse is the case. If this happened on week days, his words must be listened to, because he is allowed to write; but not on Sabbath, because he is not allowed to write. So is the decree of R. Eliezer. R. Jehoshua said, on the contrary: It was said on week days, and so much the more on Sabbath. R. Jehudah, however, said: R. Eliezer's decree was, if on Sabbath, his words must be listened to, because he is not allowed to write; but not on week days, when he is allowed to write. And R. Jehoshua's decree was to the contrary. And the same is the case as to the latter part of the Mishna.

MISHNA XI.: Suppose a house falls upon A and his father, or on any persons, that one of them has to be bequeather and the other inheritor, and it is not known who dies first, and to the estate there is a claim from the widow for her marriage contract, and from other creditors. The heirs of the father say that the son died first; and the creditors say that the father died first, and the son afterward. (*I.e.*, the creditors of the son who had a right to the estate only if he died after his father, so that with the death of his father the inheritance came to him. But if he was dead before his father, he has nothing in the estate. And this is what his brothers claim, that the creditors have no right in the estate left by their father. Concerning a marriage contract, that will be explained in the Gemara.) According to the school of Shamaï, they have to divide; and according to

the school of Hillel, the estate must be left in the hands of the present occupants.*

If it happened that the house fell on him and his wife, the heirs of the husband claim that the woman dies first, consequently her husband has inherited from her; and the heirs of his wife claim that he died first, consequently they have a right to her marriage contract and also to her own estate. They have to divide, according to the school of Shamai. But the school of Hillel say: They must leave the estate in the hands of its present occupant. And the occupants are to be considered as follows: The estates belonging to the marriage contract are to be considered as in the hands of the husband's heirs. But her own estates, which she brought with her to her husband, and which ought to go out with her by death or divorce, are to be considered in the hands of the heirs of *her* father.

If, however, the house falls on one and his mother, both schools agree that it must be divided. R. Aqiba, however, said: I hold that they (the schools) differ in the latter case also; and the school of Hillel are still of the opinion that estates must be left in the hands of the occupants. Said Ben Azai to him: We deplore that the schools differ in the former cases, and you come to add the third one, in which the rabbis testify that they have agreed.

GEMARA: The estates which were brought by the deceased woman, mentioned in the Mishna—to her husband for usage of fruit only, according to the school of Beth Hillel. Who is to be considered the occupant? According to R. Johanan: The heirs of the husband. According to R. Elazar: The heirs of the woman. R. Simeon b. Lakish, however, said in the name of Bar Kapara: Such must be divided. And the reason of this statement was taught by Bar Kapara himself, that as the claims of both parties are equal (*i.e.*, the heirs of the husband claim that all the products of this estate belonged to the deceased, as he had a right to sell them, and therefore they belong to his heirs; and the opponents claim that they were only to be used while he was alive, and therefore what was not

* The Gemara to this Mishna we transfer to Mishna 8 of the succeeding chapter, as the proper place. We also deemed it necessary to put all three Mishnas which treat of falling houses together, though in the original text they are in three separate places.

consumed by him, if his wife were alive she would certainly take with her estate; hence it belonged to her, and after her death to us), it is to be considered doubtful money, the law of which is division.

"*R. Aqiba said . . . in the hands of the occupants.*" But who are considered their occupants? R. Aila said: The heirs of the mother; and R. Zera: The heirs of the son. When R. Zera ascended to Palestine, he retracted from his statement in Babylon and accepted the system of R. Aila. Rabba, however, retained the system of R. Zera as a Halakha. Said R. Zera: From my retraction, I see that the air of the land of Israel makes one wise; as after I came here I saw that my statement while I was still in Babylon was erroneous.*

"*Said Ben Azai to him,*" etc. Said R. Simlai: Infer from this that Ben Azai was an associate disciple of R. Aqiba; as if he were a disciple only, he would have said to him, "*The master said,*" and not, "*And you (thou).*"

A message was sent from Palestine as follows: If a son has sold his share of the inheritance of his father to some one, and dies while the father was still alive, and thereafter his father died, the son of the seller has a right to take away the goods from the buyer. (Because, at the time sold, the seller has nothing as yet in his hands, and the sale was for that which would be his in the future; and as the son died before his father the goods were never his, and his son is now the heir of his grandfather, to whom the goods in question belong; hence he has a right to take them away.) And this is a complicated case in the law of money matters. But let the buyers say: Your father has sold, and you are taking away? What a claim is this! Cannot the plaintiff say: My basis is my grandfather, from whom I inherit (and my father had not any right to sell this—as explained above); and that such a claim is to be considered may be supported by [Ps. xlv. 17]: "Instead of thy fathers shall be thy children: thou shalt appoint them as princes in all the land." Hence it is not at all a complicated case in money

* The commentators differ concerning the explanation of this, as well as concerning the completion of the text. Rashbam affirms that Rabba was not in the text at all. Gershom changes the question concerning the cases in the Mishna and explains them differently. We have done what we could to make the passage intelligible to the reader.

matters. And if such there be, it would be the following: A first-born who sold the share prescribed to him while his father was still alive, and died before his father, the first-born's son has a right to take away from the buyers after the death of his grandfather. Hence his father sold that to which he was entitled; and his son, whose basis is his deceased father, takes the goods away. And this is complicated, as he cannot say, "My basis is my grandfather," for the grandfather had nothing to do with the double share of the first-born son. But even this cannot be called a complicated case, as he may claim, "My basis is my grandfather, and not my father, who has never possessed the goods he sold; for now only do I take the place of my father, who was a first-born, and take his share." Hence it is in accordance with the usual law. Therefore, if in the message of Palestine was said "a complicated case," it might be the following: If one sign a document before he robbed some one, and thereafter he became a robber, who is no longer competent to be a witness, he has no right to testify to his handwriting; but others, who know his handwriting, may. Hence he is not trusted, and the others who came upon his basis are trusted. Is this not complicated? But perhaps it treats of when his handwriting was already approved by the court, while he was still righteous? Therefore it is to be assumed that they meant the following case: If one signed a document as a witness to a stranger, and thereafter he became his son-in-law, he has no right to testify to his signature; but others may testify that they recognize the writing of the son-in-law, and then it may be relied upon. Hence he is not trusted, and others are. And you cannot say that it means only when his handwriting was already approved by the court at that time, as R. Joseph b. Minumi in the name of R. Na'hman said plainly: Even in case it was not. However, even this cannot be called complicated, as it may be said that it is thus decreed by the law. A son-in-law must not witness in a case of his father-in-law, not because it is feared he may lie, but because it is prohibited, even if the son-in-law were Moses our master. Therefore we must come to the conclusion that the complication lies in the first case mentioned in the message, and the objection based on the cited verse is not to be taken into consideration, as the verse speaks of a "blessing." But how can you say that it

speaks of a blessing, and nothing is to be inferred from it? Does not our Mishna state: "If the house falls upon him and his son, or any persons," etc.? Does it not mean, by the "heirs of the father," grandsons, and "any persons," brothers of the deceased? Now, if you bear in mind that one cannot say, "I come on the basis of my grandfather," as the cited verse cannot serve as a support, then, even when the son dies first, how is it? Let the creditors say: We claim the inheritance of the father? Nay! By "the heirs of the father" is meant the deceased's brothers; and by "any persons," his uncles, brothers of his father.

"*One and his mother*," etc. R. Shesheth was questioned: Nay! A son inherits from his mother when he is already in the grave, so that his brothers from his father's side should inherit from him? (The illustration may be found above, p. 317.) Answered R. Shesheth: This we have learned in the following Boraitha: If the father was taken into captivity and died there, and at the same time his son dies in his country, or *vice versa*, and it was not known who died first, the heirs of the father and the heirs of the son (on his mother's side) may divide among themselves the inheritance. Now, if the son while in the grave could inherit from his mother, even if he dies first, let him inherit from his grandfather on his mother's side, and then his brothers on the father's side would inherit from him. Infer from this that while in the grave nothing is to be inherited. Said R. Aha b. Minumi to Abayi: This may be inferred also from our Mishna, which states that concerning one and his mother all agree that they must divide. And if the law of inheriting in the grave were in force, let him inherit from his mother while in the grave, the same to revert to his brothers on the father's side. Hence such a law does not hold good. And why not? Said Abayi: There is the same expression in the Scripture concerning the inheritance of a husband from his wife, and a son from his mother. As the first does not inherit while in the grave, so it is with the second, etc. (This has already been explained in Chapter VIII., p. 254.) (Here is repeated the whole story of Bar Sisin's estate, preceding volume, pp. 86-87.)

CHAPTER X.

HOW DEEDS SHOULD BE WRITTEN AND WHERE THE WITNESSES SHOULD SIGN. CONCERNING ERASURES OF SOME WORDS IN DEEDS. IN WHICH CASES BOTH PARTIES MUST BE PRESENT AT THE WRITING OF THE DEEDS, AND IN WHICH ONE OF THEM SUFFICES. CONCERNING A DEPOSITED DEED WHICH WAS PAID IN PART. HOW SHALL THE COURT APPROVE AN ERASED DOCUMENT? PROPERTY FOR PRIVATE USE WHICH WAS LEFT TO POOR AND RICH BROTHERS.

MISHNA I.: A simple "get" * (document) the witnesses must sign at the end of the contents. A folded one, however, the witnesses must sign outside.† But if the witnesses signed their names outside in a simple one, or inside in a folded one, both are invalid. R. Hanina b. Gamaliel, however, said: If in a folded one the signatures of the witnesses were inside, it is valid, as it can be taken apart and will constitute a simple one. Rabbon Simeon b. Gamaliel maintains: All must be done as is the custom of the country. A simple document must be signed by two, and a folding one by three witnesses. If there was only one witness to a simple and two to a folding, both are invalid.

GEMARA: Whence is this deduced? Said R. Hanina: From [Jer. xxxii. 44] "Men shall buy fields for money, and write it in deeds, and seal them, and certify it by witnesses," etc. "Write it in deeds" means a simple document; "seal" means a folding one; "certify" means by two witnesses; "by witnesses" means three. How so? We must say, then, two

* All documents were called by the Mishna "get." This term was afterwards applied to a bill of divorce. The Gemara, however, uses the term "shtar" for documents.

† In ancient times they used to write documents as follows: The scribe wrote one line, then left a blank the size of the line written, and folded it over and sewed it; then he wrote on top of the folding, and again left a blank of the same size, and folded it over the writing and sewed again, and so on; so that after the document was complete the signatures of the witnesses remained on the outside.

witnesses for a simple, and three for a folding one. But perhaps the reverse? Common sense dictates that a folding one, which is added to in folding, should be added to also in witnesses. (The discussion proceeds to deduce this from the Scriptures, which were objected to as usual, and the Gemara came to the following conclusion): The folding one is only an enactment by the rabbis; and the verse above cited was only a light support. And why this enactment? Because of the many priests who used to live in their city. (The law prescribes that a priest, having divorced his wife, it is prohibited to him to remarry her; which is not the case with a commoner.) And as the priests are usually ill-tempered, they used to divorce their wives as soon as they became angry. Therefore the rabbis enacted that the "get" should be folded and sewn several times, that it might prolong the time, in order that they should become quiet, and recede from their previous intention. This is correct concerning divorces. But why for other documents? Because all kinds of documents were then called "gets," they enacted that all should be done in one manner.

In what place should the witnesses sign a folding document? According to R. Huna: Between one folding and another (*i.e.*, in the folding space above the lines, and thereafter it was folded and sewn so that the signatures were inside). According to R. Jeremiah b. Abba: On the reverse side, and exactly opposite the writing. Said Rami b. Hama to R. Hisda: According to R. Huna, who maintains in the folding space above the lines which is thereafter also folded, it is to be assumed that it remains inside; but this is not so, as it happened that a folding document was brought before Rabbi, and he exclaimed: There is no date to it. To which R. Simeon his son answered: Perhaps the date is inserted, etc. (*post*, p. 363). Now, if it were as R. Huna said, Rabbi ought to say: There is neither date nor witnesses (as the witnesses signed inside, one could not sew it when it was folded). And R. Hisda answered: Do you think that R. Huna means between the folding inside? He meant outside. But if so, why should not forgery be feared, as one can write inside what he likes, while the witnesses have already signed outside? In the document must be written at the end, "All its contents are true," and they re-

main forever. Hence to that which is written thereafter no attention is given. But it is still to be feared that after it is written he can forge what he pleases, and then write again, "All this is true," and have it signed by other witnesses? A document must contain only one approval that "all is true," but not more. But still it is to be feared that he can erase the approval, adding what he pleases, and then write, "All is true," etc. To this it was said by R. Johanan: If there was inserted a word between the lines, and thereafter the witnesses testify it was inserted at their instance and they approve it, the document is valid; but if some words were erased, then, although approved at the end, the document is nevertheless invalid. And this was said concerning an erasure in the place of the words "all that is written is true," and the size of these words. But even according to R. Jeremiah b. Abba, who said: On the reverse, and opposite the writing (*i.e.*, where the writing finishes inside, he shall begin opposite to write his name; so that if there should be some lines more over the signature of the witness it would be considered forgery), it is also to be feared that one might forge some lines, and add one more witness, opposite the forgery, and might say: My intention was to add one witness more? And the answer was: Do you think that the witnesses have signed lengthwise, in order? No! They signed one under the other, so that no more lines after the witnesses' signatures could be added.*

R. Itz'hak b. Joseph in the name of R. Johanan said: To all the erasures which are in the document must be written at the end, "With this signature we approve them," etc.; and in the mean time they must mention the abstract of the contents in the last line. And why so? Said R. Amram: Because the last line is not taken into consideration, as it can easily be forged; as usually the witnesses do not sign so near to the writing that one line could not be inserted, and therefore if the abstract of its contents is written attention is given, but not to something new. And to the question of R. Na'hman: What is the basis of your statement? he answered: The following Boraitha: If the signatures of the witnesses were sepa-

* The text continues to discuss the different kinds of forgery possible, and gives illustrations so complicated that it would be difficult for the reader to get any idea of them. They are unimportant, and therefore omitted.

rated by a space of two lines from the writing, the document is invalid; but if by one line, it is valid. Let us, then, see what is the reason that two lines' space make the document invalid. Is it not because one can forge the two lines? But the same can be done with one line also? We must then say that if a new sentence is written on the last line it is not taken into consideration. And so it is.

The schoolmen propounded a question: How is it if there is space for one line and a half? Come and hear the following: If there is space for two lines, it is invalid; for less than two, it is valid. If there were four or five witnesses to a document and one of them was found to be a relative, or incompetent for some other reason to be a witness, the document may remain in force by the remaining witnesses. And this is a support to Hezekiyah, who said: If there was a space left, and this was filled up with the signatures of relatives as witnesses, the document is valid. And do not be surprised at such a law (why should not the signatures of the relatives who are not competent to witness in that case harm this document?), as such a law is to be found concerning a Sukka: If on the roof of the Sukka was space to the size of *three* spans uncovered, it makes the Sukka invalid; but if it was covered with illegal things, the size of *four* is needed to make it invalid.

The schoolmen questioned: In the two lines in question, is it meant with their usual space or without? Said R. Na'hman b. Itz'hak: Common sense dictates that their space is included; as if it were supposed that it meant without, of what use could be the size of one line without any space to it? (If one should come to forget this line, he would then be compelled to write it in such characters that it would be entirely different from the original and immediately recognized. Infer from this, therefore, that "with their space" is meant.)

R. Sabbathi said in the name of Hezekiyah: The space of the two lines in question means of the handwriting of the witnesses, not of the scribes; as if one wants to forge, he does not go to the scribes (and usually the handwriting of a commoner is larger than that of a scribe). And what size is meant?

Said R. Itz'hak b. Elazar: As in writing, *e.g.*, $\left\{ \begin{array}{c} l g k z \\ k z l g \end{array} \right\}$, which makes two lines in four spaces. According to R. Hyya b. R.

Ami in the name of Ula: Two lines and three spaces. According to R. Abuhu: One line and two spaces.* Said Rabh: This was all said about the space between the contents of the document and the signature of the witness. But from the signature of the witness to the approval of the court, it does not matter how much space is left. R. Johanan, however, said: All this was said concerning the space from the contents to the signatures of the witnesses; but concerning the space from the signatures of the witnesses to the approval of the court, even if there was one line, it is invalid.†

"*R. Hanina b. Gamaliel*," etc. Rabbi objected to the statement of R. Hanina, thus: How could one make from a folding one a simple, if their dates were entirely different? As in a simple document which is dated according to the years of the king, if the king was in his first year, it is written: On fourth day of such and such a month, in the first year of king so and so; and in a folding one they used to add one year to the kingship of the ruler (*e.g.*, when it was in the first year, they used to write in the second; and if in the second, they used to write in the third). (Rashbam says: It was the custom of the nations to add one year to the kingship of the ruler in their documents. And the rabbis enacted: In a folding one it shall be dated according to the custom of the land, for the above-mentioned reason; but not in simple documents.) Now, if you say that it can be taken apart and made a simple one, it may happen that one can borrow money with a folding one, and during this time may come into some money and pay his debt before due; and to the request for a return of the document, one may say that he lost it, and give a receipt. Then, when the document falls due, he can make it into a simple, and require his money again (as in the folding one there was added one year, hence the time due in a simple comes one year later, and he can claim that he borrowed money again for the current year)? Rabbi holds: Concerning a folding one, no payment is made upon a receipt unless the document is returned or destroyed.

* Here also are illustrations of Hebrew words, which it would be difficult for the English reader to understand, and are therefore omitted.

† We have omitted the discussion in the Gemara as to the reasons of Rabh and Johanan about the risk of forgery, with many illustrations of great complication, which would hardly be understood if translated, and are also of no importance.

But was, then, Rabbi acquainted with a folding document? Did not one come before Rabbi, who was about to annul it because it bore a later date? And Zunin said to Rabbi: So is the custom of this nation, that if the king has ruled one year they count him two; and if two, three. After he had heard it from Zunin, he enacted the law that no money should be paid upon a receipt. There was a document in which was written: In such a date of the year of Orkhon, A had borrowed money from B (but the number of the year was not written), and R. Hanina, before whom the case came, said: It must be examined when this Orkhon ascended the throne; and perhaps it was several years after, as the meaning of Orkhon is "lengthy," and he was named Orkhon because he was a good many years on the throne. Said R. Hoshea to him: So is the custom of this nation: the first year they named him Orkhon, and the second year Digon. Hence this document must be counted from the first year of the present ruler. But perhaps it was when he ascended the throne the second time, as once he abdicated and then ascended again? Said R. Jeremiah: At the second time he was named Orkhon-Digon, and not Orkhon only.

There was a folding document which came before Rabbi, and he said: There is no date to it. R. Simeon his son then said to him: Perhaps it is inserted between its folds! He took it apart, and found the date. Thereupon Rabbi scrutinized him. To which Simeon said: Not I was the writer of it, but Jehudah the Tailor. And Rabbi answered: Leave out slander. It happened at another time that R. Simeon was sitting before Rabbi, and reading for him a chapter of Psalms, and Rabbi said: How correctly and nicely it is written. To which Simeon answered: Not I, but Jehudah the Tailor, wrote it. And also to this Rabbi remarked: Leave out slander. (Questioned the Gemara:) It is correct that the first time he told him he should leave out slander, as Rabbi disliked folding documents, and was angry with the writer of it. But what slander was it if he said that the correct and nice writing was by Jehudah? This is in accordance with R. Dimi the brother of Safras, who taught: One must be careful in praising his neighbor, as very often blaming comes from praising.

R. Amram in the name of Rabh said: From the following three transgressions one is not saved day by day, namely: (a)

Thought about sin (*e.g.*, if he sees a handsome woman); (b) calculation of the effects of prayer—expectation of the granting of one's prayer as a due claim; (c) and slander. Slander! Do you mean that people slander one another every day? It means indirect slander (*e.g.*, while praising or talking of one, one indirectly comes to blame). R. Jehudah said in the name of Rabh: The majority of men are suspected of robbing (*i.e.*, in business every one looks out for himself, without taking care lest he do wrong to him who deals with him), the minority are suspected of adultery, and all of them of indirect slander.

"All must be done as is customary in the country." But does not the first Tana also hold that the customs of the country are to be observed? Said R. Ashi: At those places where a simple is customary, and one told the scribe to make it, and he made him a folding one, it is certainly invalid; and *vice versa*. The point of this difference, however, is the places where both are customary, and he ordered the scribe to make for him a simple, but he prepared a folding one. According to the first Tana: It is invalid. According to R. Simeon: It is valid, as it may be supposed that he ordered him to make for him a simple only for the scribe's sake, that he should have less trouble; but if he did not heed, and made a folding one, it must not be ignored. Said Abayi: R. Simeon b. Gamaliel, R. Simeon, and R. Elazar all are of the opinion that in such a case it must be supposed that the giver of the order did so only to show him what was better for him; but he did not intend to be particular. B. Gamaliel as just mentioned; R. Simeon with his statement that if one has deceived a woman, not to her evil, but to her good (*e.g.*, if he said to her: You are betrothed to me with this *silver* dinar, and it was a golden one), his act is valid; and R. Elazar of the following Mishna: If a woman said: Go and receive my divorce at such and such a place, and he received it at another place, it is invalid. But according to R. Elazar it is valid, as it is to be supposed that she only showed him the place where she supposed it was better for him to go, but was not particular in her words.

"If there was only one witness to a simple," etc. It is correct what the Mishna teaches us: A folding document which was signed by two witnesses only is invalid, as in all other cases two witnesses suffice. But to what purpose does it state

that one witness to a simple is invalid? Is this not self-evident, as there is no case in which one witness should be sufficient? Said Abayi: It teaches: Even if, in addition to that witness who has signed, there were another who testified the same verbally, it is nevertheless invalid. Amimar, however, had in a similar case which came before him decided that the document is in force. And to R. Ashi's objection that Abayi holds it invalid, he answered: I do not hold with him. But how would Amimar explain the above question—to what purpose is it stated in the Mishna? He would answer thus: It came to teach that as a simple document with one witness is invalid biblically, so it is with two witnesses to a folding. And as a support to Amimar there may be taken the following: The colleagues of R. Jeremiah in Palestine sent a message to him: How is it if there is one witness in writing and the other verbally—should they be conjoined for decision upon their testimony, or not? We do not question, how is it according to the first Tana, the opponent of R. Jehoshua b. Kar'ha, who maintains, in Tract Sanhedrin: Even two with two must not be conjoined under certain circumstances, and so much the less one with one. But our question is, how is it according to R. Jehoshua, who decided: If there were two witnesses in writing and two verbally, they are to be conjoined? Does he hold the same when there was one and one, or not? And R. Jeremiah answered: I am not worthy that you should send to me such a message. But as you have already done so, I may say that the opinion of your disciple is that they may be conjoined. (Said R. Ashi:) We have heard that the message was thus: The colleagues sent to R. Jeremiah: How is the law if, of two witnesses, one of them has testified before one court and the other before another—may both courts be conjoined to decide upon their testimony? We are aware that according to the first Tana, the opponent of R. Nathan: Even if they had testified at different times before one court, their testimony is not to be taken into consideration, two courts are out of the question. But according to R. Nathan, who says: "In one court their testimony may be conjoined," does he hold the same with two courts, or not? And R. Jeremiah answered them as said above. Rabhina, however, said: The message was thus: If three were sitting as a Beth Din to approve a docu-

ment, and thereafter one of them died, must they write in their approval, "We were sitting three, but one is gone"; or is it not necessary? And he answered them: I am not worthy that you should send questions to me, but as you have done so, I may say that the opinion of your disciple is that it is necessary they should write, "We all three were sitting as a Beth Din, according to the law, to approve this document, but one of us is gone, and therefore only we two sign." And for this answer R. Jeremiah was returned to the college (above, p. 71, it was written that he was driven from the college).

MISHNA II.: If in the document was written, "hundred zuz which make twenty selas," he collects only twenty selas. If, however, it was written, "hundred zuz which make thirty selas," he collects only one mana (which only makes twenty-five selas). If there was written, "silver zuz which *are*," and the preceding words were erased, then the document is good for no less than two; "silver selas which *are*," and the preceding was erased, no less than two selas; "dracontiums which *are*," it means also no less than two.

If on the top of the document was written "a mana" and on the bottom "two hundred zuz," or *vice versa*, the last one must always be taken into consideration. But if so, why is it at all necessary that the amount should be written at the top? To the end that should it happen that in the words of the bottom one letter should be erased, then we may learn it from the top one.

GEMARA: The rabbis taught: If it was written "silver," without mentioning any particular coin, the document is good for no less than one silver dinar; and if "silver dinars," or "dinars of silver," then it is no less than two silver dinars. If, however, "silver to be paid with dinars," then it is no less than two golden dinars (it being understood that he borrowed from him silver to be paid with gold dinars, and as there is a plural it is no less than two).

The master said: "Silver no less than a dinar." But perhaps it means a piece of metal? Said R. Elazar: It means it was written a silver coin, but it was not mentioned which. But if so, why should it not mean perutas? Said R. Papa: It treats of those places where the perutas were not made of silver.

The rabbis taught: If the documents read "gold," it is not less than a golden dinar; "golden dinars," or "dinars of gold," it is not less than two golden ones. If, however, it was written, "gold to be paid with dinars," he must pay in gold the value of two *silver* dinars. But why should this not be explained: He shall pay him in good gold to the value of two golden dinars? Said Abayi: The defendant has always the preference (*i.e.*, by the general name dinar is meant a silver one; of a golden dinar it must be said plainly *golden*, and as here it is mentioned to be paid with dinars, and the word *gold* is omitted, the holder of the document has to suffer). But why in the first case, where it reads "silver to be paid with dinars," you say he shall pay two golden dinars? Said R. Ashi: That Boraitha treats of when the document reads "denri," and the latter Boraitha when it was written "*denrin*"; and "*denri*" means gold, and "*denrin*" silver. And my support is from a Mishna in Tract Kinin: ". . . It happened that the price of kinin in Jerusalem increased to the extent of denri in gold. Said R. Simeon b. Gamaliel: I swear by the Temple that I go not to bed this night before their price shall decrease to denrin." Hence denrin means silver, and denri gold.

"*On the top of the document*," etc. The rabbis taught: The bottom may be learned from the top when there is only one letter erased; but not when two (*e.g.*, if it was written, "Hanan of Hanani," or "Anan of Anani"—*i.e.*, the *i* was erased). Let us see! Why not two letters? Because if there were a name of four letters, two would constitute one half of a name. The same can be said with one of two letters, as there are names which consist of two letters only; * then the one would be one half of a name. Therefore we must say that the exception of two letters is because it might happen in a name of three letters, and when two are erased the greater part of the name is missing.

There was a document in which was written "six hundred and a zuz," and R. Chrabia sent it to Abayi, questioning him: Does it mean six hundred staters and one zuz, or six hundred perutas and a zuz. And he answered: Eliminate perutas, which it is not usual to write in a document, as generally they are counted together to make from them dinars or zuz. This

* In the Bible there are many examples of names which consist of only two letters.

must therefore mean six hundred staters. But as there are staters of two zuz, and also others of the same name of half a zuz, and it was said above that the defendant has the preference, the holder of the document must suffer, and he takes only six hundred half-zuz and a zuz. Abayi said: If one desires that his signature shall be known in the court, he shall not write it at the bottom of a paper, as one can find it, but write at the top that he owes him money. And there is a Mishna: If one shows a document with his handwriting that he owes him money, he may collect from unencumbered estates.

There was a toll-master of a bridge who was a Jew, who said to Abayi: Let the master show me his signature, as it is my custom to allow the rabbis to pass without pay (I would leave it with my assistants so that if it should happen you would like to pass, they will not demand payment). Abayi showed him on the top of a piece of paper. He, however, tried to draw the paper so that the signature should come a little lower, and Abayi said to him: Do not try, as the rabbis have preceded you with their advice to sew a signature at the very top of the paper. Abayi said again: From the word "thlath," which means three, to the word "eser," which means ten, one shall not write in a promissory note at the end of the line, to prevent forgery.* But if it happened that he did so, he should repeat the word two or three times, so that one of them should occur in the middle of the line.

There was one document in which was written: "A third of a vineyard"—in Aramaic "Thiltha Beperidisa"—and the owner of this document erased the top and the bottom of the first letter of the second Hebrew word, so that from the Beth he made a Vav, which means "and," so that the document, as brought before Abayi, read: "A third and the vineyard," and claimed a third of the seller's garden and the whole vineyard. When Abayi examined the document, he asked him: Why does the Vav stand so extended in the world? He then urged him to confess, which he did.

There was another document, in which was written: The shares of Reuben and Simeon my brothers ("Achai" in He-

* "Thlath" means three, "thlathin" thirty; and so also is it with all the words from three to ten: e.g., "arba" means four, and with the suffix "in" it means forty; "eser" means ten, "cosin" means twenty.

brew) were sold to me. The buyer, however, added a Vav for the word Achai, and as the brothers had another brother by the name of Achai, he claimed that he bought the shares of all three brothers—Reuben, Simeon, and Achai. With this document he came to the court of Abayi. And there also Abayi asked him: Why is the world so narrow to the Vav? And also he was urged to confess, which he did. There was another document, which was signed by Rabha and R. Aha b. Ada. When it was brought before Rabha, he said: I recognize my handwriting, but I never signed my name in the presence of R. Aha b. Ada. He urged the holder of the document to confess, which he did. Then said Rabha to him: I understand how you might easily forge *my* name; but how could you do so with R. Aha's, whose hands are trembling? And he answered: I would put my hand on the rope-bridge, to imitate a trembling writing.

MISHNA III.: A divorce may be written by the court for a husband in the absence of his wife (because, according to the ancient law, the consent of the woman was not necessary); and an approved receipt for a marriage contract to be handed to the woman in the absence of her husband, provided the court knows them—the husband must pay the fees. A promissory note may be written for the borrower in the absence of the lender, but not for the lender unless the borrower is present; and the fee is to be paid by the borrower. A bill of sale may be written for the seller in the absence of the buyer, but not for the buyer unless the seller is present; the buyer pays the fees. Documents of betrothal and marriage must not be written unless both are present—at the expense of the groom. The same is the case with documents for hiring, and contracting fields and gardens; and the expenses are to the contractors. Documents of arbitrating, and all other acts of mediating by the court, must not be written unless both parties are present—at the expense of both.

R. Simeon b. Gamaliel, however, maintains: The latter documents must be written in two copies, one for each party.

GEMARA: What does it mean—provided the court knows them? Said R. Jehudah in the name of Rabh: They shall know exactly the name of the husband concerning a divorce, and the exact name of the woman concerning a receipt.

R. Safra, R. Aba b. Huna, and R. Huna b. Hinna were sitting together in the presence of Abayi and were deliberating over the statement of Rabh just mentioned—concerning a divorce, the name of the husband, but not the name of his wife? and concerning a receipt, the name of the woman, though they do not know the name of the husband? Why should it not be feared that this man would furnish the divorce to another woman, whose husband bore the same name as himself? And the same is the case with the woman: she may furnish her receipt to a man whose wife bears the same name. Said Abayi to them: So said Rabh: The name of the husband and of his wife, concerning a divorce; and the same is the case with a receipt—the name of the woman and her husband. But why should it be prepared and given to the husband? Is it not to be feared that two men who bear one and the same name should reside in the same city (*e.g.*, Joseph b. Simeon), whose wives also bear the name of Rachel, and one can take a divorce and give it to the wife of the other? Said R. A'ha b. Hinna to them: So said Rabh: If two men of the same name reside in one city, they cannot divorce their wives unless both the men named and their wives are present. Still, it is to be feared that one may go to another city, name himself according to one of the inhabitants of his city, and take a divorce, and thereafter return to his city and furnish the divorce to the wife in whose husband's name the divorce was made out. Said R. Huna b. Hinna: So said Rabh: If one was known under one name thirty days in succession, there is no fear that he bears a false name, as he would be afraid to bear it for such a long time. But how is it if one requires a divorce should be prepared for him before he was known thirty days—shall he not be listened to? Said Abayi: This can be proved by somebody calling him suddenly by this name, and he answered. R. Zebid, however, maintains: A swindler knows what he is about, and is careful. And therefore it is no evidence if he answers to a sudden call.

There was a receipt approved by Jeremiah b. Abba. However, the same woman came into his court to claim her marriage contract several years later; and when her receipt was shown to her, she claimed to be not the same woman (*i.e.*, it was another woman who bore my name and signed the receipt). Said R. Jeremiah: I also was of that opinion, and I said so to

the witnesses who signed this document; but they told me you are the same but older, and therefore your voice has changed. And the case came before Abayi, who said: Although it was decided by the rabbis: If one said something in behalf of the plaintiff or the defendant, he has no right to retract from the first statement, and decide otherwise; however, with a scholar, who is not used to look in the face of a woman and to be particular as to her voice, it is different, as it must be supposed that after he was told she was the same, he himself had recognized her.

There was another similar case before the same R. Jeremiah, who said to that woman: I am sure you are the same. And also here Abayi decided: Although a rabbi is not used to look in the face of a woman, etc.; but when he says he did so, and is sure, he may be trusted.

Abayi said: It is advisable for a young scholar, who goes to betroth a woman, that he shall take with him a commoner; as otherwise they may substitute another woman, and he will not notice it.

"The husband must pay the fees," etc. Why so? Because it is written [Deut. xxiv. 1]: ". . . he may write and give," which means at his expense. In our time, however, it is not so customary, because the rabbis put the expenses to the account of the woman, in case the husband should decline to bear the expenses and postpone the divorce in a case where the woman is compelled to demand it.

"Paid by the borrower," etc. Is this not self-evident? It treats even where he takes money for business at a half profit.

"The buyer pays the fees," etc. Is this not self-evident? It treats even in case the seller sold his field because of its infertility.

"The expense of the groom," etc. Is this not self-evident? It means even if he were a scholar and the court were certain that they would be pleased to have him as a son-in-law even at their expense.

"The expenses are to the contractors," etc. Is this not self-evident? It speaks even in case it must remain for a year or two unfertilized for the sake of the estate.

"Arbitrating," etc. What kind of documents is meant? In this college it was explained: The documents of the claims

which the scribes of the court have to copy so that the parties should not change afterwards. R. Jeremiah b. Abba said: It means, in case each one chooses his arbitrator.

"*One for each party*," etc. Shall we assume that the point of their difference is, if one may be compelled not to act like a Sodomite? According to the first Tana: If one declines to pay the half of the expenses, it is an act of a Sodomite, and he must be compelled to do so. And according to R. Simeon: It is not, and he must not be compelled? Nay! All agree that such cases are to be compelled. Here, however, it is different, as the reason of R. Simeon's decision is: One may say, I would not like that my claim and my decided right should always be before your eyes, while I do not possess them; and this would be a burden to me, as if a lion would lie at my house, fearing every time that you might come to quarrel with me.

MISHNA IV.: If one has paid a part of his debt and deposited his document with some one, with the stipulation: If I should not pay you from date until a certain day, you may return this document to the lender, and finally he failed to pay; according to R. Jose: The depositary may return, and according to R. Jehudah: He must not.

GEMARA: What is the point of their difference? R. Jose holds: An *asmachtha** gives title. And R. Jehudah maintains: It does not. Said R. Na'hman in the name of Rabba b. Abuhu, quoting Rabh: The Halakha prevails with R. Jose. When they came to say the same before R. Ami, he said to them: After such an authority as Johanan teaches us, once and twice, that the Halakha prevails with R. Jose, what can I do? However, the Halakha does not prevail with R. Jose (remarks the Gemara).

MISHNA V.: If it happened to one that a promissory note became erased, he must find witnesses who are aware of the date when it was written, and bring them before the court, and they have to make the following approval: A, the son of B, came here with his note, which was erased on such and such a day, and C and D were his witnesses.

GEMARA: The rabbis taught: The approval must be written as follows: "We three, E, F, G, the undersigned, were sitting together, and before us was brought by A, the son of B,

* This term is explained in previous volumes in several places.

an erased note, which was signed on such and such a day, and C and D are his witnesses." And then if there be added: "We have examined the testimony of the witnesses, and have found it correct," the holder of the document may collect with it, without further evidence. If, however, this were not remarked, he must bring evidence.

If a document was torn, it is invalid; but if it was torn of itself, it is valid. If it was erased or faint, if still recognizable it is valid.

What does it mean—"was torn," and "was torn of itself"? Said R. Jehudah: If it was torn by the court; and of itself means not by the court. How is it to be known that it was torn by the court? Said R. Jehudah: If the places where the signatures of the witnesses, the date, and the amount were written are torn. Abayi, however, said: The court used to tear it in its length and width.

There were Arabs who came to Pumbeditha, who used to compel the inhabitants to submit to them the deeds of their estates. The inhabitants of the city came to Abayi with their deeds, requesting him to take a copy of them, so that, in case they should be compelled to deliver to the Arabs the originals, the copies should remain, so that in the future they could be sued. Said he: What can I do for you, since R. Safra long ago decided that two deeds must not be written for one field, because it might happen that one would seize it once, and again thereafter. They, however, troubled him, and he said to his scribe: Write for them on an erased paper, and the witnesses shall sign on the paper which is not erased, as such a deed is invalid. Said R. Aha b. Minumi to him: But perhaps the writing will be recognizable, and then it will be valid, as stated in the Boraitha above? And he answered: I did not say he should write a correct deed: I meant he should write some letters of the alphabet.

The rabbis taught: If one comes before the court claiming that he has lost a promissory note from so and so, although he brought with him witnesses who testify, "We wrote and signed the note in question for the borrower, and in our presence he gave it to him," the court must not write another one. However, this is said only concerning promissory notes. But concerning deeds, if such a case happened, they may write him

another one, without mentioning that the seller is responsible in case it should be taken away by creditors. Rabban Simeon b. Gamaliel, however, maintains: This must not be done even concerning deeds. And he used to say also: If one has presented a gift to his neighbor by a deed, if the deed was returned by the beneficiary, the gift is considered returned. The sages, however, say: Nevertheless, the gift remains for the beneficiary. The master said: Without mentioning the responsibility of the seller. Why so? Said R. Safra: Because two deeds must not be written for one and the same field, for the reason it may happen that a creditor of the previous owner will take it away. Then, the buyer who has two deeds may use both deeds to take away the estates which were sold by A to D and E. (*I.e.*, A had sold a field to B, which was encumbered to C, the creditor of A; and C proclaimed his right to it. Then B proclaimed his right, based upon the deed, to the estate encumbered to C, and took away the estate from D, who bought it from A at a later date. After he did so, and the deed was torn by the court, he (B) would make a bargain with C that for a certain amount he should not hasten to take possession of the field to which he was entitled, but should wait a few years and then do it; for the purpose that C's first claim should be forgotten, and later on, when C should take possession of the field which was until now in the hands of B, it should seem to be as a new claim; and then, on the basis of the second deed retained by him (B), he should also take away from E the estates bought by him from A at a later date.

(Says the Gemara:) But as the promissory note of the creditor was torn by the court when he took away from him the first time, how came he to proclaim his right again? And should one say, in case it was not torn? Did not R. Na'hman say: The following is the order of claims before the court? The lender comes to the court to complain that the borrower does not pay his debt; then the court summons him, and if he does not appear it puts him under the ban, and a replevin is given to the lender, that he may levy on the estates of the borrower or of those who bought same from him at a later date than that of the promissory note. And when the creditor finds such estates in some other city, the court of that city tears the replevin and substitutes a document that he may collect such

and such an amount from such and such estate, after the appraisal shall be made for the court. And after this is done, the court furnishes him with a memorandum of the appraisal and tears the previous document. Hence a replevin in which it is not mentioned that the promissory note of the borrower was "torn by us" must not be taken into consideration by any court; and a document which was given for appraisal in which it is not mentioned that the replevin of such and such a court was "torn by us" is also not to be taken into consideration. The same is the case with the memorandum of appraisal with which the court furnishes him, if it is not mentioned that the document giving the right to make an appraisal of the estate for the debt of so and so was "torn by us." Hence the alleged bargain between B and C could not occur? The statement of R. Safras that two deeds must not be written is because it might happen that one should claim the field not for debt, but because he inherited it from his parents, and it was stolen by the possessors of it. In such a case the above-mentioned bargain may be made.*

Said R. Aha of Diphthi to Rabhina: According to the supposed bargain mentioned above, that B asked C that he should not hasten to take possession, to what purpose such a bargain? If he possesses two deeds, he may take away from D and E at one time? And he answered: By such an act he would invite investigation by his opponents, and they would find out the bargain.

One Mishna states: Concerning deeds, they may write another one, without mentioning the responsibility of the seller for the estate, in case it should be taken away. Why? Let the court write a correct deed and deliver it to the buyer, at the same time furnishing the seller with a document that the first deed was lost, and if such should be found, that it was of no value, as another deed was supplied to the buyer. The rabbis said before R. Papa, according to others before R. Ashi: Because this is not stated, we may infer that the court must not furnish the seller with such a receipt. And he answered: In other cases, receipts may be written. In this case, however, it is not because of the bargain mentioned above, but as the receipt

* The commentators give illustrations of how such a bargain might be made, so involved and far-fetched that we spare the reader their infliction.

which makes the first deed valueless is in the possession of A, and not in the hands of the buyers; and it might be that D and E, who had bought from A, would not be aware of such a document, and would not be in a position to protest against the estates being taken away from them by the creditors of A. But, finally, D and E would transfer their claims to A; and then he would show them the document, and the estates would certainly be returned to them? Yea! But meanwhile the creditors would consume the products, and it would be a difficulty for D or E to collect the value from them, as there is a rule: On consumed stolen property it is very hard to collect. It may also happen that D and E bought their estate without any responsibility on A's part; hence one may take it away without any claim from these parties. But if such a case is to be feared, why should they furnish such receipts in cases of loans, as the same may happen with promissory notes—that the goods should be taken away while the receipt is in the hand of the borrower? There it is different. If the claim comes with a promissory note which had nothing to do with this estate, the possessors of the estate would investigate the matter, whether the borrower had paid him the money due, and would not return the estate without consulting the seller, who is the debtor on that promissory note: which is not the case if the document was for real estate, as in such cases usually estates are claimed, and not money.

The master said: "It may be written without mentioning the responsibility," etc. How, then, should it be written? Thus said R. Na'hman: This deed is not for collection, neither from encumbered nor from unencumbered estates, but only to testify that the estate belongs to so and so, who is the buyer of it. Said Raphram: From this, where it must be written that such a document is not in force for collection, it may be inferred that in such a one where nothing is written there is authority to collect with it even from encumbered estates; as it is to be supposed that it is an error of the scribe, who had forgotten to insert the responsibility of the seller. R. Ashi, however, maintains: A document in which nothing is mentioned does not collect from encumbered estates. And the above Boraitha, which states, "not to mention the responsibility," etc., is not as R. Na'hman explained it, but is to be taken liter-

ally—that nothing is to be mentioned—and then he is not responsible.

There was a woman who gave money to one that he might buy estates for her. He bought them for her, without responsibility in case there should be claims. And she came to complain before R. Na'hman, who said: The woman is right, as she sent to you to the end that she should have benefit, but not that she should suffer damage. You, therefore, have to buy from the woman without responsibility, and thereafter to sell to her with your responsibility.

It is said above by R. Simeon b. Gamaliel: If one has presented a gift . . . the gift is considered returned. What is his reason? Said R. Assi: Because it is to be considered as if one were to say: I give you this for a present so long as you keep this document. Rabba opposed: If so, how is it if this document was torn or lost—must one also return the gift? Therefore, said he, the point of the difference between R. Simeon and the rabbis is thus: According to R. Simeon, title is given to documents and to all their contents by transferring; and therefore when the donee returned it to the donor, the latter acquired title to it and to its contents. But according to the rabbis, title is not given by transferring; hence when the donee takes possession of the gift, the returning of the document counts nothing.

The rabbis taught: If one came to claim a field, saying that he possesses a deed, and also that it was in his possession the years of hazakah—according to Rabbi, the main evidence should be the deed (if he cannot show it, his second claim of hazakah must not be considered); and R. Simeon b. Gamaliel maintains: The main evidence is the hazakah. What is the point of their difference? When R. Dimi came from Palestine, he said: They differ whether title is given to documents by transferring. According to R. Simeon b. Gamaliel, the transferring does not give title; and according to Rabbi, it does. Said Abayi to him: If so, you differ with my master, Rabba, who said above: R. Simeon b. Gamaliel holds: That transferring does give title. And he answered: And what if I do differ? Why not? Rejoined Abayi: I mean to say that the above Boraitha could be explained only as done by my master, but not otherwise. And then, if it is as you say, R. Simeon

contradicts himself. Therefore, said Abayi, the point of the difference between Rabbi and R. Simeon b. Gamaliel in the Boraitha just cited is: In case it happened that one witness who signed the deed was found to be a relative, or for some other reason incompetent to be a witness. And it is the same point in which R. Meir and R. Elazar differ. Rabbi holds with R. Elazar, who says that the final act of a divorce, or anything else, is to be considered done by the witnesses who are present at the transfer, and not by the witnesses who sign the document. And R. Simeon b. Gamaliel holds with R. Meir, who said: The final act is considered done by the witnesses who sign the document.

But did not R. Abba say: Even R. Elazar admitted that if there was any forgery in the document, or there were incompetent witnesses, the transferring is not considered, even when it was done by lawful witnesses? Therefore said Rabhina: All agree that if the court said, "We have investigated the testimony of the witnesses, and found it false," or that one of them was incompetent, the document is invalid, as R. Abba declared. And the above Tanaim differ concerning a document without witnesses at all. According to Rabbi, who holds with R. Elazar, if it was transferred in the presence of witnesses, the act is considered final; and according to R. Simeon, who holds with R. Meir, it is not. And if you wish, it may be said that the point of their difference is: Whether a document which the signer admits must or must not be approved by the court. According to Rabbi, it must not; and according to R. Simeon, it must. But have we not heard just the reverse in Middle Gate, p. 11? (The rabbis taught:) Therefore we must say that the point of their difference is: If one is obliged to convince the court of all the evidence one mentioned at the beginning of the trial, or it is sufficient if he convinces it of one part of it (*i.e.*, if he said, first, "My evidence is a deed, and also hazakah," and thereafter he was able to convince the court of the hazakah only). According to Rabbi: It is not sufficient unless he should show the deed. And according to R. Simeon: The latter evidence suffices. But if he should be able to show the deed, then all agree that the evidence of the hazakah would not be necessary at all. And this is similar to the following case: R. Itz'hak b. Joseph claimed to have money with R. Abba,

and came to complain before R. Itz'hak of Naf'ha. And R. Abba claimed: I paid you in the presence of A and B. Said R. Itz'hak (of Naf'ha) to him: Bring, then, A and B—they shall testify. Said he to him: Am I not to be trusted, even if they do not appear? Is it not a Halakha: If one borrowed money in the presence of witnesses, it is not necessary for the borrower that he shall pay him in the presence of witnesses? Rejoined the former: I hold with the Halakha which was said by you, master, in the name of R. Ada b. Ahaba, quoting Rabh: If one says, "I paid you in the presence of A and B," it is necessary for him that A and B shall come and testify. Said R. Abba again: But did not R. Giddle say in the name of Rabh: The Halakha prevails with Rabban Simeon b. Gamaliel? And even Rabh, his opponent, meant with his statement only to make his evidence clear before the court (but not because the law dictates so)? And R. Itz'hak answered: I also mean you shall make your evidence clear before the court, as I hold with Rabha; and if you are not able to do so, you must pay.

MISHNA VI.: If one has paid a part of his debt, according to R. Jehudah, the promissory note must be changed (*i.e.*, the old note must be torn, and a new one made for the balance). According to R. Jose: The lender has to give a receipt for the amount paid. Said R. Jehudah: Then, according to you, the borrower must watch his receipt so that it shall not be consumed by mice. Answered R. Jose: Yea! This is better for the lender, as if it should be a difficulty for the borrower to watch the receipt he will pay the whole debt sooner; and we must not impair the right of the lender.

GEMARA: Said R. Huna in the name of Rabh: The Halakha prevails neither with R. Jehudah nor with R. Jose, but the court must tear the first note and write him another one with the same date as the first. Said R. Na'hman, according to others R. Jeremiah b. Abba, to R. Huna: If Rabh were aware of the following Boraitha: "The witnesses tear the note, and write for him another one with the same date as the first," he would retract from his statement that this must be done by the court. And he answered: He was aware of this Boraitha, and nevertheless he did not retract, for the reason that only the court has the power to collect money, which therefore may tear and write another one with the former date, but not witnesses

who have done the message they were ordered to, as they have no right to do the same again without a new order. Is that so? Did not R. Jehudah say in the name of Rabh: If a deed was lost, witnesses may write another one, even if this occurred ten times, to one field. Said R. Joseph: Rabh meant a deed of gift. And Rabha said: Rabh meant a document without any responsibility of the estate for other claims.

Where is to be found the Boraitha cited above, of which Rabh was aware? It is thus: If one's debt was a thousand zuz on a document, and he paid five hundred, the witnesses may tear the document and write another one for five hundred, of the date of the old one. So is the decree of R. Jehudah. R. Jose, however, says: The document of the thousand remains, and a receipt for five hundred must be given to the borrower. And for two reasons it was said that a receipt should be written and handed to the borrower: first, because he should be compelled to pay as soon as possible; and, secondly, the debt should be counted from the first date. But does not R. Jehudah also say that a new document should be written with the same date as that which was torn? So said R. Jose to R. Jehudah: If you say that the document should be written from the first date, then I differ with you only in one thing—concerning the receipt; and if you think that the document should be written from the date on which a part was paid, then I differ with you in both.

The rabbis taught: If the document was written at the date used by the government, and such a date fell on a Sabbath or on the Day of Atonement, on which it is prohibited for an Israelite to write, this note is to be considered written with a later date, which is valid. So is the decree of R. Jehudah. But according to R. Jose, it is invalid. Said R. Jehudah to him: Did not such a case come before you in Cepphoris, and you made it valid? And he answered: I did so only with a case similar to that about which we are discussing, because, as the date fell on a Sabbath, it is highly probable that the document was of a later date; but in other cases, where such a supposition has no basis, I do not agree with you. But what answer is this? R. Jehudah also claimed that the case happened to be before R. Jose in Cepphoris. Said R. Pdath: All agree that if the date of the document was examined and found

to fall on a Sabbath, or on the Day of Atonement, it must be considered as with a later date, and it is valid. In what they do differ is: A document which is doubtful, if written with an earlier or a later date. According to R. Jehudah, who holds that in case of payment no receipt is given, but the document itself must be returned, it is valid, because it cannot do any harm to any one by being collectible twice. And according to R. Jose, who holds that for a payment in part the document must not be returned, and only a receipt is furnished, it is invalid, because he can collect with it the whole amount, as the receipt is in the hands of the borrower. Said R. Huna b. Jehoshua: Even according to them who say that a receipt may be written, it is only if a part or a half was paid; but for the whole amount no receipt is written, but he must return him the note; and if lost, he loses his money.

(Says the Gemara:) In reality it is not so, as a receipt may be written even on the whole amount; as it happened with R. Itz'hak b. Joseph, who had money with R. Abba, and when he demanded his money, R. Abba demanded his promissory note. And R. Itz'hak answered: The note is lost, and I will give you a receipt. And he answered: There are both Rabh and Samuel who taught that we do not write a receipt. And when this case came before R. Hanina b. Papi, he said: Rabh and Samuel were so beloved by us that if some would bring the earth of their graves we would keep it always before our eyes; but notwithstanding this, there are both R. Johanan and Resh Lakish who decided that a receipt should be given; and the same was said by Rabbin when he came from Palestine in the name of R. Ilah. Common sense also dictates so; as how can it be supposed that if the creditor lost the promissory note the debtor may consume the whole amount and enjoy himself? Abayi opposed: But after your theory that a receipt is to be written, how is it if the receipt is lost—should the lender collect the money again and enjoy himself? Said Rabha to him: Yea! So is the law, as we read in the Scriptures: "The borrower is a servant to the lender" [Prov. xxii. 7]. Said R. Yema, according to others R. Jeremiah of Diphthi, to R. Kahna: What is the basis of our custom that we write documents with later dates, and we also write receipts? And he answered: That which R. Abba said to his scribe: When it shall happen

that you have to write a document with a later date, you must write as follows: This document was postdated by us for a certain reason, and is dated not with the date it was ordered, but of to-day. Said R. Ashi to R. Kahna: However, in our day and in our country we do not act likewise. It is since R. Safras said to his scribe: Should you have to write a receipt for a lost promissory note, then, if you are aware of the date the promissory note was given, you must write: "The money which was due according to the note written on such and such a date was returned to the lender." And if you do not know the exact date, you must write: "The money due on a note of so and so, to so and so, was paid," not mentioning the date at all; and then, if the note should appear again, it will be of no value. Said Rabhina to R. Ashi, and according to others R. Ashi to R. Kahna: But why is it not customary in our time to do so, as we write documents with later dates without mentioning that they are postdated, and receipts with the date of payment, and we do mention the date of the document? And he answered: The rabbis enacted: One shall do so for his own sake; but if one does not care to do so, it will be his own fault if he should suffer damage. Said Rabba b. Ashila to the scribes: If you should have to write a deed of gift, or deeds in which the seller does not take the responsibility of the estate for the future, you shall do as follows: If you remember the date when the donor or the seller told you in the presence of witnesses to do so, you shall write that date; and if you do not recollect the exact date, you may write the current date, and it will not be considered false. Rabh told his scribes, and the same did R. Huna: When you are writing a document in the city of Shili, although you were ordered to do so in the city of Hini, you must write in the document the city in which you are doing it, and not the city where you were ordered.

Rabha said: If one holds a promissory note for a hundred zuz, and requests that it shall be rewritten in two notes, each of fifty zuz, his request is to be refused—for the sake of both the lender and the borrower: for the lender it is better to have one document, as, should it happen that he pay the half, he will give him a receipt, which the borrower will have to watch, and therefore he will hasten to pay his debt; and for the borrower

it is also better, as the law of a document paid in part is, that the lender must take an oath (and in case he is lacking cash the lender will give him time rather than take an oath). And he said again: If one has two notes of fifty each, and he requests that one of a hundred should be made instead of the two, also to this request no attention should be paid—and also for the sake of both. For the lender it is better, if fifty is paid, that the other document should remain in force, so that he will not be obliged to take an oath; and also for the borrower it is better, having paid one note, that he shall not be bound to watch the receipt for the other half. R. Ashi said: If the lender holds a promissory note for a hundred zuz, and orders the scribe to write for him another note for fifty zuz, claiming that the half was paid by the borrower, he must not be listened to; nor if he asks that the note should be written from that date, or from the current date. Why so? It is to be feared that the borrower has paid the whole amount, and to the demand that his note should be returned, he was answered, "It was lost," and furnished him with a receipt instead; and this note for fifty zuz he will collect from him, claiming that this note has nothing to do with the former one.

MISHNA VII.: If there were two brothers, one rich and one poor, and they inherited from their father a bath-house or an olive-press house, if for business, they must share equally; but if for private use, the rich one may say to the poor, "You may hire slaves, that they shall heat the bath for your use"; or, "You may buy olives and press them for your private use, but I shall not allow you to do this for a stranger, and you take the benefit." If it happen that in one city two persons bear one and the same name, they cannot give promissory notes to each other nor can any of the inhabitants collect on a promissory note of one of them. If there were found a promissory note of one of the two persons by some one which is marked "paid," the other may also claim: My note is paid. How, then, shall they do, if they wish that their documents shall be of value? Write their names threefold—*e.g.*, Joseph b. Simeon b. Jacob; and if they are alike in this also, they must make a sign to their names (*e.g.*, if one is shorter than the other, he must say, "the Little"; and if they are both of equal size, if one is a priest, he shall write "Cohen").

GEMARA: There was a promissory note which came to the court of R. Huna, in which was written: "I, A, the son of B, have borrowed from *you* a mana." Said R. Huna: "From *you*" can be any one—even the Exilarch, or even King Sabur. Hence it may be that some one lost it, and you found it. Said R. Hisda to Rabba: You must study the case, as in the evening R. Huna will ask you how to decide it. He had deliberated, and found the following Boraitha: A divorce which was signed by witnesses, but there was no date. Said Aba Saul: If the divorce reads: "I divorced her this day," it is valid. Hence we see that "this day" means that on which it was given out. The same is the case with this document; "from you" means from this man who holds it. Said Abayi to him: But perhaps Aba Saul holds with R. Elazar, who holds that the final act of the witnesses of transfer is considered (therefore he makes valid such a divorce as must be delivered in the presence of lawful witnesses). But in our case, why should it not be feared that the plaintiff found a lost note? And he answered: That such a supposition is not to be taken into consideration may be inferred from our Mishna, which states: If there are two persons who bear one and the same name, they cannot give promissory notes to each other, nor to any of the inhabitants, etc. But if one of them has a promissory note from one of the inhabitants, it is valid, and he may collect. Now, why is it not to be feared that it was lost by the other person who bears the same name, and this plaintiff found it? Hence we see that this is not taken into consideration. Abayi, however, may say that this is not taken into consideration because there is only one person who could lose it, and if so, he would certainly announce his loss; but in other cases, where it might be lost by any one, it should be feared. But is there not a Boraitha which states: As the two persons who bear the same name cannot collect promissory notes from each other, so also cannot one of them collect from any other one? Hence this Boraitha differs with our Mishna. And what is the point of their difference? Whether in such a case the plaintiff has to bring evidence. The Tana of the Mishna holds that he has not; and the Tana of the Boraitha maintains that he has. As it was taught: To promissory notes title is given by transferring. However, according to Abayi the holder

of them must bring evidence that they were transferred to him. And Rabha said: He must not.

Said Rabha: I infer my statement from the following Boraitha: If one of the brothers holds a promissory note from some one, claiming that his father or his brother had transferred it to him, it is for him to bring evidence. Hence we see that this law holds good only concerning brothers, who usually hinder one another, and claim that their brother took it without their or their father's consent; but in all other cases no evidence is needed. Abayi, however, maintains: On the contrary, this Boraitha comes to teach: Lest one say that concerning brothers, who hinder one another and are very careful with the inheritance, no evidence is needed for the one who holds the document, although in all other cases it is, the Boraitha came to state that it is not so. But there is another Boraitha: As the persons who bear the same name are allowed to take promissory notes from others, so they may take from each other. And what is the point of their difference? Whether a promissory note may be written for the borrower in the absence of the lender. The Tana of our Mishna holds that this may be done. Hence one of the two persons may go to the scribe, telling him that he wants to borrow from his fellow-citizen, who bears the same name, some money. And after he receives such a promissory note, he may claim that this was given by the other to him; therefore our Mishna says that they cannot collect from each other. And the Tana of the Boraitha holds: The promissory note must not be furnished to the borrower in the absence of the lender. Hence there is no fear.

"If a promissory note was paid," etc. We see, because a receipt was found. But how would it be if not? The promissory note would hold good. But our Mishna states: Nor can any of the inhabitants collect. Said R. Jeremiah: It speaks of when in the note his name was written threefold; but if so, let them see the receipt, to whom it was made out. Said R. Hoseah: It speaks of when it was written threefold in the note, but not in the receipt. Abayi, however, said: The Mishna is to be explained thus: If there was found among the borrower's documents a writing, "The promissory note which I gave to Joseph b. Simeon is paid," if he possess such from the other, both are considered paid.

"To write their names threefold," etc. There is a Boraitha: If both were priests, they must write their names fourfold—*e.g.*, Joseph b. Jacob b. Itz'hak b. Abraham; and that all the four names should be alike is very rare.

MISHNA VIII.: If one (while struggling with death) says to his son: "A promissory note among the notes I possess is paid, but I do not remember which," all of them are to be considered paid. If, however, one person has given two promissory notes, the larger amount is considered paid, and the smaller amount not.

GEMARA: Rabha said: If one says: "A promissory note from you, which I possess, is paid," and there were two from him, the larger amount is considered paid, and the smaller amount not; if, however, "The debt you owe me is paid," all the promissory notes from him which are in his hands are considered paid. Said Rabhina to him: According to your theory, if one says: "My field is sold to you," does it mean that the largest he has is sold? And if he said, "The field I possess is sold to you," does it mean all the fields? There it is different, as it is for the plaintiff to bring evidence; and if the buyer so claims, he has to bring evidence to what he claims. But here the creditor is the plaintiff; and if he says, "Your debt is paid," it is the best evidence that all the notes are paid.

MISHNA IX.: If one made a loan to his neighbor through a surety, he must not collect first from the surety, unless the borrower does not possess any estate; however, if the stipulation was made that he may collect from whom he pleases, then he may start with the surety.

R. Simeon b. Gamaliel (however) is of the opinion that even in such a case the lender may not start with the surety, unless the borrower does not possess anything. And he used to say thus: If one made himself a surety to a woman for her marriage contract, and thereafter the husband was about to divorce her, the court should compel him to vow that from the time divorced he should not derive any benefit from his former wife, which means not to remarry her, for fear that the husband and his wife may have made a bargain to collect the money for the marriage contract from the surety, and thereafter he will remarry her.

GEMARA: And why should not the creditor collect from the surety? Both Rabba and R. Joseph said: The surety may

claim: I have given bail for the money in case the borrower should die or run away, but not if I deliver him to you. R. Na'hman opposed, saying: Such is the Persian law. But this is not so, as the Persians collect from the surety only, even when the borrower possesses estates? R. Na'hman meant to say: Such a law is similar to a Persian law, for which they give no reason, and therefore he says the Mishna meant: He shall not summon the surety unless he has already summoned the borrower. So also we have learned in the following Boraitha: If one made a loan to his neighbor through a surety, he must not summon the surety first, unless the stipulation was that he might collect from whom he pleased. R. Huna said: Whence do we deduce that a surety is obliged to pay? From [Gen. xliii. 9]: "I will be a surety for him." R. Hisda opposed, saying: He was not a surety only, but also a receiver, as it reads farther on, "from my hand shalt thou require him," and also [ibid. xlii. 37], "deliver him into my hand," etc. Therefore said R. Itz'hak: From [Prov. xx. 16]: "Take away his garment, because he hath become surety for a stranger." (Here is repeated from Middle Gate, p. 305. See there.)

Amimar said: Whether a surety has to pay or not, R. Jehudah and R. Jose differ. According to the latter, who holds that an *asmachtha* gives title, he is responsible; and according to the former, who holds that an *asmachtha* does not give title, the surety is not obliged to pay. Said R. Ashi to him: But is it not a fact that a surety is responsible, although it is now taken as a rule that an *asmachtha* does not give title? Therefore said R. Ashi: Because of the pleasure that the lender trusted him on his word, the surety made up his mind that the lender should be paid under all circumstances; and such a case it is not considered as an *asmachtha*, but as a debt which lies upon himself.

"*That he may collect from whom he pleases,*" etc. Rabba b. b. Hana in the name of R. Johanan said: Even then, if the borrower possess estates, he must not collect from the surety. But does not the latter part of the Mishna state that Simeon b. Gamaliel said so; from which it is to be inferred that the first Tana holds that he may collect from the surety in any event? The Mishna is not complete, and should read thus: If one made a loan to his neighbor through a surety, he must not collect

through the surety unless he had made the stipulation that he might collect from whom he pleased. But even then he collects from the surety in case the borrower does not possess any estate; but if he does, he must collect from the borrower first, and if it should not be sufficient, then from the surety. If, however, the surety was also the receiver of the loan for the borrower, then he may collect from the surety, although the borrower possesses estate. R. Simeon b. Gamaliel, however, maintains that even then he collects from the borrower if he possesses any estate. (In the name of R. Johanan was said (First Gate, p. 156): In that case the Halakha does not prevail with R. Simeon b. Gamaliel.)

R. Huna said: If the surety said: "Lend to this man, and I am the surety"; or, "I will pay"; or, "Count the debt to me"; or, "Lend him, and I will give to you"—all these versions are considered surety. If, however, he said to him: "Give to him, and consider me as receiving the money"; or, "Give to him, and I will pay"; or, "Count the debt to me"; or, "Give to him, and I will return to you"—all these versions are considered receipt. (*I.e.*, if he said: "Borrow from him," it means that he should be the debtor: "In case he shall not pay, I will." But if he says, "Give to him," then the borrower is not considered here at all, as the lender gave by his order.)

The schoolmen propounded a question: How is it if he said, "Lend him, and count me as the receiver"; or, "Give to him, and I will be surety"? According to R. Itz'hak: In the first case, in which he remarked, "I will be the receiver," he must be so considered, although he said, "Lend *him*"; and in the second case, in which he said, "I will be surety," he is to be so considered, although he said, "Give to him." R. Hisda, however, maintains: In either case he is considered a receiver, unless he said, "Lend him, and I will be the surety." And according to Rabha: All the versions mentioned above are considered surety, unless he said, "Give to him, and I will return to you."

Said Mar b. Amimar to R. Ashi: So said my father: If the expression was, "give to him, and I will return you," then has the lender nothing to do with the borrower. (Says the Gemara:) In reality it is not so. The lender may collect the

money from the borrower, unless the surety took the money from the hand of the lender and delivered it to the borrower.

There was a judge who transferred the estate of the borrower to the lender, before the lender had demanded his money from the borrower, and R. Hanin b. R. Yeba removed the judge. Said Rabha: Who so wise to do such a thing, if not R. Hanin b. R. Yeba, as he holds that the estates of the debtor are his surety; and our Mishna states: He must not collect from the surety, nor must he demand his debt first from the surety?

There was a surety for orphans who had paid the lender before he notified the orphans (*i.e.*, he was surety for the father of the orphans, who borrowed some money, and after his death he paid the lender from his own pocket, and then summoned the orphans to pay him from their estates). And R. Papa decided: To pay a debt for which there is no document is a meritorious act, to which orphans who are not of age cannot be compelled; and therefore the surety must wait with his claim until they shall become of age. R. Huna b. Jehoshua, however, maintains: The reason why the orphans have not to pay until they shall become of age is, because they are not aware that the deceased had not paid such a debt. And the difference of the two statements is, in case the deceased had confessed before his death that he had not yet repaid the debt. Then, according to R. Huna, the orphans may be compelled to pay; but not, according to R. Papa.

A message was sent from Palestine: If one was put under the ban because he declined to pay his debt, and he died while still under the ban, he is to be considered as if he had confessed before his death that he had not yet paid, and the orphans have to pay, as the Halakha prevails in accordance with R. Huna b. Jehoshua.

An objection was raised from the following: If the promissory note of the deceased was in the hands of the surety, who claims to have paid the lender, and he demands the debt from the orphans' estates, he cannot collect (for perhaps the lender lost it, and he found it). If, however, there was marked in the note by the lender that he has received the debt from the surety, he may. Hence this is correct only with R. Huna's statement; but it contradicts R. Papa, who said: The orphans must not

be compelled to pay in such a case. R. Papa may say: When the lender wrote that he received the money from the surety and transferred the promissory note to him, it is no longer considered a debt without a document, the payment of which is only a meritorious act, to which the orphans cannot be compelled; as for that purpose the lender marked, "I have received from you that from this date the promissory note should be considered as if given by the deceased to the surety."

There was a surety for a deceased debtor to a heathen, who paid the heathen before he had demanded his debt from the orphans. Said R. Mordecai to R. Ashi: So said Abimi of Hagrunia in the name of Rabha: Even according to him who holds that it may be doubted whether the deceased had paid his debt before dying, it is only when the creditor was a Jew, but not when he was a heathen, who usually demands the debt from the surety and not from the debtor. Answered R. Ashi: It is just the contrary. Even according to him who said that it must not be doubted whether the debt was paid, it is only concerning a Jew; but concerning a heathen, whose law dictates that they have to collect the debt from the surety, it is to be feared that if the surety should not have in his hand an amount which would cover the debt in case it should not be paid, he would not consent to be a surety; and therefore he cannot collect from the orphans except by suing them when they shall be of age.

"If one made himself surety to a woman for a marriage contract," etc. Moses b. Azoi was a surety for the marriage contract of his daughter-in-law, whose husband was R. Huna, who was a scholar, and became thereafter very poor and was unable to support his family. Said Abayi: Is there not one who shall advise R. Huna to divorce his wife, and she shall go to his father, who is rich, and collect the marriage contract, and thereafter R. Huna shall remarry her? Said Rabha to him: But does not our Mishna state: "He shall vow not to derive any benefit," etc.? Rejoined Abayi: Must, then, every one who wishes to divorce his wife go to the court? Finally it was developed that R. Huna was a priest, who could not remarry his wife in case of being divorced. Said Abayi: This is what people say: Poverty follows in the path of the poor. But did he not say above (p. 304), that he who gives such advice

is called a shrewd knave? In this case, where the surety was his father and the son was a scholar, it is different. But was not the father a surety only, who has not to pay (as will be explained farther on)? He was also a receiver. But even then, it is correct according to him who holds that a receiver must pay, even in case the groom possessed nothing at the time of marriage. But what can be said to him who said that in such a case even a receiver is not to be compelled to pay? It may be said that when his father became surety the son was still in the possession of some estates; and if you wish, it may be said that with a father it is different. As it was taught: A surety in a marriage contract, all agree that he has not to pay. A receiver from a creditor, all agree he must pay; but concerning a receiver in a marriage contract and a surety from a creditor the rabbis differ. According to one: If the borrower possessed estates at the time the loan was made, the receiver must pay, as it may be supposed that he obliged himself with all his mind, as he had nothing to fear; and the other holds: He must pay in any event. The Halakha, however, prevails: A surety must pay in any event, unless he was a surety to a marriage contract, even in case the husband was in possession of estates at the time he became surety. And the reason is, because it may be supposed that he did so as a meritorious act, in order that the couple should not be parted; and he did no harm to the bride, as, if the husband had money, he would pay.

R. Huna said: A sick person who has consecrated all his estates, and at the same time said, "So and so has a mana with me," he may be trusted, as it is to be assumed that one would not use deceit against the sanctuary. R. Na'hman opposed: Is it, then, usual that one should use deceit against his children? And, nevertheless, both Rabh and Samuel say: If a sick person said, "So and so has a mana with me," if he added, "Give to him," he is to be listened to; but if he did not, he is not to be listened to. Hence we see that, if he did not say "Give," his statement that so and so has a mana with him is considered as if he did so for the purpose that, should he be cured, his children should not think him very rich. Why should not the same be applied in the case of the sanctuary? R. Huna speaks in case there was a promissory note, and only the sick person admitted that the note was a right one. If so, then we must

say that the statements of Rabh and Samuel applied even when there was no promissory note. But if so, it was a loan without a document, and both Rabh and Samuel said: On such a loan one cannot collect, neither from the heirs nor from the buyers? Therefore said R. Na'hman: In both cases it speaks of when there was a document: one case treats of when the note was approved, and the other when it was not. And then if he said "Give," he approves the note, and is to be listened to; and if he does not say "Give," the note remains unapproved.

Rabba said: A sick person who said, "A has a mana with me," and thereafter the orphans claimed that they have paid, they are to be trusted. If, however, he said, "Give a mana to A," and the orphans say they have paid, they are not to be trusted. But is not common sense against such a theory? It seems just the contrary. If the father said, "Give," and the orphans said "We did so," they may be trusted; but if the father said, "A had a mana with me," it may be supposed they did not hasten to pay him, and why should they be trusted? Therefore if such a statement was made by Rabba, it must be thus: If a sick person said, "A has a mana with me," and the orphans thereafter said that after deliberating the deceased said, "I have paid it already," they may be trusted, as it is probable the deceased remembered that he had returned it. But if the sick person says, "Give a mana," and thereafter the orphans claim the same as is said above, they are not to be trusted; as if it were for deliberation, he would not say "give."

Rabha questioned: If a sick person had confessed (*i.e.*, his creditor came to him, saying, "You owe me a mana," and he said, "yea"), must the sick person also add "yea," that those who are present shall be witnesses, as is required in such a case of one in good health, or not? And it is also a question whether he must say to the witnesses: "Mark this in writing"; and also whether a sick person has the right to say, "It was only a joke," or, "This is out of the question." Concerning one who is dying, after deliberating, he came to the conclusion that all these are not necessary, as there is a rule: The words of a dying person are to be considered as written and delivered to whom it concerns.

MISHNA X.: If one borrows money on a promissory note, the lender has a right to collect from encumbered estates; and

if without a note, but in presence of witnesses, the lender may collect from unencumbered only. If A holds a writing that B owes him money (not a promissory note, which usually must be drawn by witnesses), he collects from unencumbered estates only. A surety who has signed his name after the signatures of the document ("I, so and so, am a surety"), the lender may collect from the surety from unencumbered estates only (as it is considered a verbal surety, as there were no witnesses who testified to this).

Such a case happened to come before R. Ishmael, and he decided that he should collect from free estate. Ben Nanas, however, maintains: He must not collect from any estate. And to the question of R. Ishmael: Why so? he answered: If it happen that a creditor sees his debtor in the market, grapples him by the throat, and one passes by and says, "Leave him alone, I will pay," he is nevertheless free, because the loan was made not upon his surety. The same is the case here. If, after the document was made and the witnesses signed it, he adds, "I am a surety," he is not considered such, as he was a surety when the loan was already made. Said R. Ishmael: If one wishes to become wise, he shall occupy himself with the civil law; for there is no store (of wisdom) in the entire Law richer than it (the civil law). And those who wish to study civil law may take lessons of Ben Nanas.

GEMARA: Ula said: Biblically there is no difference between a loan on a document and by word of mouth; and it should be collected from encumbered estates. Why is it said that on a verbal one, one collects from free estate only? Because the buyers of the borrower should not suffer damage (*i.e.*, as they could not be aware of a thing done verbally). But when there is a document, it is their own fault if they do not investigate before they buy. Rabba, however, maintains the contrary: Both loans ought to be collected from free estates only; as, according to the biblical law, the estates are not mortgaged even if there is a document (unless it is so written). But why did the rabbis enact that a document collects from encumbered estate? In order not to close the door for borrowers. For a verbal loan, however, they did not enact, as it is not known to the people; and the buyers from the borrower could not know there was a loan.

Did, indeed, Rabba say so? Was not his decision [in Chapter VIII., p. 274] "that a first-born takes a double share in the estate collected after the death of the father"? Now if not mortgaged biblically, in a document why should he take a double share—to which he is not entitled in movable property or money collected after death? And lest one say that the names of Ula and Rabba should be reversed in the above statements, this would not hold good, as we have heard Ula saying elsewhere that a creditor collects biblically from the worse estate of the debtor. Hence we see that Ula holds that estates are mortgaged biblically. (This presents no difficulty, as the cited statement of Rabba [in Chapter VIII.] was only to give the reason of the Palestinians; but he himself does not hold with them.)

Both Rabh and Samuel hold: A verbal loan is not collectible—neither from heirs nor from buyers; as, biblically, estates are not mortgaged on any loan. But R. Johanan and Resh Lakish both hold: They are mortgaged, and therefore a loan is collectible—whether from heirs or from buyers. Said R. Papa: The Halakha prevails that a verbal loan is collectible from heirs, for the purpose of not closing the door to borrowers; but is not collectible from buyers, who could not know of the existence of such a debt.

"If *A* holds a writing . . . from unencumbered estates," etc. Rabba b. Nathan questioned R. Johanan: How is it if this writing was approved by the court? And he answered: Even then, the same is the case. Rami b. Hama objected from a Mishna in Tract Gittin, in which it is stated that, according to R. Elazar, if such a document, without witnesses, was given to the lender in the presence of witnesses, he may collect from encumbered estates? The case is different, as the writing was with the intention of transferring it in the presence of witnesses; it is the same as if the witnesses had signed the document.

"*A* surety . . . after the signatures," etc. Said Rabh: If the surety signed before the signatures, it may be collected from encumbered estates; and if after, from unencumbered estates only. But at some other time the same Rabh said: Even if he had signed his name before the signatures, it is to be collected from free estates only. Hence Rabh contradicts him-

self. This presents no difficulty, as his statement, from free estates only, speaks of when the surety wrote, *e.g.*, "B is a surety," which does not make it clear for whom he is a surety; and the witnesses who signed their names after him, perhaps they have nothing to do with the surety. And his statement that it is collectible from encumbered estates speaks of when there was written after the text, explaining the loan, "*And so and so is the surety,*" to which the approval was by the witnesses signed after him. And the same was said by R. Johanan.

"*Such a case came before R. Ishmael,*" etc. Said Rabba b. b. Hana in the name of R. Johanan: Although R. Ishmael praised Ben Nanas, the Halakha prevails with R. Ishmael.

The schoolmen propounded a question: How is it if such a case as illustrated by Ben Nanas occurs? Come and hear what R. Jacob said in the name of R. Johanan: Even then, R. Ishmael differs with him. But with whom, then, does the Halakha prevail? Come and hear what Rabbin, when he came from Palestine, said in the name of Johanan: R. Ishmael differs with Ben Nanas even in the case illustrated by him, and the Halakha prevails also in this case with R. Ishmael. Said R. Jehudah in the name of Samuel: However, if the man who said, "Leave him alone, I will pay," fulfils his promise with the ceremony of a sudarium, he is mortgaged. Infer from this that in case of all other sureties no sudarium is necessary; and this differs with R. Na'hman, who said: Only a surety, in the presence of the court, is free from a sudarium; but all others are not. The Halakha, however, prevails that with a surety who was present when the money was delivered, a sudarium is not needed, but after the delivery it is needed. With a surety appointed by the court it is not needed, as, because of his pleasure at the court choosing him to be the surety, he makes up his mind to pay, and is mortgaged.

END OF TRACT BABA BATHRA AND OF VOL. VI. (XIV.)

Stanford University Libraries

3 6105 124 423 786



FEB 18 1968

Stanford University Library
Stanford, California

In order that others may use this book, please
return it as soon as possible, but not later than
the date due.



PRINTED IN U.S.A.

Digitized by Google



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

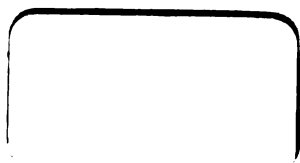
New edition of the Babylonian Talmud

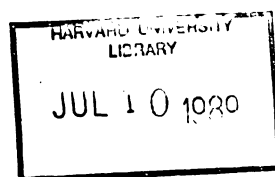
Michael Levi
Rodkinson, Isaac
Mayer Wise, ...

507
10.00
3
4



**HARVARD
COLLEGE
LIBRARY**







tion of the Grand Prize Diploma for the first translation (into a modern language) of the Babylonian Talmud. The name of the translator leads those

HARVARD UNIVERSITY
LIBRARY
JUL 10 1980

Jun. H. S. Robinson's Magazine
November (October) 1896

Dear Mr. Robinson!

Die Juden die Sie pfeifen, sind die Feinde
und die Feinde sind die Feinde der Feinde
Kaiser, die Feinde sind die Feinde der Feinde
pfeifen die Feinde der Feinde, und die Feinde
sind die Feinde der Feinde. Die Feinde
sind die Feinde der Feinde. Die Feinde
sind die Feinde der Feinde.

Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.

Amicus

Amicus.

Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.

Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.
Die Feinde sind die Feinde der Feinde.

The Amicus

Translation of the original letter of the Privy Counsellor to H. L. M.
the German Emperor, Prof. Lazarus, Ph.D., D.D.

"You have been kind enough to dedicate your English translation of
Volume VI. (1) of the Babylonian Talmud to me, in conjunction with
Monseigneur the Grand Rabbi of France, Zadoc Kahn. You have conferred
upon me a high honor and I beg of you to accept thereof my heartiest
thanks. It would be a deceiving flattery were I to say your work is per-
fect, for I am but a layman so far as the English language is concerned,
hence on that point am not in a position to judge. I know, however,
that only by means of a diligence which cannot be estimated and through
untiring energy—and that possessed by a skillful pilot who has mastered
the whole sea of the Talmud—can such a gigantic work be accom-
plished.

"The American Jews, who turn to the promotion of the science of
Judaism with such praiseworthy zeal, will be proud of the fact that this
ever-desired and never-accomplished task, the translation of the whole
Talmud into a modern idiom, was consummated on American soil.

"That you have connected my name with your work obliges me to
express my sincerest thanks, with the expression of which I remain, with
many hearty wishes for your future welfare and success, your
true friend,
Lazarus.

NEW EDITION
OF THE
BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and
Translated into English

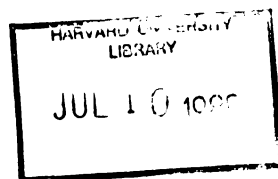
BY
MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)
TRACT SANHEDRIN

15-16

Volumes VII. and VIII. (XV. and XVI.)

NEW YORK
NEW TALMUD PUBLISHING COMPANY
1117 SIMPSON STREET



~~CL 5444.5~~

~~CL 5444.5~~

~~Jud 6400. (15-16)~~

Jud 6400. 8.5 (15-16) Walker found



~~XX - XX~~

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna akhrena* or *Waibayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.



COPYRIGHT, 1902, BY
MICHAEL L. RODKINSON.

TO HIM
WHO RANKS AMONG THE FIRST PHILANTHROPISTS OF
OUR CO-RELIGIONISTS

ABRAHAM ABRAHAM, Esq.

IN RECOGNITION OF HIS GENEROUS DEEDS TOWARD PROMOTING
LITERATURE IN GENERAL AND JUDAISM IN PARTICULAR,
THIS BOOK IS MOST RESPECTFULLY DEDICATED BY
THE TRANSLATOR

MICHAEL L. RODKINSON

NEW YORK
IN THE MONTH OF ELUL, 5662
(SEPTEMBER 18TH, 1902)

A WORD TO THE READER.

MANY books have been written by the scientists of the last century, and many lengthy articles have appeared in the various periodicals, concerning the Jewish *high court*, and this tract, which, if extracts were given, would make an entire bulky volume in itself. However, we deem it best to give the reader the information where these are to be found. The time during which the Sanhedrin were established is the main topic of their discussions. Zunz, for instance, gives the time from King Simeon of the Maccabees. Jost states that it was from the period of Hyrcan. And an anonymous writer in "Israelitische Annalen," Vol. I., pp. 108-134, maintains that they were established at an exceedingly earlier date, and that the Greek name "Sanhedrin" was changed during the time of the second Temple. At all events, Schürer, in his "Jüdische Geschichte," wrote a lengthy article on this subject, in Vol II., from p. 188 to 240 (where there is to be found a bibliography of the subject), concluding with his opinion that the *high court* began at an earlier time. Z. Frankel, too, in his article, "Der gerichtliche Beweis," Berlin, 1848, claims that the establishment of the jury in the entire civilized world was taken from the Sanhedrin. All this was written in Germany. An English book by Rabbi Mendelsohn also treats upon this topic. We, too, will have something to say concerning this in our forthcoming "History of the Talmud." We are inclined, in many respects, however, to accept the opinion of Reifmann, given in his Hebrew book, "Sanhedrin," Warsaw, 1888. He says that courts were even established in the days of Noah, the judges of which were Shem, Abraham, Isaac, and Amram, continuing until Moses. He, in turn, established a court of seventy judges, and from that time the Supreme High Court was of that number (seventy-one, including Moses), and thereafter supreme courts of twenty-three, and courts of three, were established at all times, and wherever the Jews resided; the sages of the second Temple naming these courts "great" and "small" Sanhedrin. Reifmann's reasons are gathered from the post-biblical literature, and are based upon the Bible. According to him, the three judges had to decide civil cases only, the twenty-three, crimi-

▼

nals and capital punishments, and the seventy-one were a political body, who were to decide also the great events; as, for instance, an entire tribe, or the princes and heads of tribes. We, however, would say that the court of three had also to decide criminal cases to which capital punishment did not apply. So it seems to us, from this tract, p. 212 of the Talmud, that a stubborn and rebellious son was punished with stripes by a court of three, before being finally sentenced to death by the court of twenty-three.

Reifmann also quotes from "Midrash Aggada," that before prophesying a prophet was obliged to get permission from the Sanhedrin, who previously tried him whether he was a true prophet or not. We may here add that this contradicts the Talmud, for it says that to recognize a true prophet was by demanding a sign, p. 260, and if the prophet would have been obliged to get the permission of the Sanhedrin, this would certainly be mentioned in the Talmud instead.

This is as much as we have to say in regard to the time and name, and that the Sanhedrin ceased about forty years previous to the destruction of the Temple. At the same time we would call the attention of the readers to the fact that this tract distinguishes itself from all others in Halakha as well as in Haggada. Aside from the many strange explanations of the verses of Scripture, which are not used in other extracts, it says plainly that there are numerous laws written in the Pentateuch which have never occurred, and never will occur, but that they were written merely for study. The Haggada also distinguishes in taking the power to judge upon the Bible personages if they are to have a share in the world to come, and also in criticism of their acts, even of the most holy of them. This is self-evident that the later commentaries, and especially the cabbalists, interpreted the Haggada after their ways. We, however, have translated it almost literally, with an effort to make it in some respects intelligible to the general reader, and have also added footnotes, where we deemed it necessary. And we may say that the real student will find much pleasure if he will devote his special attention to this tract.

For this purpose we have made from this celebrated tract a double volume, as we deem it will please the readers and the students, and will also equalize the size of the volumes.

M. L. R.

September 16, 1902.

CONTENTS.

A WORD TO THE READER	v
SYNOPSIS OF SUBJECTS	xi

CHAPTER I.

RULES AND REGULATIONS CONCERNING THE APPOINTMENT OF JUDGES IN CIVIL AND CRIMINAL CASES. WHICH ARE CONSIDERED CIVIL AND WHICH CRIMINAL. HOW MANY ARE NEEDED TO THE INTERCALATION OF A YEAR AND OF MONTHS; TO APPRAISE CONSECRATED REAL ESTATE AS WELL AS MOVABLE PROPERTIES; AND IF AMONG THE APPRAISERS MUST BE PRIESTS, AND IF SO HOW MANY. THE NUMBER OF PERSONS NEEDED TO ADD TO THE CITY FROM THE SUBURBS OF JERUSALEM. WHAT MAJORITY IS NEEDED TO ACCUSE AND WHAT TO ACQUIT. HOW MANY PEOPLE MUST BE IN A CITY THAT A COURT OF TWENTY-THREE JUDGES SHOULD BE ESTABLISHED . . .	1
--	----------

CHAPTER II.

RULES AND REGULATIONS CONCERNING THE HIGH-PRIEST: IF HE MAY JUDGE AND BE JUDGED, BE A WITNESS AND BE WITNESSED AGAINST; THE LAWS REGARDING A DEATH OCCURRING IN HIS FAMILY AND THE CUSTOM OF THE CONDOLENCE. THE SAME RULES CONCERNING A KING. REGULATIONS AS TO WHAT A KING MAY AND MAY NOT ALLOW HIMSELF: HOW MANY WIVES AND HOW MANY STABLES FOR HORSES HE MAY HAVE; HOW HE MUST BE RESPECTED AND FEARED BY HIS PEOPLE, ETC. . .	43
--	-----------

CHAPTER III.

RULES AND REGULATIONS CONCERNING THE QUALIFICATION OR DISQUALIFICATION OF JUDGES AND WITNESSES WHO MAY DECIDE UPON STRICT LAW AND WHO IN ARBITRATION. WHEN A REJECTION AGAINST JUDGES AND WITNESSES MAY OR MAY NOT TAKE PLACE. OF RELATIVES THAT ARE DISQUALIFIED AND THOSE THAT ARE NOT. HOW THE WITNESSES SHOULD BE EXAMINED IN CIVIL CASES. UNTIL WHAT TIME NEW EVIDENCE MAY OR MAY NOT AFFECT A DECISION RENDERED	64
--	-----------

CHAPTER IV.

RULES AND REGULATIONS CONCERNING EXAMINATIONS AND CROSS-EXAMINATIONS OF WITNESSES IN CIVIL AND CRIMINAL CASES. THE DIFFERENCE IN JUDGING AND IN DISCUSSIONS BETWEEN CIVIL AND CRIMINAL CASES. HOW THE MEMBERS OF THE SANHEDRIN WERE SEATED. HOW MANY RECORDING SCRIBES WERE NEEDED. HOW JUDGES WERE ADDED IF NEEDED, AND FROM WHAT PEOPLE. HOW WITNESSES SHOULD BE FRIGHTENED IN CRIMINAL CASES. THE REASON WHY ADAM THE FIRST WAS CREATED SINGLY. 97

CHAPTER V.

RULES AND REGULATIONS CONCERNING PRELIMINARY QUERIES, EXAMINATION, AND CROSS-EXAMINATION IN CRIMINAL CASES. WHAT MAY OR MAY NOT BE CONSIDERED A CONTRADICTION OF WITNESSES. HOW IS IT IF A DISCIPLE NOT BELONGING TO THE JUDGES SAYS: "I HAVE SOMETHING TO SAY TO HIS ADVANTAGE OR DISADVANTAGE"? BY WHAT MAJORITY ONE MAY BE ACQUITTED AND BY WHAT ACCUSED; AND TO WHAT NUMBER JUDGES MAY BE ADDED, IF THEY CANNOT COME TO ANY CONCLUSION. 115

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE EXECUTION BY STONING AND THE MANNER OF HERALDING. HOW THE CRIMINAL WAS URGED TO CONFESS BEFORE DEATH. THE STRIPPING OFF BEFORE DEATH OF THE DRESS OF A MALE AND OF A FEMALE. THE HANGING AFTER STONING, AND HOW IT WAS PERFORMED 126

CHAPTER VII.

RULES AND REGULATIONS CONCERNING THE FOUR KINDS OF DEATH PRESCRIBED IN THE SCRIPTURE, AND HOW THEY OUGHT TO BE EXECUTED. THE ENUMERATION OF THOSE WHO COME UNDER THE CATEGORY OF STONING. HOW THE EXAMINATION CONCERNING BLASPHEMY SHOULD BE CONDUCTED. CONCERNING THOSE WHO TRANSFER THEIR CHILDREN TO MOLECH; FAMILIAR SPIRITS, ETC. CONCERNING CURSING FATHER AND MOTHER, SEDUCERS AND MISLEADERS, ETC. 149

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING A STUBBORN AND REBEL-
 LIOUS SON. AT WHAT AGE AND WHAT HAS HE TO DO TO
 BE CHARGED AS SUCH? HOW IS IT IF, *e.g.*, HIS FATHER CON-
 DEMNS HIM, BUT NOT HIS MOTHER, OR *vice versa*. IF ONE
 OF HIS PARENTS WERE LAME OR BLIND, ETC. IF HE RUNS
 AWAY BEFORE THE DECISION WAS RENDERED. CONCERNING
 BURGLARY AND IF A BURGLAR DESERVES CAPITAL PUNISH-
 MENT, MUST PAY THE DAMAGE CAUSED BY BREAKING IN 201

CHAPTER IX.

RULES AND REGULATIONS CONCERNING THOSE TO WHOM BURNING
 AND THOSE TO WHOM SLAYING APPLIES. WHO IS CONSIDERED
 A MURDERER DESERVING CAPITAL PUNISHMENT AND WHO IS
 TO BE EXILED. THOSE WHO RECOVERED AFTER THEY WERE
 DIAGNOSED TO DIE; KILLING SOME OTHER ONE INSTEAD OF
 THOSE WHOM HE HAD INTENDED 222

CHAPTER X.

RULES AND REGULATIONS CONCERNING THOSE TO WHOM CHOKING
 APPLIES. CONCERNING A REBELLING JUDGE; WHAT SHALL BE
 HIS CRIME FOR WHICH HE IS TO BE EXECUTED; AT WHICH
 PLACE AND WITH WHICH KIND OF DEATH. AND CONCERNING
 A FALSE PROPHET 245

CHAPTER XI.

THE HAGGADIC PART ABOUT RESURRECTION; SHARES IN THE
 WORLD TO COME; AND ABOUT THE MESSIAH, ETC. . . . 265

SYNOPSIS OF SUBJECTS
OF
TRACT SANHEDRIN (SUPREME
COUNCIL).

CHAPTER I.

MISHNA I. To which cases judges are needed to decide, and to which commoners ; which three, five, twenty-three, and seventy-one. The Great Sanhedrin consisted of seventy-one, and the Small of twenty-three. How many a city should contain, that it should be fit for a supreme council. If one were known to the majority of the people as an expert, he alone might decide civil cases. A permission from the Exilarch holds good for the whole country (of Babylon and also for Palestine) ; from the Prince in Palestine, for the whole of Palestine and Syria only : he may teach the law, decide civil cases, and may also decide upon the blemishes of first-born animals. He (a priest) saw a divorced woman and married her, and with this he annulled his priesthood. He erred in his opinion—*e.g.*, there were two, Tanaim and two Amoraim who differed in a case, and he decided the case according to one. There are three Tanaim who differ concerning arbitration. When the decision is already given in accordance with the strict law, an arbitration cannot take place. May or may not a judge say, "I do not want to decide this case" ? and under what circumstances ? Is mediation a meritorious act, or is it only permitted ? There were many who used to say maxims of morality, and Samuel found that they were only repetitions of verses in the Scriptures. "Say unto wisdom, Thou art my sister," means, if the thing is certain to you as that it is prohibited for you to marry your sister, then you may say it ; but not otherwise. If one appoints a judge who is not fit to be such, he is considered as if he were to plant a grove in Israel. The court shall not listen to the claims of one party in the absence of the other (in civil cases). "You shall judge righteously" means, you shall deliberate the case carefully, and make it just in your mind, and only thereafter may you give your decision : "For the judgment belongeth to God." The Holy One, blessed be He, said : "It is the least for the wicked to take away money from one and give it to another illegally," etc. Is warning needed to a scholar ? Where is the hint that collusive witnesses are to be punished with stripes ? Punishment of stripes is not applied to those who do no manual labor. The numbers three, five, and seven—to what have they a similarity ?

A year must not be intercalated with one month, except by them who are invited for it by the Nashi. Since the death of the last prophets—Haggai, Zechariah, and Malachi—the Holy Spirit has left Israel, etc. A leap year should not be made because of the kids, lambs, etc. For the following three things a leap year is made: Because of the late arrival of Spring, etc. A leap year must not be made in the years of famine. The year must not be intercalary before Rosh Hashana. A leap year must not be made in one year for the next. No appointment of a leap year must be because of defilement. If not for Ben Baba, the law of fines would be forgotten from Israel. The legend how Jehudah b. Baba supplied the degree of Rabbi to five (six) elders, and by this act he caused the oral law not to be forgotten from Israel. The custom of giving degrees must not be used out of Palestine. What is to be considered second tithe, of which the value is not known? Rotten fruit, etc. "Every great matter," means the matter of a great man. By the whole tribe, is meant the head of it. The legend how a battle was decided by King David. Whence do we know that it is a duty to appoint judges to each tribe? etc. The legend of Eldad and Medad, and what their prophecy was. How Moses selected the seventy elders from each tribe, and also the payment of the first-born who were not redeemed by Levites. Sentence of guilt must be by a majority of two. If all persons of a Sanhedrin are accusing, the defendant becomes free. How so? In a city in which the following ten things do not exist it is not advisable for a scholar to reside, and they are, etc. Of rulers of thousands were six hundred; of hundreds, six thousand; of fifties, twelve thousand; of tens, sixty thousand—hence the total number of the officers in Israel was seventy-eight thousand and six hundred, 1-42

CHAPTER II.

MISHNAS I. AND II. The high-priest may judge and be a witness; be judged and witnessed against. A king must not judge, and is not judged; must not be a witness, nor witnessed against. There are cases from which one may withdraw himself, and there are others from which he may not. How so? A king must not be a member of the Sanhedrin; nor he and a high-priest engage in discussion about a leap year. The legends of three pasturers who had a discussion about the month Adar, which the rabbis took as a support to establish a leap year. When he (high-priest) goes in the row to condole with others, his vice and the ex-high-priest are placed at his right, etc. Formerly the custom was for the mourners to stand, and the people to pass by, etc. A row is not less than ten persons, not counting the mourners. All agree that if a king has relinquished his honor, it is not relinquished. How could David marry two sisters while they were both living? The strength of Joseph was moderation on the part of Boas, and the strength of the latter was moderation on the part of Palti, etc., etc. If a death occurs in the house of the king, he must not leave the gate of the palace, . . . 43-52

MISHNAS III. TO VI. Three positive commandments was Israel commanded when they entered Palestine, viz., they should appoint a king, etc. The treasures of kings which are plundered in time of war belong to the king only. He (the king) must not marry more than eighteen wives. Even one

wife, should she be liable to turn his heart away, he must not marry her. The number eighteen mentioned in the Mishna—whence is it deduced? Four hundred children were born to David by the handsome women whom he took captive (*i.e.*, those mentioned in Deut. xxi. 11). Only a son may stay alone with his mother, but it is not allowed for any one besides to stay alone with a married woman. He (the king) must not acquire many horses, neither more gold and silver than to pay the military. He shall not acquire many horses, and lest one say, "Even those which are needed for his chariots," etc. He shall not acquire much gold and silver—lest one say, "Not even sufficient for paying the military," etc. Why does not the Scripture explain the reason of its law? Because in two verses it was so done, and the greatest men of a generation stumbled because of them, etc. Ezra was wrothy that the Torah should be given through him, if Moses had not preceded him. In the very beginning the Torah was given to Israel in Assyrian characters, etc. (see footnote, p. 59). One must not ride on his—the king's—horse, etc. Come and see how hard is divorce in the eyes of the sages! He who divorces his first wife, even the altar sheds tears on account of him. The king must cut his hair every day, a high-priest every eve of Sabbath, and a commoner priest every thirty days, 52-63

CHAPTER III.

MISHNAS I. TO III. Civil cases by three: one party may select one, and so the other, and both one more. Pure-minded people of Jerusalem used not to sign a document unless they were aware who was the other who was to sign it, and also would not sit down to judge unless they were aware who was to be their colleague, etc. One has no right to reject a judge who was appointed by the majority. There is a rule that the testimony of one who is interested in a case is not to be taken into consideration. Proof is needed to each claim, even if it is not so important that it could injure the case. He who saw Resh Lakish in the college saw one uprooting hills and crushing them, and he who saw R. Mair saw one uprooting *mountains* and crushing them. Gamblers (habitual dice-players) and usurers, and those who play with flying doves, are disqualified to be witnesses. What crime is there in dice-playing? Because they do not occupy themselves with the welfare of the world. One who borrows to pay usurers is also disqualified. Gamblers are counted those who play with dice; and not only with dice, but even with the shells of nuts or pomegranates. Among those who play with doves—other animals are also meant. There was added to the disqualified witnesses robbers and forcers (*i.e.*, those who take things by force, although they pay the value for them). There was secondly added to that category, collectors of duty and contractors of the government. The father of R. Zera was a collector for thirteen years, etc. One's thought for his maintenance injures him in his study of the law, etc. They who accept charity from idolaters are disqualified to be witnesses, provided they do so publicly, etc. One who is wicked in money matters only is disqualified to witness, but not one wicked in heavenly matters. Bar Hama had slain a man, and the Exilarch told Aba b. Jacob to investigate the case; and if he really slew the man they should make the murderers blind, etc., 64-79

MISHNAS IV. TO VI. The following are counted relatives who may not be witnesses: Brothers, brothers of father or mother, brothers-in-law, etc. "My father's brother shall not witness in my cases; he, his son, and his son-in-law." "The brother of my mother-in-law cannot be a witness for me." The husband of one's sister, also the husband of the sister of one's father and the husband of the sister of one's mother, their sons and their sons-in-law, are also excluded from being witnesses. A stepfather . . . his son-in-law, etc. There was a deed of gift which was signed by two brothers-in-law—*i.e.*, two husbands of two sisters, etc. How were the witnesses examined? They were brought into separate chambers, etc. How were the witnesses frightened? There was one who had hidden witnesses under the curtains of his bed, and he said to his debtor: "Have I a mana with you?" etc. There was one who was named by the people "the man who has against him a whole kab of promissory notes." There was another who was named "the mouse who lies on dinars," etc. There was a document of confession in which it was not written: "He (the debtor) has said to us, 'Write a document, sign, and give it him' (the creditor)," etc. "I have seen your deceased father hide money in a certain place, saying, 'This belongs to so-and-so,'" etc. How is the judgment to be written? So was the custom of the pure-minded in Jerusalem. They let parties enter, listened to their claims, and thereafter let the witnesses enter, listened to their testimony, then told all of them to go out, etc. This is a rule for every case in which is mentioned "a witness," that it means two. Simeon b. Alyaqim was anxious that the degree of Rabbi should be granted to Jose b. Hanina, etc., etc. A confession after a confession, or a confession after a loan, may be conjoined; but a loan after a loan, or a loan after a confession, do not join (p. 91). Witnesses in civil cases who contradict one another in unimportant investigations are to be considered. So long as the defendant brings evidence to his advantage, the decision may be nullified by the court. However, if after he had said, "I have no witnesses," etc. What happened to R. Na'hman with a young man whom he made liable. If one who is summoning a party who says, "I want my case brought before the assembly of sages," etc., he may be compelled to try his case in that city. In Babylon they are not allowed to try cases of fine, 79-96

CHAPTER IV.

MISHNAS I. TO III. Cases coming before the court, the witnesses thereof must be examined and investigated. What difference is there between civil and criminal? The following from (a) to (g). Biblically there is no difference between civil and criminal cases concerning investigations. But why is it enacted that civil cases do not need investigation? "Justice, only justice, shalt thou pursue," means that one shall follow to the city of a celebrated judge, etc. What has the court first to say to the advantage of the defense in criminal cases? If one has tried a case, and made liable him who is not, or *vice versa*, etc. Tudus the physician testified that not one cow or one swine was sent from Alexandria in Egypt of which the womb was not removed. If one was found guilty by the court, and thereafter one come, saying: I know a defense for him, etc. So long as the fire in the

stove burns, cut off all that you want to roast, and roast it. (*I.e.*, when you are studying a thing, consider it thoroughly to prevent questions.) All who take part in the discussion may explain their reasons, until one of the accusers shall yield to one of the defenders. In the neighborhood of R. Johanan there was one who was blind who used to judge cases, etc. From the time of Moses until the time of Rabbi, we do not find one man who was unique in the possession of wisdom, riches, and glory, etc. One may teach his disciple, and at the same time may judge in association with him in criminal cases. In ten things civil cases differ from criminal cases. All are competent to judge civil cases. But not all of them are competent to judge criminal cases. The Sanhedrin sat in a half-circle in order that they could see each other, etc. The Torah has testified that we are such a kind of people that even a fence of lilies is sufficient for us, and will never be broken. How were the witnesses awestruck in criminal cases? A human being stamps many coins with one stamp, and all of them are alike; but the Holy One, blessed be He, has stamped every man with the stamp of Adam the first, and, nevertheless, not one of them is like the other. Although the court of the Sanhedrin existed no longer, the punishment of the four kinds of death prescribed in the Scripture was not abolished by Heaven. Adam the first was created singly, and why? That disbelievers should not say there were many Creators in heaven, etc. In three things one is different from his neighbor—in voice, etc., 97-114

CHAPTER V.

MISHNA I. The court used to examine the witnesses with seven inquiries, etc. Should one of the witnesses say, "I have something to say in behalf of the defendant," or one of the disciples, "I have something to say to the disadvantage of the defendant," the court silences him. Why not say that eight queries are necessary in the examination? *Viz.*, how many minutes are there in the hour? Do you recognize this man as the murderer of him who was slain? Was he a heathen or an Israelite? Have you warned him? Did he accept the warning? etc. Whence do we deduce that the warning is prescribed biblically? Witnesses who testified in case of a betrothed woman, if they be found collusive, are not to be put to death. What is the difference between examination? etc. Until what time may the benediction of the moon be pronounced? If Israel should have only the meritorious act of receiving the glory of their heavenly Father once a month, it would be sufficient. They do not drink wine. And why not? In civil cases the court may say: The case becomes old, etc., . . . 115-125

CHAPTER VI.

MISHNAS I. TO IV. If the conclusion was to condemn, the guilty one was taken out immediately to be stoned. A herald goes before him, heralding: So and so, etc. One stands with a flag. I doubt who had to bear the cost of the flag and horse mentioned in the Mishna, etc. If one of the disciples said, "I have something to say in behalf of the defendant," and thereafter he became dumb? He who is modest, the verse considers him as if he should

sacrifice all the sacrifices mentioned in the Scripture. When he (the guilty) was far from the place of execution—a distance of ten ells—he was told to confess. Why are the words “unto us and to our children,” and the Ayin of the “ad” pointed? The Lord said to Joshua: Thou thyself hast caused all the evils, because thou didst excommunicate the goods of Jericho. One should always proceed with prayer before trouble comes. It happened with one who was going to be executed, that he said: If I am guilty of this crime, my death shall not atone for all my sins. See footnote, p. 135, concerning the legend of Simeon b. S. of the eighty witches hung by him. A male was stoned while naked, but not a female. The stoning place was two heights of a man, etc. If before the execution the hands of the witnesses were cut off, he becomes free from death. “The avenger of the blood himself shall slay.” Infer from this that it is a meritorious act for the avenger to do so himself, 126-139

MISHNAS V. AND VI. All who are stoned are also hanged. A male, but not a female. Two must not be judged on the same day, provided there are two kinds of death. How was one hanged? The beam was put in the earth, etc. King Sabur questioned R. Hama: Whence do you deduce from the Torah that one must be buried? etc. Is the burying because the corpse shall become disgraced if not buried, or is it because of atonement? Is the lamentation an honor for the living or for the deceased? And what is the difference? etc. A wicked person must not be buried with an upright one. All the curses with which David cursed Joab fell on the descendants of David. They were [II Sam. iii. 29], etc. If not for Joab, David would not have been able to occupy himself with the law, etc., 139-148

CHAPTER VII.

MISHNAS I. TO V. Four kinds of capital punishment are prescribed to the court by the Scriptures. According to R. Simeon, burning is more rigorous than stoning. With her father, burning applies; with her father-in-law, stoning applies. How is this to be understood? Do you come to teach a Halakha which will be used only then when the Messiah will appear? The prescribed punishment of burning was this: The sinner was placed in waste knee-deep. Then placing a twisted scarf of coarse material within a soft cap, etc. But which will burning or stoning be derived from the offerings of the bullocks, which were burned bodily? Nadab said to Abihu: When will the two old men die, and you and I be leaders of Israel? The prescribed punishment of slaying was thus: He was decapitated, etc. The prescribed punishment of choking was thus: The sinner was placed in waste knee-deep, etc. To the following sinners stoning applies: viz., one who had connection with his mother, etc. “A man” means to exclude a minor. [Lev. xxii.]: “That lieth with his father’s wife” means, that there is no difference whether she is his mother or not, 150-164

MISHNAS VI. TO VII. One who had connection with a human male, or with an animal, and also a human female who uncovers herself before a male animal, are punished with stoning. “With an animal” makes no difference whether it was a large or a small one. A blasphemer is not guilty, unless he mentioned the proper name of God (Jehovah). “Any man whatsoever,”

etc., meaning to include the heathen, who are warned of blasphemy. Ten commandments were commanded to Israel in Marah; seven of them are those which were accepted by the descendants of Noah. For transgression of these commandments a descendant of Noah is put to death, viz., adultery, bloodshed, and blasphemy. A descendant of Noah may be put to death by the decision of one judge, by the testimony of one witness, etc. Every relationship for which the punishment of the courts of Israel is death, a descendant of Noah is warned of it; but all other relationships, the punishment of which is not death, are permissible to them. He who raises his hand to his neighbor, although he has not as yet struck him, is called wicked. "Flesh in which its life is, which is its blood, shall ye not eat," [Gen. ix. 4] means any member of the animal, while it is still alive. We do not find any case where what is forbidden to the descendants of Noah should be allowed to the Israelites. An unclean thing never came from heaven. There is no difference if one hears it from the blasphemer himself or from the witness who heard it from the blasphemer—he must rend his garments . . . 164–187

MISHNAS VIII. TO XII. One is considered an idolater who worships it with its proper worship; and even if he only sacrifices, smokes incense, or pours wine, etc. Why not say that from bowing "all kinds of worshipping" is to be inferred? In our Mishna it is stated: "He who *worships* idols." There is another Mishna, farther on, which states: He who says: "I will worship," is always considered an idolater, etc. If one worship an idol because he loves it, or because he fears it, etc. Concerning Sabbath it is more rigorous than all the other commandments in one respect, and all other commandments are more rigorous in another respect, etc. There is a tradition: He who conjoins the name of Heaven with something else is to be destroyed. It happened to a female heathen who was very sick and vowed that if she recovered she would worship all the idols which were to be found, etc. If one gives one of his children to Molech, he is not guilty unless he has transferred him to the servants, etc. One is not guilty unless he let him pass in the usual manner. What was that? A row of bricks were placed for passing, etc. Baal ob (mentioned in the Scripture) is the python that makes the dead speak from his armpit, and Yidofni means one that makes the dead speak from his mouth. Is not he who queries an "ob" the same who inquires of the dead? Nay! etc. An observer of times is, according to R. Aqiba, he who reckons times and hours, saying: This day is good to go on the road, etc. He who curses his father or mother is not punished with a capital punishment, unless he curse them by the proper name of God, . . . 187–194

MISHNAS XIII. TO XIV. He who sins with a betrothed damsel is not guilty to be stoned, unless she was a maiden betrothed and still in her father's house. A seducer means one who is himself a commoner—*e.g.*, he says: There is an idol in such and such a place which so and so eats, etc. Concerning all who are liable to capital punishment biblically, it is not allowed to hide witnesses except in this case, etc. A conjurer is liable to be stoned only when he did an act, but not if he dazzled the eyes. The Halakhas of witchcraft are similar to the Halakhas of Sabbath. There are some to which stoning applies, etc. I have seen a rider of a camel who took his sword, cut off the head of the camel, and thereafter rung a bell, and the camel stood up. It was only a dazzling of the eyes. The legend of R. Eliezer with

his disciple, "Thou shalt not learn to do," means: "Thou must not learn to do, but thou mayest learn it to understand it for the purposes of deciding cases, 194-200

CHAPTER VIII.

MISHNAS I. TO VIII. A stubborn and rebellious son—at what age may he be considered as such? From the time he brings forth two hairs, etc.; but the sages used to speak with delicacy. A minor of nine years and one day is fit to have connection with a woman, and in a case of adultery it is considered. Whence do we know that the first generation produced children at the age of eight? A daughter should be more open to the charges of stubbornness and rebelliousness, etc. But so is the decree of the Scripture—"a son, and not a daughter." He cannot be condemned as a stubborn and rebellious son unless he eats meat and drinks wine. You shall not look for wine which makes red the faces of the wicked in this world, and makes them pale in the world to come. Thirteen ways are enumerated in the Scripture concerning wine, as in Genesis ix., from 20 to 25. If he has stolen from his father and consumed on his premises, etc., he is not charged as a stubborn and rebellious son unless he stole from his mother and father. If the father is willing to transfer the case of the son in question to the court, and the mother is not willing, or *vice versa*, etc. Such a thing neither occurred nor ever will be, and the same is with the case of a misled town, and also with a house of leprosy, and was written only for study. If one hand of his father or mother is missing, or they limp, or are dumb, etc. If he runs away before the decision of condemnation is rendered, etc. The Scripture prefers that he should die innocent, and not be put to death because of his sins. For the death of the wicked is both a benefit to them and a benefit to the world, etc. In the case of "breaking in" [Ex. xii., 1], for which there is no liability if one is killed by a detector, one is also punished because of his future crimes, etc. A burglar who broke in and succeeded in taking some utensils and escaped is free from paying. Because he acquired title to them by his blood. It happened that rams were stolen from Rabha by burglary and thereafter they were returned to him; he would not accept them because the above decision came from the mouth of Rabh, etc., 201-216

MISHNA IX. The following may be killed for self-protection: He who pursues one to kill him, and he who pursueth a betrothed damsel, etc. According to the rabbis the Scripture cares for the violation of her honor, and as she also cares for it, though without life-sacrifice, she must be saved even by killing her pursuers, etc. One who intends to worship idols may be killed (if there is an impossibility of preventing his crime otherwise.) "In the city of Luda it was voted and resolved that if one were compelled, under threat of being killed, to commit any one of all the crimes which are mentioned in the Torah, he might commit it and not be killed, except idolatry, adultery, and bloodshed. Is a descendant of Noah commanded to sanctify the Holy Name, or not? It happened to one that he saw a woman and became sick through his infatuation, etc., 216-221

CHAPTER IX.

MISHNAS I. TO VI. Punishment of burning applies to one man who has intercourse with a woman and her daughter, and to a daughter of a priest,

etc. Punishment with the sword applies to a murderer and to the men of a misled town. If one pressed down a person while he is in water, or in fire, preventing him from coming out, he is guilty, etc. If one bound a person, and he died thereafter of hunger, he is not guilty of a capital crime. If, however, he put him in a sunny place, and he died because of the sun, he is guilty. Ball-players—if one threw a ball with the intention of killing some one, he is to be put to death, and if it was unintentional, he is to be exiled, etc. All agree that if one kills a person whose windpipe and larynx (gullet) are cut or whose skull is fractured, he is free (for it is considered as if he attacked a dead man). If one strikes a person with a stone or with his fists, and he was diagnosed (by the physicians of the court) to die, and thereafter he improved, etc. Capital punishment does not apply to one who intended to kill an animal and killed a man, an idolater and killed an Israelite, etc.; but it does apply to one who intended to strike a person on the loins with an article which was sufficient for this purpose, and he strikes him to death on his heart, etc. A murderer mixed up among others—all of them are free, etc. If it happen that the persons sentenced to deaths of different kinds, and are so mixed that it is not known who comes under this kind of death and who under another, all of them must be executed with the more lenient death. If one committed a crime which deserves two kinds of death, he must be tried for the more rigorous one. Ezek. xviii. must not be taken literally, but "the mountains he eateth not" means that he does not live upon the reward of the meritorious acts done by his parents; "his eyes he lifteth not up to the idols" means that he never walked overbearingly, etc., . . . 222-238

MISHNAS VII. TO IX. He who receives stripes, and relaxes into the same crime, the court takes him to the kyphos. He who kills a person not in the presence of witnesses is taken to the kyphos and is fed on scant bread and water. If one steals a kisvah, or one curses his neighbor, invoking God as a "carver," zealous people (like Pinchas) have a right to strike him when caught in the act. What is this punishment if there were no zealous men? Answer to this, it happened that it was read before R. Kahan in a dream, etc. In a case where there is a violation of the Holy Name the honor of the master must not be considered. "If a priest performs the service while he is defiled," etc. "If a common Israelite served in the Temple," etc., 238-244

CHAPTER X.

MISHNAS I. TO VI. Choking applies to him who strikes his father or mother, to him who steals a living soul, etc. A son is not guilty of a capital crime unless he wounds his father by striking him. Cursing is in one respect more rigorous than striking, as he is guilty even if he did it after his father's death. If one steals a person, he is not guilty of a capital crime unless he brings him upon his own premises. There is no difference whether he stole a male or a female, a proselyte, or a bondsman, etc. R. Jehudah says that there is no disgrace for slaves. "Thou shalt not steal," in the third commandment, means human beings. [Lev. xix., 11]: "Ye shalt not steal," meaning money. A judge rebelling against the Great Sanhedrin. There were in Jerusalem three courts, etc. In case a judge in the country had a dispute with his colleagues, they came to the first court. If this court were able to decide it traditionally they rendered their decision; and if not, all of them came to the Great Sanhedrin, which was in the Temple

treasury, etc. A disciple who is not a judge who decides for practice against the Great Sanhedrin, is not culpable. A rebelling judge is not guilty unless he gave his decision in a matter to which, if done intentionally, korath applies, etc. The punishment of him who transgresses the decision of the scribes is more rigorous than for that which is plainly written in the Scriptures. The judge in question was not put to death by the court of his own city, etc., but was brought to the Supreme Council, in Jerusalem, etc. A false prophet who is to be sentenced by the court is only he who prophesies what he (personally) has not heard and what he was not told at all, etc. He who prophesied in the name of an idol, saying, "So and so was said by such an idol," although it corresponds exactly with the Hebrew law, he is punished by choking. See all illustrations, pp. 258-260. In every case mentioned in the Torah, if a true prophet commands you to transgress, you may listen, except as to idolatry, 245-261

CHAPTER XI.

MISHNA I. All Israel has a share in the world to come. The following have no share in the world to come: He who says, etc. Three kings and four commoners have no share in the world to come, etc. Is he who does not believe that the resurrection is hinted at in the Torah such a criminal that he loses his share in the world to come? Where is the resurrection hinted at in the Torah? etc. From the Pentateuch, Prophets, and Hagiographa. See 267, also footnote. Queen Cleopatra questioned R. Mair thus: When they shall be restored, will they be naked or dressed? Cæsar questioned Rabbon Gamaliel: You say that the dead will be restored. Does not the corpse become dust? etc. The living die—should the dead come to life? That which has not existed at all comes to life—shall those who had life once not come to life again? The legend of Gebiah b. Pessisa who advocated Israel before Alexander of Macedonia, etc. (Pp. 268, 270.) Antoninus said to Rabbi: The body and soul of a human may free themselves on the Day of Judgment by Heaven. How so? Why does the sun rise in the east and set in the west? At what time does the soul come into the body? At what time does the evil spirit reach man? Lest one say that the verse just cited means, I make one die and another one shall I bring to life, therefore it reads, "I wound and I cure." As wounding and curing apply to one person only, etc. He who hesitates in declaring a Halakha to a disciple, even the embryos in the entrails of their mothers denounce him. Great is wisdom, as it was placed between two divine names. Exiles atone for everything. The upright who will be restored in the future will never return to dust. "What will they do at the time the Holy One, blessed be He, shall renew His world?" etc. Concerning the dead whom Ezekiel restored, the different opinions of Tannaim and Amoraim, if it was a reality or a parable only. (P. 278.) Six miracles occurred on the day Nebuchadnezzar threw Chananyah, Mishael, and Azaryah into the caldron. Even at the time of danger one shall not change the dress belonging to his dignity. Where was Daniel at the time that they were thrown into the caldron? The legend of Ahab and Zedkiyahu with the daughter of Nebuchadnezzar. According to the advice of three, Daniel went away before the affair of Chananyah, etc. Concerning the six barley's which Boaz gave to Ruth. All that is written in the book of Ezra was said by Nehemiah b. Chackhalyah. Why then was

it not named after him? The angel who rules the souls after their departure from this world is named Dumah. Hiskiah, who has eight names, shall take revenge on Sanherib, who also has eight names. Hiskiah's (king of Judah) whole meal consisted of a litter of herbs. Pharaoh, who personally blasphemed, was also punished by Heaven. Sanherib, who blasphemed through a messenger, was also punished through a messenger. Ten trips had the wicked made on that day, etc., as it reads [II Kings, x. 28 to 32]. There was one day more appointed for the punishment of the iniquity of Nob. And the astrologers told Sanherib, etc. If the judgment is postponed over one night there is hope that it will be abolished entirely. The legend how Abishai saved King David from Yishbi's hand at Nob. Sanherib, when he came to attack, brought with him forty-five thousand princes with their concubines in golden carriages, etc. See pages 293-296, the many legends concerning Sanherib. Be careful with the children of the Gentiles, as it happens very often wisdom emanates from them. That the day on which Achaz died consisted of only two hours. And when Heskiah became sick and thereafter recovered, the Holy One returned the ten hours to that day, etc. Three hundred mules loaded with iron saws which cut iron were given to Nebusaradan by Nebuchadnezzar while going to attack Jerusalem. Nebusaradan was a true proselyte, from the descendants of Sissera were such who studied the law in Jerusalem, and from the descendants of Sanherib were such who taught the Torah among a majority of Israelites, etc. Have you heard when the fallen son will come? etc. In his Sabbatic period when the son of David will appear in the first year there will be fulfilled, etc. The generation in which the son of David will come, young men will make pale the faces of the old, etc. The world will continue for six thousand years, the first two thousand of which was a chaos, etc. There are no less than thirty-six upright in every generation who receive the appearance of the Shekinah. All the appointed times for the appearance of the Messiah have already ceased. And it depends only on repentance and good deeds. Jerusalem will not be redeemed but by charity. What the Messiah told to Jehoshua ben Levi: Ben David will not arrive until Rome shall have dominated, etc. Discussion concerning the name of the Messiah. The cock said to the bat, I look out for the light because the light is mine (I see it), but for what purpose do you wait for it? The days of the Messiah will be as from the day of creation until now. "He hath despised the word of God," means he who learned the Torah but does not teach it. He who learned the Torah and does not repeat it is similar to him who sows but does not harvest, etc. Has not Moses written something better than: And Lotan's sister was Thimna, etc.? Who is meant by the term epicurian? What good have the rabbis done for us? They have never permitted us to eat a crow, and they have not prohibited us to eat a dove, etc. The measure with which man measures will be measured out to him—i.e., as a man deals he will be dealt with. A good woman is a good gift; she may be given to one who fears God. A bad woman is leprosy to her husband, etc. One may ask the fortune tellers who tell fortunes by certain oils or eggs. But it is not advisable to do so, because they often lie. Support me, and I will bear the statement of Aqiba, my disciple, who says: "Pleased are chastisements," etc. Three men (biblical personages) came with indirectness, etc. What means, "and he lifted up his hands"? He took off his phylacteries in his presence. (See footnote, page 323.) The legends concerning Jeroboam,

pp. 322-325. King Menashe appears to R. Ashi in a dream. R. Abuhu used to lecture about the three kings and became sick, etc. Why was Achab rewarded by the prolongation of his kingdom for twenty-two years? Because he was liberal with his money and assisted many scholars from his estate; half his sins were atoned. Four sects will not receive the glory of the Shekhina, viz., scorners, liars, hypocrites, and slanderers. Achaz abolished the worship and sealed the Torah, etc. The angels wanted to put Michah aside, but the Lord, however, said leave him alone because his house is open for travellers. Great are entertainments, for its refusal estranged two tribes from Israel, etc. Why does not the Mishna count Achaz and Amon among those who have no share? etc. Explanation to verses of Lamentation, pp. 334 to 337. The Scripture is particular that if any one tells his troubles to his neighbor, he should add: "May it not happen to you." The interpreters of notes said that all of them have a share in the world to come, etc. "A perpetual backsliding." Said Rabh: A victorious answer has the assembly of Israel given to the prophets, etc. Concerning Bil'am, the elders of Moab, and Midian, 265-340

One shall always occupy himself with the Torah and divine commandments, even not for the sake of Heaven, as finally He will come to do so for His own sake, etc. The caution that Achiyah, the Shilonite, gave to Israel is better for them than the blessings that Bil'am has given to them. "And Israel dwelt in Shittim." Everywhere such an expression is to be found it brings infliction, etc. I saw the record of Bil'am, and it was written therein thirty-three years was Bil'am when he was killed by Pinchas, the murderer. One shall not bring himself into temptation, as David, king of Israel, placed himself in the power of a trial and stumbled. Six months was David afflicted with leprosy; the Shekhina left him, and the Sanhedrin separated themselves from him. Exclusion shall always be with the left hand, and inclusion with the right hand—i. e., if one is compelled to repudiate some one, he shall do it easy as with his left hand, etc. Concerning David's sin with Bath Sheba, 340-350

MISHNA II. The generation of the flood have no share in the world to come, and are also not judged, etc. Concerning the generation of dispersion, men of Sodom and Gomorrah, etc., pp. 350-355: "Noah was just, a perfect man in his generation;" in his generation, but not in others. According to Resh Lakish: In his generation which was wicked, so much the more in other generations. Eliezar, the servant of Abraham, questioned Shem the great, etc. Shem the great questioned Eliezar, etc. "The generation of dispersion." What had they done? What were the crimes of the Sodomites? Concerning the congregation of Korah. One must do all he can not to strengthen a quarrel, etc. "And all . . . on their feet," means the money which makes one stand on his feet. "The generation of the desert has no share," etc. Eliezar, however, said, they have, etc., . . . 350-362

MISHNAS III. TO IV. The ten tribes who were exiled will not be returned, etc. (pp. 362-363). From what age has a minor a share in the world to come? Your saying is not satisfactory to their creator. Say the reverse, even he who has studied but one law does not belong to the Gehenna. It happened once that I was in Alexandria of Egypt, and I found a certain old Gentile who said to me: Come, and I will show you what my great-grandfathers have done to yours, etc. Concerning Shebna and his society, ref. Isaiah, viii-12. Adam was created on the eve of Sabbath. And why?

The Minnim shall not say, etc. At the time the Lord was about to create a man, He created a *catus* of angels, etc. Every place where the Minnim gave their wrong interpretation the answer of annulling it is to be found in the same place—*e.g.*, p. 370. The discussion with R. Gamaliel and other rabbis, pp. 372-376. "My creatures are sinking into the sea, and ye want to sing?" It reads [Ob. i. 1]: "The vision of the Lord . . . concerning Edom." Obadiah was an Edomite-proselyte. And this is what people say that the handle of the hatchet to cut the forest is taken from the wood of the same forest. [Gen. xxii. 1]: "After these things." After what? After the words of the Satan, etc. According to Levi, "after the exchange of the words between Ishmael and Isaac, etc., 362-378

MISHNA IV. The men of a misled town have no share in the world to come (the Halakhas in detail, 378-383). Concerning the key of rain, which is one of the three keys which are not to be transferred to a messenger, Elijah, too, in the days of Achab, etc., 378-385

TRACT SANHEDRIN (SUPREME COUNCIL).

CHAPTER I.

RULES AND REGULATIONS CONCERNING THE APPOINTMENT OF JUDGES IN CIVIL AND CRIMINAL CASES. WHICH ARE CONSIDERED CIVIL AND WHICH CRIMINAL. HOW MANY ARE NEEDED TO THE INTERCALATION OF A YEAR AND OF MONTHS ; TO APPRAISE CONSECRATED REAL ESTATE AS WELL AS MOVABLE PROPERTIES; AND IF AMONG THE APPRAISERS MUST BE PRIESTS, AND IF SO HOW MANY. THE NUMBER OF PERSONS NEEDED TO ADD TO THE CITY FROM THE SUBURBS OF JERUSALEM. WHAT MAJORITY IS NEEDED TO ACCUSE AND WHAT TO ACQUIT. HOW MANY PEOPLE MUST BE IN A CITY THAT A COURT OF TWENTY-THREE JUDGES SHOULD BE ESTABLISHED.

MISHNA I. : To decide upon the following cases, three persons are needed (the Gemara explains for which common and for which judges): Civil cases, robbery, wounds, whole damages and half, double amount and four and five fold payments;* and the same in the case of forcing, seducing, and libel (*i.e.*, an evil name, Deut. xxii. 19). So is the decree of R. Meir.

The sages, however, maintain: In the last case (libel) twenty-three are needed, as this is not a civil case, but a crime which may bring capital punishment. In the case of stripes, three. In the name of R. Ishmael, however, it was said: Twenty-three are needed. To the intercalation of a month and to proclaim a leap year, three. So is the decree of R. Meir.

Rabban Simeon b. Gamaliel maintains: It begins with three persons and is discussed by five, and the decision is rendered by seven. If, however, it was decided by three, their decision holds good.

The elders who had to lay their hands upon sacrifices [Lev.

* All this is explained in Tract Baba Kama.

iv. 15], and also in the case of the heifer [Deut. xxi. 3]—according to R. Simeon, three are needed, and according to R. Jehudah, five. At the performance of the ceremony of Halitzah and denial, three; to appraise the value of the plants of the fourth year (which must be redeemed), and the second tithe, of which the value in money is to be appraised, three; to appraise the value of consecrated articles, three; in cases of Arakhin (vows of value, men or articles), if movable property, three—according to R. Jehudah, one of them must be a priest; and if real estate, ten, and one of them a priest; and likewise to appraise the estimated value of men [Lev. xxvii.].

Crimes (which may bring capital punishment), twenty-three; in the case of Lev. xx. 15, twenty-three, as verse 16 reads: "Then shalt thou kill the woman and the beast"; and also in the preceding verse: "The beast also shall ye slay." And the same is the case with the stoning of an ox, of which it reads [Ex. xxi. 29]: "The ox shall be stoned, and the owner . . . be put to death"—which means, as for the death of its owner twenty-three are needed, so also for the stoning of the ox.

The wolf, the lion, the bear, the tiger, the bards,* and the serpent are killed by the judgment of twenty-three. R. Eliezer, however, maintains: Every one who hastens to kill them is rewarded. But R. Aqiba says: Twenty-three are needed.

A whole tribe, or a false prophet, or a high-priest, if they have to be judged for a crime which may bring capital punishment, a court of seventy-one judges is needed. The same number of judges is needed to decide upon battles which are not commanded by the Scriptures, and also for enlarging the city of Jerusalem by annexing its suburbs or free land; and the same is the case if it is necessary to enlarge the courtyard of the Temple. Also, the same number of judges is needed for appointing supreme councils to each tribe. A misled town [Deut. xii. 14] must also be condemned by seventy-one. However, a town which stands on the boundary cannot be condemned; nor three of them at one time at any place, but only one, or two.

The Great (Sanhedrin) consisted of seventy-one, and the small of twenty-three. Whence do we deduce that the great council must be of seventy-one? From [Num. xi. 16]: "Gather unto me seventy men." And add Moses, who was the head of them—hence seventy-one? And whence do we deduce that a small one must be twenty-three? From [ibid. xxxv. 24 and 25]: "The

* According to some, the hyena; to others, another sort of a preying beast.

congregation shall judge"; "And the congregation shall save."* We see that one congregation judges, and the other congregation saves—hence there are twenty; as a congregation consists of no less than ten persons, and this is deduced from [ibid. xiv. 27], "To this evil congregation," which was of the ten spies, except Joshua and Caleb. And whence do we deduce that three more are needed? From [Ex. xxiii. 2]: "Thou shalt not follow a multitude to do evil"—from which we infer that you shall follow them to do good. But if so, why is it written at the end of the same verse, "Incline after the majority, to wrest judgment"?† This means, the inclination to free the man must not be similar to the inclination to condemn; as to condemn a majority of *two* is needed, while to free, the majority of *one* suffices. And a court must not consist of an even number, as, if their opinion is halved, no verdict can be established; therefore one more must be added. Hence it is of twenty-three.

How many shall a city contain that it shall be fit for a supreme council? One hundred and twenty families. R. Nehemiah, however, maintains: Two hundred and thirty—so that each of them should be the head of ten families, as we do not find in the Bible rulers of less than ten.

GEMARA: Are not robbery and wounds civil cases? Said R. Abuhu: The Mishna means to explain the term "civil cases" by robbery and wounds; but to the admitting of debts or loans, three judges are not needed. And that so it should be understood, both expressions were needed; as, if it stated civil cases only, it would include loans, etc.; and if the expression "robbery," etc., only, one might also say the same is the case with loans, etc.; and the expression "robbery," etc., is because the main point wherein three judges are prescribed by the Scriptures is in cases of robbery [Ex. xxii. 7]: "Shall the master of the house be brought unto the judges." And concerning wounds, it is the same whether a wound be in one's body or in his pocket (money), and therefore it begins with civil cases, and explains that cases like robbery are meant, and not common ones, etc. But whence are common loans excluded, that they do not need three? Did not R. Abuhu say: If two persons have judged in a matter of civil law, all agree that their

* Leeser translates, "to deliver," the meaning of which is to save, as it is adopted in the original text.

† Leeser's translation here is incorrect, not only according to the Talmud, but also to the *punctuation* of the verse.

judgment is of no value? Therefore we must say that the Mishna means to exclude loans and admission of debts—to exclude from three *established* judges; but three common men are needed. And the reason is what R. Hanina said: Biblically, investigation is needed of crimes as well as of civil cases. As it is written [Lev. xxiv. 22]: "One manner of judicial law shall ye have." But why was it said that civil cases do not need investigation? In order not to lock the door to borrowers. And Rabha explained this statement as meaning that in two kinds of civil cases—loans, etc.—three common people are needed; but in cases of robbery, etc., three established judges. And R. Aha b. R. Ekha said: Biblically, even one is fit to decide civil cases, as it is written [ibid. xix. 15]: "In righteousness shalt thou judge thy neighbor." But the rabbis enacted three, in order to prevent men of the market, who are ignorant of law, to undertake to judge cases. But is it not the same with three common men? Are they not men of the market? If three undertake to judge a case, it is highly probable that at least one of them knows something of law. But if so, let two who should make an error in judging not be responsible? If this should be enacted, then all the market people would undertake to decide upon things.

But what is the difference between Rabha and R. Aha b. R. Ekha (according to both, three common men are needed in cases of common loans, etc.)? They differ in the following, which was said by Samuel: If two commoners have decided upon loan cases, their decision is to be respected; but they are considered an impertinent Beth Din. Rabha does not hold with Samuel, and maintains: Their decision must not be respected. And R. Aha holds with him (Samuel).

"*Whole damages and half*," etc. Are not damages the same as wounds (both are to be paid)? Because it has to state half damages, it mentions also whole damages. Are not half damages also the same? The Mishna teaches concerning money which is to be collected according to the strict law and that which is only a fine. But this is correct only as to him who says that half damages are a fine; but as to him who says half damages are strict law, what can be said? Because it has to state about the double amount, and four and five fold, which are more than the amount damaged, it mentions also half damages, which is less; and as half is mentioned, it mentions also the whole.

Whence do we deduce that three are needed? From what the rabbis taught. It treats [Ex. xxii. 7 and 8] three times of judges; hence three are needed. So said R. Yachiha. R. Jonathan, however, maintains: The first expression "judges," as the beginning, must not be taken into consideration, as it is needed for itself, and therefore only the two expressions "judges," mentioned after, are to be counted, and the third one is added only because we do not establish a court of an even number (as said above).

The rabbis taught: Civil cases are to be discussed by three. Rabbi, however, said: It is discussed by five, so that the final decision should be by three. But even when there are three, is not the final decision made by two? He means to say, because the conclusion must be of three judges. This explanation was ridiculed by R. Abuhu, saying: On such a theory, then the great Supreme Council ought to be one hundred and forty-one, to the end that the final conclusion should be made by seventy-one; and of a small council there ought to be forty-five, so that the conclusion should be made by twenty-three. And therefore we must say, as the Scripture reads, "Gather unto me seventy," it means the seventy ought to be at the time established. And the same is it in the case above cited, "the congregation shall judge, and the congregation shall save," meaning that at the time of judging there shall be ten. And in the same way are to be interpreted the just cited verses 7 and 8, that the plaintiff has to bring his case before three only. Therefore it may be said that the reason of Rabbi's decision is that because in the first verse is written, "The judges may condemn," as in the last, three is meant, so is it with the word Elohim, mentioned before, which means judges, also two is meant, which makes four; and one is added, so that they shall not be an even number—hence five. The rabbis do not care for this, as the term which is translated, "They may condemn," is written in the singular, and is only read in the plural.

The rabbis taught: Civil cases are decided by three; but if one is known to the majority of the people as an expert, he alone may decide. Said R. Na'hman: *e.g.*, I decide cases alone, without consulting any other rabbis. And so also said R. Hyya.

The schoolmen propounded a question: What does R. Na'hman mean by saying: As, for instance, I? Does he mean similar to him, who knew the laws traditionally and by common sense, and was also so empowered by the Exilarch; but if there

was one who was equal to him in wisdom, but had no permission, his decision must not be respected? Or does he mean to say, if one were equal to him in wisdom he might so do without permission? Come and hear: Mar Zutra, the son of R. Na'hman, made an error in one of his decisions, and came to question R. Joseph whether he must make good the error. To which he answered: If he was appointed by the parties as a judge, he had not to pay; if not, he must pay. Infer from this that he who is appointed by the parties may so do even without permission from a higher court.

Said Rabb: If one wants to decide cases, and not be responsible in case of an error, he shall get permission from the Exilarch. And so also said Samuel.

It is certain that here in Babylon a permission from the Exilarch holds good for the whole country; and the same is the case from the Prince in Palestine, for the whole of Palestine and Syria. And it is also certain that if one has a permission from the Exilarch, he may practise in Palestine. As the following Boraitha states: The sceptre shall not depart from Judah. These are the exilarchs of Babylon, who rule over Israel with their sceptres. "And a lawgiver," etc., [Gen. xlix. 10] means the grandsons of Hillel, who are teaching the Torah among the majority of the people. The question, however, is, if with the permission of the princes they may judge in Babylon?

Come and hear: Rabba b. Hana had decided a case and erred, and came to question R. Hyya whether he had to pay. To which he answered: If the parties appointed you as a judge, you have nothing to pay; but if not, you have. Now, as Rabba b. Hana had permission from Palestine, and would be obliged to pay if not appointed, it is to be inferred that the permission from Palestine did not hold good in Babylon. But is it not a fact that Rabba b. R. Huna, when he would quarrel with the house of the Exilarch, used to say: I did not take any permission from you, but from my father, who had it from Rabb, and the latter from R. Hyya, and the latter from Rabbi? This was concerning worldly affairs only. But if the permission of Palestine does not hold good for Babylon, why did Rabba b. Hana take it? For the cities which are situated on the boundary of Palestine. How was the case when he took the permission? When he was about to descend from Palestine to Babylon, R. Hyya said to Rabbi: My brother's son, Rabba b. Hana, descends to Babylon. And Rabbi answered: He may teach the

law, decide civil cases, and may also decide upon the blemishes of first-born animals which are prohibited to be slaughtered without a blemish on their body.*

When Rabh was about to go to Babylon, R. Hyya said to Rabbi: The son of my sister goes to Babylon. Said Rabbi: He may teach the law, decide cases, but not about blemishes of the first-born of animals.

Why did R. Hyya name the first "my brother's son" and the second "my sister's son"? And lest one say that so was the case, did not the master say: Abu, Hana, Shila, Marta, and R. Hyya all were the sons of Abba b. Aha Kharsala of Khaphri? (Hence Rabh, who was Abu's son, was also his brother's son—why did he say "my sister's"?)

Rabh, who was his brother's and also his sister's son (on his mother's side), he named him "the son of my sister"; but Rabba b. Hana was the son of his brother only. And if you wish, it may be said that R. Hyya named him "my sister's," because of his great wisdom. As it is written [Prov. vii. 4]: "Say unto wisdom, Thou art my sister." But why should Rabh not be permitted to decide about blemishes? Was he not wise enough for this? Is it not a fact that he was wiser than any of his contemporaries? Or was he not acquainted enough with the kind of blemishes? Did not Rabh say: I have dwelt eighteen months with a pasturer of cattle to learn the blemishes which are temporary, and those which remain forever? This was done that Rabba b. Hana should be respected, as Rabh was highly respected even without that. And if you wish, it might be said that because of the fact itself, that Rabh was an expert concerning blemishes, it was not allowed to him to practise, for the reason that Rabh would allow such blemishes as other experts were not aware of, and people who should see that would act likewise, relying upon Rabh, so that they would finally allow the animal which had a temporary blemish to be slaughtered.

It is said above: "Rabbi said: He shall teach law." To what purpose was this said? Does such a scholar as Rabh need such a permission for teaching? This was said because of the

* The first-born of cattle which might be legally eaten, and also of an ass, had biblically to be submitted to the priest when the Temple was in existence; but after the destruction of the Temple they had to be raised until a blemish on their bodies appeared. But what kind of a blemish made them fit for slaughtering? They had to be examined by an expert who understood blemishes, and was familiar with the entire law; and a permission was needed for the expert.

following case: It happened that Rabbi went into a certain place and saw that they kneaded dough without offering a sample for legal purity. And to the question why they did so, their answer was: There was a disciple who taught: Water of *Bzein* (swamp) does not make articles subject to defilement. In reality, however, the expression was: "Mee Beizim," which means eggs; and they took it for Bzein, and acted accordingly. And therefore it was taught: A decree was enacted that a disciple should not teach unless he had the permission of his master.

Tanchun, the son of R. Ami, happened to be in the city of Hthar, and lectured: One may wet wheat and pound for peeling on Passover. And they said to him: Is not there here R. Mani of the city of Zur, who is a great scholar, and there is a Boraitha: A disciple must not decide a Halakha at the place of his master, unless distant from him three parsas—which distance Israel took when travelling in the desert. And he answered: I was not aware of this.

R. Hyya saw a man standing in a cemetery, and said to him: Are you not the son of so and so, who was a priest? He said: Yea, but my father was one of those who follow their eyes. He saw a divorced woman and married her, and with this he annulled the priesthood.

It is certain, when one takes a permission to give judgment in part, that it holds good (as so it was with Rabh). But how is it if the permission was conditionally for a certain time? Come and hear what R. Johanan said to R. Shauman: You have our permission until you shall return to us.

The text says: Samuel said: If it was decided by two, their decision is valid; but they are called an impertinent Beth Din. R. Na'hman repeated this Halakha, and Rabha objected from the following: If two are defending and two are accusing, and one says, "I do not know how to decide," judges must be added; now, if it were as you say, that the decision of two is valid, let, then, the decision of the two hold good? There it is different, as they start with the intention that it should be decided by three. He then objected to him from the following: Rabban Simeon b. Gamaliel said: Judgment in accordance with the strict law must be decided by three. In an arbitration, however, two suffice; and the strength of the mediation is greater than that of the law; as, if there were two who had decided a case in accordance with the law, although they were appointed by the parties, they (the parties) may retract. But

if a mediation was made by the arbitrators, no retraction can take place. And lest one say that the rabbis differ with R. Simeon, did not R. Abuhu say: All agree that a decision passed by two is valueless? And he answered: Do you oppose one man to another (Abuhu may say so, and Samuel otherwise)?

R. Abba objected to R. Abuhu from the following: If one has decided upon a case—freed the guilty, or pronounced guilty the innocent, or decided unclean a thing which is clean, or *vice versa*, the act is valid and he must pay from his pocket. (Hence we see that even the decision of one is respected.) This Boraitha speaks of when the parties had appointed him for this purpose. But if so, why must he pay? It means, if they tell him: We appoint you to decide this case in accordance with the biblical law.

Said R. Safras to R. Abba: Let us see what was the error. If the error was that he decided against a Mishna, did not R. Shesheth say in the name of R. Assi that he who made an error as to a Mishna might retract from his decision? Hence such a decision is not valid, and he has not to pay from his pocket. Therefore it must be said that it means he erred in his opinion. How is this to be understood? Said R. Papa: *E.g.*, there were two Tana'im and two Amoraim who differed in a case, and it was not decided with whom the Halakha prevailed. However, the world practised according to one party, and he had decided the case according to the other party; and this could be called erring in one's opinion.

Shall we assume that in that case in which Samuel and R. Abuhu differ, the Tana'im of the following Boraitha also differ: Arbitrating must be done by three persons. So is the decree of R. Meir. The sages, however, maintain: One is sufficient? The schoolmen who heard this thought that all agree that arbitration is similar to a strict law, and therefore they assumed that the point of their difference was: R. Meir holds three are needed, and the sages that two suffice. Nay, all agree that a strict law must be decided by three, and the point of their differing is: Whether arbitration must be similar to a strict law: according to one it must, and according to the other it must not.

Shall we assume that there are three Tana'im who differ concerning arbitration? One holds: Three are needed; the second, two; and the third, that even one is sufficient. Said R. Aha b. R. Ekha, according to others R. Yema b. Chlamia: He who says two are needed holds that even one is sufficient; and only

to the end that they should be able to testify to this case as witnesses did he say two. Said R. Ashi: Infer from this that an arbitration does not need a sudarium, for if it should be necessary, why should not the one who maintains that three are needed be satisfied with two and a sudarium? The Halakha, however, prevails: An arbitration needs a sudarium.

The rabbis taught: Even as a strict law needs three, so is it with arbitration. However, when the decision is already given in accordance with the strict law, an arbitration cannot take place. R. Eliezer, the son of R. Jose the Galilean, used to say: It is prohibited to mediate, and he who should do so sins; and he who praises the mediators despises the law, as it is written [Ps. x. 3]: "The robber blesseth himself when he hath despised the Lord." But it may be taken as a rule that the strict law shall bore the mountain, as it is written [Deut. i. 17]: "The judgment belongs to God." And so was it said by Moses our master. But Aaron (his brother) loved peace, ran after it, and used to make peace among the people, as it is written [Mal. ii. 6]: "The law of truth was in his mouth, and falsehood was not found on his lips; in peace and equity he walked with me, and many did he turn away from iniquity." And R. Jehoshua b. Karha also said: Arbitration is a meritorious act, as it is written [Zech. viii. 16]: "With truth and the judgment of peace, judge ye in your gates." How is this to be understood? Usually, when there is judgment, there is no peace; and *vice versa*. It must then be said that an arbitration is a judgment which makes peace. So also was it said about David [II Sam. viii. 16]: "And David did what was just and charitable * unto all his people."

Here, also, "just" and "charitable" do not correspond; as if just, it could not be called charitable, and *vice versa*. Say, then, it means arbitration, which contains both.

The first Tana, however, who said above that arbitration is prohibited, explains the passage thus: He, David, judged in accordance with the strict law—he acquitted him who was right, and made responsible him who was so, according to the law; but when he saw that the culpable one was poor and could not pay, he used to pay from his pocket. Hence he did judgment to one and charity to the other. Rabbi, however, could not agree with such an explanation, because of the expression,

* *Zakke* is the term in Hebrew, which means also charity.

"unto all his people"; and according to the above explanation, it ought to be "to the poor." Therefore said he: Although he did not pay from his pocket, it was counted as a charitable act that he delivered a theft out of the hands of the defendant.

R. Simeon b. Menasia said: If two persons brought a case before you, before you have heard their claims, and even thereafter, but you are still not aware to whom the strict law inclines, you may say to them: Go and mediate among yourselves. But after you are aware who is right according to the strict law, you must not advise them to mediate, as it is written [Prov. xvii. 14]: "As one letteth loose (a stream) of water, so is the beginning of strife; therefore before it be enkindled, leave off the contest"; which means, before it be enkindled you may advise a mediation, but not after you know with whom the law is. Similar to this is: If two persons came with a case before you, one being mighty (who can harm you) and the other common, you may say to them, "I am not fit to judge between you," so long as you have not heard their claims; or even thereafter, not knowing as yet to whom the law inclines. But you must not say so after you are aware; as it is written [Deut. i. 17]: "Ye shall not be afraid of any man."

R. Jehoshua b. Karha said: Whence do we deduce that if a disciple were present when a case came before his master, and saw a defence for the poor and an accusation for the rich (which his master might overlook), he must not keep silence? From the verse just cited. R. Hanin said: One must not keep in his words out of respect for any one; and witnesses also must be aware for whom they testify, and for whom their testimony goes. And who is he who will punish them for bearing false witness? As it is written [Deut. xix. 17]: "Then shall both the men who have the controversy stand before the Lord." And the judge must also be aware of same, as it is written [Ps. lxxxii. 1]: "God standeth in the congregation of God; in the midst of judges doth he judge." And so also it reads [II. Chron. xix. 6], which was said by the king Jehoshaphat: "Look (well) at what ye are doing; because not for man are ye to judge, but for the Lord."

And should the judge say: Why should I take the trouble and the responsibility to myself?—therefore it is written at the end of this verse: "Who is with you in pronouncing judgment." Hence the judge has to decide according to what he sees with his eyes.

What is to be understood by final judgment? Said R. Jehudah in the name of Rabh: When the judge is able to pronounce: You, so and so, are guilty, and you, so and so, are right. Said Rabh: The Halakha prevails with R. Jehoshua b. Karha. Is that so? Was not R. Huna a disciple of Rabh, and his custom was to question the parties of a case before him: Do you desire strict law, or arbitration? Hence we see that he did not begin with mediation; and R. Jehoshua said that mediation is a meritorious act. R. Jehoshua, with his statement, means also to say: Ask the parties which they like better. But if so, it is the same as what the first Tana said (*i.e.*, it is prohibited to arbitrate after the conclusion, but not before the case is begun)? The difference between them is—according to R. Jehoshua it is a meritorious act; and according to the first Tana it is only a permission for the judge, but not meritorious. But then it is the same as R. Simeon b. Menasia said. There is also a difference, as according to the latter we must not advise an arbitration after hearing the claim, which is not according to the former. All the Tanaim mentioned above differ with R. Thn'hum b. Hnilai, who said: The above-cited verse [Ps. x.] was said concerning the golden calf [Ex. xxxii. 5]: "And when Aaron saw this." What did he see? Said R. Benjamin b. Jepheth in the name of R. Elazar: He saw Chur, who was killed by the people. And he thought: "If I do not listen to them, they will do likewise with me, and will commit a sin, as written [Lam. ii. 20]: 'Shall there be slain in the sanctuary of the Lord the priest and the prophet?' And they will have no remedy. It is better for them that I should make the golden calf, and to that probably there will be a remedy by repenting."

There was one who used to say: It is well for him who is silent while being reprov'd; and if he is accustomed to do so, it prevents a hundred evil things which he might have to overcome through quarrelling. Said R. Samuel to R. Jehudah: This man only repeats what is already written in the above-cited verse [Prov. xvii. 14].* There was another who used to say: A thief is not killed for stealing two or three times (*i.e.*, do not wonder if the punishment does not occur at once, as finally it will come). And Samuel said to R. Jehudah: This is also repeating the verse [Amos, ii. 5]: "Thus hath said the

* It is inferred from the term in Hebrew, "Reshit Madun," which is not translatable into English.

Lord, For three transgressions of Israel, and for four, will I not turn away their punishment."

There was another who used to say: Into seven pits does the man of peace fall and come out, and the wicked does not come out from the first into which he falls. And to this also said Samuel to R. Jehudah: It is a repetition of the verse, Prov. xxiv. 16: "For though the righteous were to fall seven times, he will rise up again"; and should the wicked fall in one,* he will not rise again.

There was another who used to say: If the court levied on one's mantle for a bet to his neighbor, he might chant a song and go on his way. And to this the same said to the same: This also is to be understood from [Ex. xviii. 23]: "The whole of this people will come to its place in peace."

There was another who used to say: She slumbers, and the basket which was placed on her head fell down. And also to this said Samuel: The same is understood of [Eccl. x. 18]: "Through slothful hands the rafters will sink," etc. And there was another who used to say: The man on whom I relied raises his fist against me. To which Samuel referred [Ps. xli. 10]: "Yea, even the man that should have sought my welfare, in whom I trusted, who eateth my bread, hath lifted up his heel against me."

There was one more who used to say: When love was strong, we—I and my wife—could place ourselves on the flat of a sword. Now, when love is gone, a bed of sixty ells is not sufficient for us. To which R. Huna said: We can see this from the Scriptures in [Ex. xxv. 22]: "I will speak with thee from above the cover." And a Boraitha states that the ark measured nine spans, and the cover one; hence, altogether, it measured ten. Also in [I Kings vi. 2]: ". . . house which was built . . . sixty cubits in length." And finally we read [Is. lxvi. 1]: ". . . where is there a house that ye can build unto me?" (*I.e.*, when the Tabernacle was built, ten spans sufficed, and at the exile no house in the world could be found in which the Shekinah would rest.)

R. Samuel b. Na'hmani in the name of Jonathan said: A judge who judges truth to his fellow-men makes the Shekinah to rest in Israel; as the above-cited Psalm lxxxii. 1 reads: "God

* The end of the verse, "but the wicked shall stumble into misfortune," is not found in the Scriptures. This is one of several places which shows that at that time in the Bible was another text.

standeth in the congregation of God; in the midst of judges doth he judge." And those who do the contrary influence the Shekinah to leave, as it is written [ibid. xii. 6]: "Because of the oppression of the poor, because of the sighing of the needy, now will I arise, saith the Lord."

The same said again in the name of the same authority: A judge who takes away from one and gives to another, against the law, the Holy One, blessed be He, (in revenge) will take souls from his house. Thus it is read [Prov. xxii. 22, 23]: "Rob not the poor because he is poor, neither crush the afflicted in the gate; for the Lord will plead their cause, and despoil the life of those that despoil them."

And he said again, in the name of the same authority: A judge should always consider as if a sword lay between his shoulders and Gehenna was open under him. As it is written [Solomon's Song, iii. 7, 8]: "Behold, it is the bed which is Solomon's; sixty valiant men are round about it, of the valiant ones of Israel. All of them are girded with the sword, are expert in war; every one hath his sword upon his thigh, because of the terror in the night—which means the terror of Gehenna, which is equal to the night.

R. Jashyha, according to others R. Na'hman b. Itz'hak, lectured: It is written [Jer. xxi. 12]: "O house of David, thus hath said the Lord: Exercise justice on (every) morning, and deliver him that is robbed out of the hand of the oppressor." Do, then, people judge only in the morning, and not during the entire day? It means, if the thing which you decide is clear to you as the morning, then do so; but if not, do not. R. Hyya b. Abba in the name of R. Jonathan, however, said: This is inferred from [Prov. vii. 4]: "Say unto wisdom, Thou art my sister," which means, if the thing is as certain to you as that it is prohibited for you to marry your sister, then you may say it, but not otherwise.

R. Jehoshua b. Levi said: If there are ten judges discussing about one case, the collar lies upon the neck of all of them. But is that not self-evident? It means even a disciple who is sitting before his master (although the result does not depend upon him).

R. Huna used to gather ten disciples of the college when a case came before him, saying: In case of error, let them also have sawings of the beam. And R. Ashi, when it happened that there was the carcass of a slaughtered animal to examine if

it was legal, used to gather all the slaughterers of the city, for the above-said purpose.

When R. Dimi came from Palestine, he said: R. Na'hman b. Kohen lectured: It is written [ibid. xxix. 4]: "A king will through the exercise of justice establish (the welfare of) a land; but one that loveth gifts overthroweth it"; meaning, if the judge is like unto a king, who needs not the favor of any one, he is establishing the land; but if like unto a priest who goes around the barns asking for heave-offering, he overthroweth it. The house of the Prince had appointed a judge who was ignorant, and it was said to Jehudah b. Na'hman, the interpreter of Resh Lakish: Go and be his interpreter. He bent himself to hear what was said for interpretation; but the judge said nothing. Jehudah then exclaimed: Woe unto him that saith to the wood, "Awake!" "Rouse up!" to the dumb stone. Shall this teach? Behold, it is overlaid with gold and silver, and no breath whatever is in its bosom [Hab. ii. 19]. And the Holy One, blessed be He, will punish his appointer, as the following verse reads: "But the Lord is in his holy temple: be silent before him, all the earth."

Resh Lakish said: If one appoints a judge who is not fit to be such, he is considered as if he were to plant a grove in Israel. As it is written [Deut. xvi. 18]: "Judges and officers shalt thou appoint unto thyself"; and ibid. 21 it reads: "Thou shalt not plant unto thyself a grove—any tree." R. Ashi added: And if this were done in places where scholars are to be found, it is considered as if one should do it at the altar, as the cited verse continues: "near the altar of the Lord thy God."

It is written [Ex. xx. 23]: "Gods of silver and gods of gold," etc. Is it only prohibited from gods of silver, and of wood we may? Said R. Ashi: This means the judge who is appointed by means of silver and gold. Rabh, when he went to sit on the bench, used to say: By my own will I go to be slain (*i.e.*, if I make an error I shall be punished for it), without attending the needs of my house; and I enter, clear the court, and I pray that the departing should be like the entering (as he came without sin, so should he depart). And when he saw the crowd run after him, he used to say: "Though his exaltation should mount up to the heavens, and his head should reach unto the clouds, yet when he but turneth round will he vanish for ever" [Job, xx. 6, 7] (to quiet his excitement).

Mar Zutra the Pious, when he was carried on the shoulders

of his followers on the Sabbaths before the festivals (each Sabbath before the three festivals they used to preach festival laws), he used to say [Prov. xxvii. 24]: "For property endureth not forever, nor doth the crown remain for all generations."

Bar Kapara lectured: Whence do we deduce what the rabbis said: Be deliberate concerning judgment? From [Ex. xx. 23]: "Neither shalt thou go up by steps upon my altar"; and the next verse is: "These are the laws of justice."

R. Eliezer said: Whence do we know that the judge should not step upon the heads of the whole people (the hearers of the lectures used to sit on the floor during the lectures, and one who passed among them appeared as if he were stepping on their heads)? From the same cited verse. It treats: Thou shalt set before them the laws of justice; it ought to be: Thou shalt teach them? Said R. Jeremiah, and according to others R. Hyya b. Abba: It means the preparation of things belonging to judgment: the cane, the strap, the cornet, and the sandal. As R. Huna, when he used to go on the bench, used to say: Bring here all the things above mentioned.

It is written [Deut. i. 16]: "And I commanded your judges at that time." This was a warning to the judges that they should be careful with the cane and straps, which were in their hands to punish them who rebelled. Farther on it is written: "Hear the causes between your brethren and judge righteously." Said R. Hanina: This is a warning to the court that it shall not listen to the claims of one party in the absence of the other (in civil cases); and the same warning is to one of the parties—he shall not explain his claim in the absence of his opponent. "You shall judge righteously" means, you shall deliberate the case carefully, and make it just in your mind, and only thereafter you may give your decision.

It is written: "Between a man and his brother, and his stranger." Said R. Jehudah: It means, even between a house and its attic. (*I.e.*, if it were an inheritance, the judge must not say: You both need dwellings—what is the difference, if one take the house and one the attic? But he must appraise the value of each and then give his decision. "And his stranger" means, if you hire your house to a stranger for a dwelling, it cannot be said: What is the difference, if I give him an oven or a stove? But you must give him according to the conditions. So R. Jehudah. Farther on it reads: "Ye shall not recognize (respect) persons in judgment." According to R. Jehudah, it

means: You shall not recognize him if he is your friend; and according to R. Elazar, it means: You shall not recognize him as strange to you, if he is your enemy.

The host of Rabh had to try a case before Rabh, and when he entered he said to Rabh: Do you remember that you are my guest? And he answered: Yea, but why? And he said: I have a case to try. Rejoined Rabh: I am unfit to be a judge for your case (because you reminded me that you favored me some time ago). And he appointed R. Kahana to judge the case. R. Kahana, however, had seen that he relied too much upon Rabh, so that he would not listen to him. He then said to him: If you listen to my decision, well and good; and if not, I will put Rabh out of your mind (*i.e.*, I will put you under the ban). It reads farther on: "The small as well as the great shall ye hear." Said Resh Lakish: It means, you shall treat a case of one peruta with the same care and mind as you would treat a case involving a hundred manas. To what purpose was this said? Is this not self-evident? It means, if two cases come before you, one of a peruta and one of one hundred manas, you shall not say: It is a small case, and I will see to it after.

"Ye shall not be afraid of any man; for the judgment belongeth to God." Said R. Hama b. R. Hanina: The Holy One, blessed be He, said: "It is the least for the wicked to take away money from one and give it to another illegally"; but they are troubling me that I shall return the money to its owner. "And I commanded you at that time." Above it reads: "I commanded your judges." Said R. Elazar in the name of R. Simlai: This was a warning for the congregation, that they should respect their judges; incidentally, also, a warning to the judges that they should bear with the congregation. To what extent? Said R. Hana, according to others R. Sabathi: Even [Num. xi. 12] "as a nursing father beareth the sucking child."

It treats [Deut. xxxi. 23]: "Thou must bring this people," etc. And in verse 7 it is written: "Thou must go with." Said R. Johanan: Moses said to Joshua: You and the elders shall rule over them; but the Holy One, blessed be He, said: "*Thou* shalt bring them (*i.e.*, thou alone), because there must be one ruler to a generation, and not two or many.

There is a Boraitha: A summons must be by the consent of three judges. And this is in accordance with Rabha, who said: If the messenger of the court had summoned one in the

name of one of the three judges who are in the court, the summons is nothing unless he state it is in the name of all the three judges, provided it was not a court day; but on a court day he has to mention nothing.

"Double amount." R. Na'hman b. R. Hisda sent a message to R. Na'hman b. Jacob: Let the master teach us. In cases of fine, how many persons are needed? [What was the question—does not the Mishna state three? The question was, whether one judge, who is an expert, may do this, or not?] And the answer was: This is stated in our Mishna, in the double amount, and four and five fold—three. And it cannot be said it means three common men; for your grandfather said in the name of Rabh: Even ten commoners are illegal to decide cases of fine. Hence the Mishna means judges, of whom, nevertheless, three are needed.

"It may bring capital punishment." And what is it (meanwhile his claim is money—why should three not be sufficient)? Said Ula: The point of their differing is, if an evil tongue is to be feared (*i.e.*, while he comes to the court complaining about his wife, witnesses may come and testify that she had indeed sinned; and then it is a crime of capital punishment). According to R. Meir, the fear of such is not to be taken into consideration; and according to the rabbis, it is. Rabha, however, maintains: The fear of an evil tongue is not taken into consideration by all of the parties; but the point of their difference is, if the honor of the first should be respected or not. And it treats that twenty-three were gathered for that case, and the husband claimed that he would bring witnesses that his wife had sinned. But thereafter he could not bring witnesses, and the case remained as a claim for money only, and then the twenty departed. And he asked them to decide at least his civil claim. According to R. Meir, this case, as a money matter, might be tried by three; but according to the rabbis, we must respect the honor of the judges gathered, and therefore even in the latter case all the twenty-three have to take part.

An objection was raised from a Boraitha which states: The sages said: If the claim was money, then three suffice; but if a crime which could bring capital punishment, then twenty-three are needed. And this is correct only according to Rabha's statement, *viz.*: If the beginning of the claim was money, then three; and if the beginning was crime, then twenty-three. But according to Ula's it is contradictory.

Said Rabha: I and the lion of our society, who is R. Hyya b. Abbim, have thus explained this: The Mishna treats of a case in which the husband brought witnesses that his wife had sinned, and his father-in-law brought witnesses who proved the first collusive. And his claim against the husband was money; and therefore three sufficed. But in a case where crime is charged, twenty-three are necessary.

Abayi, however, maintains: All agree that an evil tongue is to be feared; and they also agree that the honor of the first must be respected. The Mishna, however, speaks of a case in which the warning was as to capital punishment, but not stoning. (*I.e.*, as will be explained in the proper place, one should not be put to death for a crime of which he was not warned that the punishment for it was death; and according to some, the warning must be: The punishment for such a crime is such and such a death. And as the punishment of adultery is stoning, and she was warned only of death in general, according to him who holds that the warning must state the kind of death, in this case no capital punishment can occur.) And this is in accordance with R. Jehudah, who said elsewhere: One is not put to death unless he was informed in the warning what kind of death he should die.

R. Papa maintains: It speaks of a scholarly woman who was aware of what kind of punishment pertained to such a thing; and the point of their differing is, if to a scholar warning is needed. And R. Ashi maintains: The warning was as to stripes, instead of capital punishment; and the point of their differing is, if a trial involving stripes needs twenty-three, in accordance with the opinion of R. Ishmael, or not.* And Rabhina maintains: It speaks of when one of the witnesses was found a relative, or incompetent to be a witness; and the point of their difference is, if the testimony of the other witnesses should be ignored because of the incompetent one, or not (explained at length in Tract Maccoth). And if you wish, it can be said that it speaks of when one was warned by some others, but not by the witnesses; and there are some of the Tanaim who hold that the warning holds good only when it was made by the witnesses. And it might also be said that the witnesses contradicted one another, at the cross-examination, concerning certain unimportant things (*e.g.*, how he and she were dressed when the crime was com-

* All this will be explained in the proper place in succeeding volumes.

mitted); but they did not contradict each other concerning the important thing (*e.g.*, the date and hour). And there is a difference between Tanaim whether such a contradiction is to be taken into consideration, or not?

R. Joseph said: If the husband brought witnesses that she had sinned, and the father brought witnesses who proved them collusive, the witnesses of the husband are put to death, but do not pay the prescribed fine. If, however, the husband brought a third party of witnesses, who proved collusive the second party, they are to be punished both with death and with payment of fine to the husband.

Rabha said: If witnesses testify that A had sinned with a betrothed woman, and thereafter they be found collusive, they are put to death, but do not pay the fine; if, however, they testified that A had sinned with the daughter of B, who was betrothed, they pay the fine also. And the same is the case if they testify that one had connection with an ox, and they were found collusive; if, however, they testify with the ox of so and so, they have to pay the fine to the owner of the ox also. But to what purpose did he state the other case—is it not the same as the first? Because he himself was in doubt concerning the following case: If one testified that so and so had connection with *my* ox, should he be trusted or not? Shall we say that only a testimony which incriminates one's self is not to be trusted—because one is kin to himself and cannot make himself wicked, but in a case where one's property is involved, we do not say that he is kin to his money, and therefore he should not be trusted. After deliberating, however, he decided that the testifying concerning his ox should be trusted, as the latter case is not taken into consideration.

"*The cases of stripes*," etc. Whence is this deduced? Said R. Huna: It is written [Deut. xxv. 1]: "And they judge them," which is plural, and no less than two; and as a court must not be of an even number, one is to be added—hence it is three. In the same verse it reads: "And they justify . . . and they condemn," which is also plural, and no less than two—hence two and two are four, and with the three mentioned above it is seven?

The latter terms are needed for that which Ula said: Where is to be found a hint in the Scriptures concerning collusive witnesses? [A hint—does it not read (*ibid.* xix. 19): "Then shall ye do unto him as he had purposed to do unto his brother"?

Where is the hint that collusive witnesses are to be punished with stripes ?] From the above-cited terms, "and they shall justify . . . condemn the wicked: Then shall it be, if the guilty man deserve to be beaten," etc., which is not to be understood as meaning the court only, as the words, "they shall justify the righteous," would be superfluous in that case. And therefore it is to be explained thus: If there were witnesses who had made the righteous guilty, and thereafter other witnesses came and justified the righteous who were indeed right, and made guilty the witnesses who accused them; then, if the former were to be punished with stripes, if found guilty, the same punishment is to be meted to the guilty witnesses.

But is there not a negative commandment in Ex. xx. 16: "Thou shalt not bear false witness"? This negative commandment is counted among those who do no manual labor; and for the transgression of such, punishment of stripes is not applied.

"In the name of Ishmael it was said," etc. What is his reason? Said Abayi: The analogy of expression, Rosha (guilty). It reads [Deut. xxv. 2]: "Guilty man," and [Num. xxxv. 31]: "Who is guilty of death." As in case of death, twenty-three are needed, the same is the case with stripes. Rabha, however, maintains: His reason is simple, as stripes take the place of that. Said R. Aha, the son of Rabha, to R. Ashi: If so is the case, why must he be examined by the court to see if he can stand the forty stripes? Let him be beaten without any examination; and if he cannot stand them, let him die. And he answered: It reads [Deut. xxv. 3]: "And thy brother be rendered vile before thy eyes." Hence if you beat, you must beat one who is still alive, but not a dead body. If so (said R. Aha again), why does a Boraitha state that if the examination shows that he can stand only twenty, he is beaten with that number, which can be made a multiple of three, say eighteen only? Let him receive twenty-one; and if he cannot receive the last stripe let him die, as the last stripe was on a body which was still alive (*i.e.*, thrice seven are twenty-one, and as he would not die by twenty according to the examination, the twenty-one would still be on a live body). Rejoined R. Ashi: The verse reads: "Thy brother thus rendered vile before thy eyes," which means that after the stripes he shall still be thy brother, which would not be the case if he died while being beaten.

"To the intercalary month," etc. It does not state for the

consideration of the intercalary, nor does it state for the consecration of the month; but for the intercalary itself, why are three needed? Let it be not consecrated at the thirtieth day, and it will become intercalary by itself (*i.e.*, if the thirty-first day be consecrated as the first of the next month, the past month will be intercalary with one day). Said Abayi: Read: For the consecration of the month. And so also we have learned in a Tosephtha: For the consecration of the month and the proclamation of a leap year, three. So is the decree of R. Meir. Said Rabha: You say: Read "for the consecration"; but it is stated "the intercalary." Therefore, he maintains, the consecration in the additional day (*e.g.*, the thirtieth) must be by three; but after the day is over, no consecration is needed. And it is in accordance with R. Elazar b. Zadok, who said (Rosh Hashana, p. 1): If the moon was not seen at the usual time, no consecration is needed, as it was already consecrated by heaven. R. Na'hman says: The consecration after the thirtieth day must be by three; but at the thirtieth no consecration takes place at all.

And it is in accordance with Plimi, who says in the following Boraitha: When the moon is seen at her usual time, no consecration is needed; but if not at the usual time, then it must be consecrated. R. Ashi, however, maintains: It is to be understood, the consideration if the month should be intercalary, and the expression "to intercalary" means the consideration of it. And because it needs to teach to proclaim a leap year, it says also intercalary. Hence only to the consideration, but not to the consecration, which is in accordance with R. Eliezer, who said: A month must not be consecrated at any time, as it is written [Lev. xxv. 10]: "Ye shall hallow the fiftieth year," from which we infer that a year may be consecrated, but not months.

"*Rabban Simeon Gamaliel*," etc. There is a Boraitha: How was it said by R. Simeon b. Gamaliel that it began with three, was discussed by five, and concluded by seven? Thus: If one of the three says it must be considered, and the other two say it is not needed, then the individual's opinion is abandoned. If, however, *vice versa*, two more must be added to discuss the matter; and then, if two say it needs, and three say no, the majority is considered. And if *vice versa*, then two more must be added, and the decision is according to the majority.

The numbers three, five, and seven, to what have they a

similarity? R. Itz'hak b. Na'hmani and one of his colleagues, who was R. Simeon b. Pazi, and according to others just the reverse, differ. One said that the three were taken from the three verses specifying the blessings of the priests (Num. vi. 24, 25, 26). And the other said: Three from the "three door-keepers" mentioned in II Kings, xxv. 18; and five, from [ibid. 19]: "The five men of those that could come into the king's presence"; and the seven from "the seven princes of Persia and Media" [Esther, i. 14].

R. Joseph taught the same as the latter, and Abayi questioned him: Why did not the master explain this to us before now? To which he answered: I was not aware that you needed the explanation. Has it happened that you questioned me, and I would not answer?

The rabbis taught: A year must not be intercalated with one month, except by them who are invited for it by the Nashi. It happened with Rabban Gamaliel, who commanded that seven persons should be invited for the morrow in his attic, for the purpose of the intercalation of the year, that on the morrow, when he came, he found eight persons, and said: He who was not invited shall leave. Samuel the Little then arose and said: I am the one who was not invited. I came here, not to take part in the intercalation, but to get experience in the practice of this ceremony. To which the former answered: Sit down, my son; sit down. All the years which have to be intercalated might be done by you. But so was the decision of the sages, that such must be done only by the persons who were invited. (Says the Gemara:) In reality, it was not Samuel the Little, but some other, and he did so only not to bring shame upon his colleague. It happened that as Rabbi was lecturing he perceived the odor of garlic, and he said: He who has eaten garlic shall leave. R. Hyya then rose and left the place; and every one, seeing R. Hyya go out, did the same. On the morrow R. Simeon, the son of Rabbi, met R. Hyya, and questioned him: Was it you who disturbed my father yesterday? And he answered: Save God! Such a thing would not be done in Israel by myself. And from whom did R. Hyya learn this? From R. Meir, as is stated in the following Boraitha: It happened with a woman who came to the college of R. Meir, saying: One of you has betrothed me, but I do not know who it was. Then R. Meir arose and wrote her a divorce, and handed it to her; and after him, all the people in the college did likewise. And from whom did

R. Meir learn this? From Samuel the Little; and Samuel the Little from Shechanyah b. Yechiel, who said to Ezra [Ezra, x. 2]: "We have indeed trespassed against our God, and have brought home strange wives of the nations of the land; yet now there is hope in Israel concerning this thing." And he, Shechanyah, learned this from Jehoshua b. Nun, of whom it is said [Josh. vii. 10]: "Get thee up; wherefore liest thou upon thy face? Israel hath sinned," etc.

The rabbis taught: Since the death of the last prophets, Haggai, Zechariah, and Malachi, the Holy Spirit has left Israel; nevertheless they were still used to a heavenly voice. It happened once that they had a meeting in the attic of the house of Guriah, in the city of Jericho, and a heavenly voice was heard: Among these people there is one who is worthy that the Shekinah should rest upon him; but his generation is not fit. And the sages turned their eyes on Hillel the Elder. And when he departed, they lamented him. "Woe, pious! Woe, modesty! O thou disciple of Ezra." The same happened again when they had a meeting in an attic in the city of Yamnia, and the heavenly voice said: Among these people is one worthy that the Shekinah should rest upon him, but his generation is not fit. And the rabbis turned their eyes on Samuel the Little. When he departed, he also was lamented: "Woe, pious! Woe, modesty! O thou disciple of Hillel!"

The rabbis taught: A year must not be intercalated without the Prince's consent. It happened once that Rabban Gamaliel went to one ruler in Syria, and remained there longer than was expected; and the sages had intercalated the year on the condition that Rabban Gamaliel should agree; and then, when he came, he said, "I agree," and the year was intercalated without any other ceremony.

The rabbis taught: A leap year should not be made unless necessary, because of the spoiled roads, bridges requiring to be repaired, and because of the ovens where the paschal lambs were to be roasted, and they were not yet dry; and for them who reside in exile, and had left their places for Jerusalem to offer the paschal lamb, but could not reach in such a short time; but not if there was still snow or cold, and also not for them who resided in exile and had not as yet left their places for Jerusalem.

The rabbis taught: A leap year should not be made because of the kids, lambs, and pigeons which are too young. But this

may be taken as a support. How so? Said R. Janai in the name of R. Simeon b. Gamaliel: We inform you that the pigeons are still soft, and the lambs still thin, and the time of spring has not yet arrived; and it has pleased me to add to this year thirty days. An objection was raised from the following Boraitha: How much is to be added to a leap year? Thirty days. R. Simeon b. Gamaliel said: One month of twenty-nine days. Said R. Papa: If they wish, they can make it with thirty days; and if they wish, with one month of twenty-nine days. Come and see the difference between the old, mighty generation and that of the new, modest one. There is a Boraitha: It happened with Rabban Gamaliel, who used to sit on a step in the court of the Temple, that Johanan his scribe was standing before him, and three pieces of parchment were lying before him. And he told him: Take one parchment, and write to our brethren in Upper Galilee and to our brethren in Lower Galilee: May your peace be increased! We inform you that the time has come to separate tithe of the mounds of olives. And take another piece of parchment, and write to our Southern brethren: May your peace be increased! We inform you that the time has come to separate tithe of the garden sheaves. And take the third one, and write to our brethren in exile in Babylon, and to our brethren in Media, and to all other Israelites who are scattered in exile: May your peace be increased everlastingly! We inform you that the pigeons are soft, and lambs thin, and the time of spring has not yet come, and it pleases me and my colleagues to add to this year thirty days. (Hence Gamaliel wrote: "pleased me and my colleagues"; and Simeon his son did not mention his colleagues.) (Says the Gemara:) Perhaps this happened after R. Gamaliel was discharged and reappointed, as then he became more modest.

The rabbis taught: For the following three things a leap year is made: because of the late arrival of spring; of the unripeness of tree-products; and for the late arrival of Thkhupha (the equinox).^{*} When two of the three things occur, the year is made intercalary; but not if one of them. And when one of the reasons is spring, all rejoiced. And R. Simeon b. Gamaliel said: When Thkhupha (the equinox) was the reason. And the schoolmen questioned: How is he to be understood? Does he mean that they rejoiced when the Thkhupha (the equinox) was

^{*} See Rosh Hashana, p. 12, second edition.

one of the reasons, or does he mean to say that if it was the reason it suffices to make the year intercalate even without other reasons? The question remains undecided.

The rabbis taught: For the following three lands the leap year was made: Judea, Galilee, and the other side of the Jordan. For two of them, but not for one. If it happened that Judea was one of them, all rejoiced, because the offer of the omer (as the first of the harvest) was brought only from the land of Judea.

The rabbis taught: The year is to be made intercalary only in the land of Judea; but if it was made already in Galilee, their act is valid. However, Hananiah, the man of Anni, has testified that if the leap year was made in Galilee it was not considered. And R. Jehudah b. R. Simeon b. Pazi said: The reason of Hananiah is [Deut. xii. 5]: "Even unto his habitation shall ye refrain," which means, all your repairing should be only in the habitation of the Omnipotent.

The rabbis taught: A leap year is to be made only during the day-time, and if it was done in the night it is not intercalate. And the same is the case with the consecration of the month; it holds good in the day-time, and not in the night.

The rabbis taught: A leap year must not be made in the years of famine. And there is a Boraitha: R. Meir used to say: It is written [II Kings, iv. 42]: "And there came a man from Ba'al-shalishah, and brought unto the man of God bread of the firstfruits, twenty loaves of barley-bread," etc. And we know by tradition that the city of Ba'al-shalishah was the most fruitful city in the whole land of Israel, in which the fruit became ripe previous to all other cities; and nevertheless at that time it was not ripe, but only one kind of grain; and not wheat, but barley, as so it reads. And lest one say it was before the time the omer was to be brought, therefore it is written at the end of this verse: "Give it unto the people, that they may eat." Hence, under such circumstances, that year ought to have been intercalary. And why was it not made so by Elisha? Because it was a year of famine, and every one went to the barns in order to get something to eat, and therefore it was not intercalated.

The rabbis taught: The year must not be intercalary before Rosh Hashana (*i.e.*, no meeting must be appointed to discuss upon the necessity of an additional month in the next year). Even if it were so done, it is not to be taken into consideration. However, if circumstances compelled them to do so, they may

do it immediately after Rosh Hashana; but the additional month must be no other one than Adar. Is that so? Was not a message sent to Rabha: A couple came from the city of Lecarte, and caught an eagle, and in their hands were found things which were made in the city of Luz (*e.g.*, Thkhalth, for Tshitziṯh). And by the kindness of the Merciful One, and because of their unripeness, they were redeemed, and left in peace. And the descendants of Na'hshun desired to establish one nazib (ruler) more, but the Aramaic had prevented them. However, the prominent men of the cities held a meeting, and added one ruler (nazib) in that month in which Aaron (the high-priest) died. (Hence we see that a meeting about a leap year was appointed in the month of Ab, as Aaron died in that month?)*

The discussion, and even the establishment, may be done even before Rosh Hashana; but it must be kept secret until the day of New Year is past. But whence do we know that with the above-mentioned word "nazib" they meant "a month"? From [I Kings, iv. 7]: "And Solomon had twelve superintendents (nazibun) . . . for the king's household, one month in the year"; but *ibid.* 19 reads: "Besides the one superintendent (nazib) who was in the land?"

R. Jehudah and R. Na'hman—one said: One manager over all the superintendents. And the other maintains that this nazib was for the intercalary month.

The rabbis taught: A leap year must not be made in one year, for the next; and also three successive years must not be intercalary. R. Simeon, however, said: It happened with R. Aqiba, that he established three leap years, one after the other, while he was in prison. And he was answered: This is no evidence, as the court had established each leap year in its proper time.

The rabbis taught: A leap year must not be appointed, neither in the Sabbatic year nor in the following year. But when were they used to be established? On the eve of the Sabbatic year. The house of Rabban Gamaliel, however, used to appoint it for the year following the Sabbatic.

The rabbis taught: No appointment of a leap year must be because of defilement. R. Jehudah, however, maintains it may,

* This riddle was sent at the time when it was prohibited by the Roman government to establish a leap year, and even to discuss about it. Therefore the message was sent as a riddle so as to be unintelligible to those not concerned.

and adds: It happened with King Hezekiah, who had established such because of defilement, and thereafter he prayed for forgiveness. As it is written [II Chron. xxx. 18]: "For a large portion of the people, even many out of Ephraim and Manasseh, Issachar, and Zebulun had not cleansed themselves, but ate the Passover not as it is written. However, Hezekiah prayed for them, saying: "The Lord, who is good, will grant pardon for this."

R. Simeon said: If they had established it because of defilement, it is intercalary; and Hezekiah prayed for forgiveness because the law dictates that only the month of Adar shall be intercalary. He, however, intercalated the month Nissin. R. Simeon b. Jehudah, however, said in the name of R. Simeon: He prayed for forgiveness because he seduced Israel to establish a second passover.

The master said: He intercalated the month of Nissin. Did he not hold the tradition [Ex. xii. 2]: "This month shall be unto you the chief of months," which means Nissin; and it is written, *this* is Nissin, but no other month shall be named Nissin? He erred in that which is said in the name of Samuel: In the thirtieth day of Adar no intercalary month must be appointed, because this day was fit that it should be the first of Nissin. And he, Hezekiah, did not hold this theory. There is also a Boraitha which states: In the thirtieth day of Adar no month must be intercalated because it is fit to be the first of Nissin.

But how is it if, notwithstanding this, it was established on that day? Said Ula: Then the month must not be consecrated on that day. But how is it if it was consecrated also? According to Rabha, the consecration abolishes the intercalary; and according to R. Na'hman, both hold good—the intercalary and the consecration. Said Rabha to R. Na'hman: Let us see! From Purim to Passover are thirty days; and on Purim we begin to lecture about the law of Passover. Now, if they should appoint another Adar on the thirtieth day after the lectures of Passover were already heard, people would not believe then that another month was appointed, and so they would use leavened bread on Passover. And he answered: Why, they would believe, as they know the establishment of a leap year depends on counting; and they would say that it was not as yet clear to the rabbis—the reckoning of this year—until the thirtieth day of Adar arrived.

R. Jehudah in the name of Samuel said: A leap year must not be established unless the Thkhupha was less with a greater part of the month, which are sixteen days. So is the decree of R. Jehudah. R. Jose, however, said: Twenty-one days. And both took their reference from [Ex. xxxiv. 22]: And the feast of ingathering at the closing (Thkhuphat—equinox) of the year. One holds that the whole feast should be in the new Thkhuphat; and the other holds that it is sufficient if a few days of the feast should occur in the new Thkhuphat. How is this to be understood? If they hold that the day in which the Thkhupha occurs is counted to the past Thkhuphat, why, then, is it necessary for R. Jehudah that the Thkhuphat shall be less with sixteen, and to R. Jose with twenty-one days? Even if it would be less with fifteen days, according to R. Jehudah, and twenty days, according to R. Jose, the whole festival will not be on the new Thkhuphat according to R. Jehudah, as the fifteenth day of Nissin, which is the first day of the feast, and in which the Thkhuphat occurs, is counted to the past Thkhuphat; and also according to R. Jose, if the Thkhuphat occurs on the twenty-first day, which is counted to the past, not one of the festival days would occur on the new Thkhuphat, as the festival begins on the fifteenth, and the seventh ends with the twenty-first. Therefore it must be said, of the day in which the Thkhuphat occurs, both R. Jehudah and R. Jose count it as the beginning of the new Thkhuphat.*

"Laying the hand of the elders upon sacrifices." The rabbis taught: It is written [Lev. iv. 15]: "And the elders of the congregation shall lay their hands," etc. (The expression in Hebrew is, "Vsomkhu Ziqnye Hoedha"—literally, "and they shall lay," "the elders," "of the congregation.") From the expression Hoedha, which means the congregation, instead of elders of the congregation, it is deduced that it means the prominent of the congregation; and from the plurality of Vsomkhu ("and they shall lay," which means no less than two) and the plurality of the elders, who are also two, it is deduced four persons; and as the number of the court must not be even, one is added—hence it makes five. So is the decree of R. Jehudah. R. Simeon, however, maintains: There is only one

* The detailed explanation of all this would take too much space. However, it will be understood by those who know the order of the Jewish calendar. Although in our work it is of no importance, we hope that the reader will have an idea of it from our text, without the detailed explanation and the discussion following, omitted.

plurality in the elders, who are two, and one is added for the purpose mentioned above, making three only. And there is a Boraitha: To laying the hand upon the elders, and laying the hands of the elders upon the sacrifices, three are needed. What does this mean? Said R. Johanan: Laying the hand upon the elders means, to give one the degree of Rabbi: Said Abayi to R. Jose: Whence do we deduce this? From [Num. xxvii. 23]: "And he laid his hand upon him," etc. Then let one be sufficient, as Moses was only one person; and lest one say that Moses took the place of the Large Sanhedrin, who were seventy-one, then say that to confer a degree seventy-one are needed? This difficulty remains.

Said R. Aha b. Rabha to R. Ashi: Do we lay the hands upon the man to whom we want to give such a degree? And he answered: We support him with that, that we name him Rabbi and give him the permission to judge about fines upon them who deserve it.

Is it indeed so—that one man cannot bestow a degree? Did not R. Jehudah in the name of Rab say: Behold, the memory of that person shall remain blessed forever—I mean, R. Jehudah b. Baba, as, if not ben Baba, the law of fines would be forgotten from Israel. It happened once that the government passed an evil decree upon Israel, that he who bestowed a degree should be put to death, and the same should be done with him who received the degree. The city where the degree was conferred should be destroyed, and even the boundaries which were used while giving the degree should be torn out. Jehudah b. Baba then went and sat between two great mountains, and between two large cities—between the two suburban limits of the cities of Usha and Sprehen—and conferred the degree of Rabbi on five elders; and they were: R. Meir, R. Jehudah, R. Simeon, R. Jose, and R. Elazar b. Shamuas. According to R. Ivia, there was a sixth: R. Nehomai. When the enemy got wind of it, Jehudah said to them: My children, run away. And to their question: Rabbi, what will become of you? he answered: I shall remain before them as a stone which cannot be moved. It was said that three hundred iron spears were put by the enemy into his body, making it as a sieve. (Hence we see that even one person only is authorized to give a degree?) There were some other persons with him, but they were not mentioned, because of the honor of Jehudah b. Baba. Was indeed Meir elevated by Jehuda? Did not Rabha b. Hanah say in the name

of Johanan that R. Aqiba gave the degree to R. Meir? Yea, R. Aqiba did so, but it was not accepted; and from R. Jehudah b. Baba he accepted.

R. Jehoshua b. Levi said: The custom of giving degrees must not be used out of Palestine. What does he mean? Shall we assume that loss of fines should not be judged at all out of Palestine? This is not so, as there is a Mishna: Sanhedrins are to be established in Palestine as well as in other places out of Palestine. He means that one must receive his degree in Palestine only.

It is certain that a degree of Rabbi is not considered when the bestower is out of and the receiver is in Palestine. But how is it if the bestower is in Palestine and the receiver is out? Come and hear: R. Johanan was troubled for R. Shaman b. Aba, who was not present and could not receive the degree R. Johanan wished to honor him with. R. Simeon b. Zerud and his colleague Jonathan b. Ekhmai, according to others *vice versa*—one of them who was present they supported with a degree, and the one who was not did not receive such.

R. Hanina and R. Hoseah were two about whom R. Johanan troubled himself very much, to honor them with the degrees they deserved, but was always prevented, whereat he was very sorry. Said they to him: Let master not worry, as we are descendants of the house of Eli. And R. Samuel b. Na'hman in the name of R. Jonathan said: Whence is it deduced that the descendants of Eli are prevented by Heaven from receiving degrees? From [I Sam. ii. 32]: "And there shall not be an elder in thy house in all times"—which cannot be meant literally—"an old man," as it is written [ibid. 33]: "And all the increase of thy house shall die as (vigorous) men." Hence it means a *degree* of an elder (scholar).

R. Zera used to hide himself so as not to be honored with a degree, because of R. Elazar's statement: Be always misty, in order to have a better existence. Thereafter, when he heard another statement of the same authority, "One is not raised to a great authority unless all his sins are forgiven by Heaven," then he went to receive a degree. When he was graduated as a rabbi, his followers sang for him thus: "There is no dyeing, no polishing, no painting, and nevertheless it is handsome and full of grace." When Ami and Assi were graduated as rabbis, likewise people sang of them thus: "Of such men—of such people—appoint rabbis for us, but not from the sermonisers";

and according to others, "not steel-hearted and impudent men."

R. Abuhu, when he came from college in the court of the Zaiser, the matrons of Zaiser's house used to sing for him: "Great man of his people! ruler of his nation! candle of light! may thy coming be welcomed in peace."

"*Case of the heifer.*" The rabbis taught [Deut. xxi. 2]: "Then shall thy elders and thy judges go forth," etc. Elders, two, and judges, two, are four, etc. (will be translated in Tract Souta, as the proper place).

"*Plants of the fourth year and second tithe,*" etc. The rabbis taught: What is to be considered second tithe of which the value is not known? Rotten fruit, sour wine, and rusty coins. They also taught: Such second tithe must be redeemed by the appraisement of three buyers who all know the price of such stock; but not by three laymen who do not know the exact price. Among the buyers may be a Gentile, and also the owner of the stock. And R. Jeremiah questioned: How is it if the three were partners? Come and hear: One and his two wives may redeem the second tithe of which the value is not known. Hence it is allowed. This is no support, as this Boraitha may speak of such as were apart in business. *E.g.*, R. Papa and his wife, the daughter of Aba of Sura (who used to do business for herself).

"*Consecrated articles,*" etc. Our Mishna is not in accordance with R. Eliezer b. Jacob of the following Boraitha, who said: Even for a small fork of the sanctuary, ten persons are needed to appraise the value for redeeming. Said R. Papa to Abayi: R. Eliezer is correct that it needs ten, as he may hold with the statement of Samuel, who said: Priests are ten times mentioned in the portion which speaks of consecrated things. But whence did the rabbis take three? This difficulty remains.

"*Arakkin . . . movable property.*" What are they? R. Giddle in the name of Rabh said: If one vows, the value of this utensil is to be consecrated, then it must be appraised for its value, and he must pay. R. Hisda, however, said in the name of Abayi: It means, if one vows his own value, and appoints movable property for the collection. R. Abuhu said: If one vows his own value for the treasurer of the priests, when he came to collect, if he collects from movable property, three suffice to appraise it; but if from real estate, ten are needed. Said R. Aha of Diphthi to Rabhina: It is correct that three are

needed to appraise articles which are to be redeemed from the sanctuary; but why are three needed for bringing into the sanctuary? And he answered: It is common sense. What is the difference between bringing in and taking out? The reason of appraisement is because an error can occur by which the sanctuary would suffer; and this can take place in both taking out and bringing in.

"*A priest,*" etc. Said R. Papa to Abayi: It is correct that R. Jehudah requires that one of them should be a Cohen, as in that portion a Cohen is mentioned; but what is the reason of the rabbis, who do not require him—and for what purpose is a Cohen mentioned, according to them? This difficulty remains.

"*By ten, and one of them a priest,*" etc. Whence is all this deduced? Said Samuel: In this portion the word Cohenim is mentioned ten times, and only one of them is needed for itself; and all the others are considered as an exclusion after an exclusion, as to which there is a rule that such comes to add something. And therefore we add nine Israelites to one Cohen. R. Huna b. R. Nathan opposed, saying: Why not say: Add five Israelites to five Cohenim? This difficulty also remains.

"*The value of men,*" etc. But does, then, a man become consecrated? Said R. Abuhu: If one vows, the money he is worth (not according to age, which is prescribed biblically) must be appraised as if he were a slave sold on the market; and a slave is equal to real estate. Therefore it needs ten: R. Abim questioned: How is it if one vows the value of his hair, and it should be cut off? Shall we say that things which ought to be cut off are considered as already cut, and movable, and the appraisement needs three only; or, so long as it is attached to the body, it is considered as the body itself, and ten are needed? Come and hear: If one consecrated his slave, no transgression is committed by using him for work. R. Simeon b. Gamaliel said: If one uses his hair, it is a transgression: And we are aware that he speaks when the hair in question is still attached to the body and is ready to be cut off. Hence there is a difference of opinion among the Tanaim.

"*The stoning of an ox . . . and the owner put to death.*" Said Abayi to Rabha: Whence do we know this verse means to equal the judgment of the ox to that of its owner? Perhaps it is meant literally—that its owner also shall be put to death? Said Hezekiah, and so also was it taught by his school: It is written [Num. xxxv. 21]: "He who smites him shall be put

to death, for he is a murderer." From which we infer that only when he himself smote is he to be put to death: but he is not to be killed for the death by his ox.

"*The wolf, the lion,*" etc. Said Resh Lakish: This is in case they have killed some one; but if not, it is not a meritorious act to kill them. [Hence we see that he holds that these beasts can be considered the property of one who domesticates them.] R. Johanan, however, maintains: In any case, it is a meritorious act to kill them. [Hence he holds that they cannot be domesticated, and are considered ownerless.]

There is an objection from our Mishna: R. Eliezer says: Every one who hastens to kill them is rewarded—which is correct according to R. Johanan, who may explain the word "rewarded"—with the skin of the animal; but according to Resh Lakish, who said, only when they have killed, there is a rule that when so it was, the rabbis considered them as if they were already sentenced to death by the court, and in such a case it is prohibited to derive any benefit from them. What, then, means Eliezer by the expression "he is rewarded"? It means that he will be rewarded by Heaven. There is a Boraitha in accordance with Resh Lakish, as follows: An ox, as well as other animals or wild beasts which kill, must be judged by twenty-three. R. Eliezer, however, maintains: An ox which has killed, by twenty-three; but as to all wild beasts, he who hastens to kill them will be rewarded by Heaven.

"*R. Aqiba says,*" etc. Is it not the same as the first Tana? They differ in the case of a serpent.

"*A whole tribe,*" etc. Let us see what sin a whole tribe may commit. Shall we assume that it has violated the Sabbath? We know that there is a difference between an individual and a majority only in the case of idolatry; but in the other commandments there is no difference, according to the Scripture. And if it means that the whole tribe was accused of idolatry, and they should be judged as a majority, then our Mishna is neither in accordance with R. Jashiah nor with R. Jonathan of the following Boraitha: How many people must be in the city which shall be misled? From ten to one hundred. So is the decree of R. Jashiah. R. Jonathan, however, maintains: From one hundred up to the majority of the tribe. Now we see that even Jonathan says the majority, but not the whole tribe. Said R. Mathna: It means the Prince of the tribe only. As R. Ada b. Ahaba explains [Ex. xviii. 22]: "Every great matter" means,

the matter of a great man; so also here, by the whole tribe is meant the head of it. Rabhina, however, said: The Mishna speaks of a case in which the whole tribe was accused of idolatry, your difficulty being, do we then judge them as a majority? We may say, Yea! although their punishment is similar to that of an individual who is to be stoned. And this is in accordance with R. Hama b. Jose, who said in the name of R. Oseah: It is written [Deut. xvii. 5]: "Then shalt thou bring forth that man or that woman who has committed this wicked thing, unto thy gates"—which means only an individual, but not the whole city, to thy gates. The same is the case with a whole tribe; only an individual can be brought to the gates to be stoned, but not the whole tribe. (Hence they are judged by seventy-one, as a majority.)

"*False prophet*," etc. Whence is this deduced? Said R. Jose b. Hanina: From an analogy of expression—"presume"—which is to be found in the case of a false prophet [Deut. xviii. 20] and in the case of a rebelling elder [ibid. xvii. 12]. As in the latter case seventy-two are needed, so also in the former. But is not the expression "presumptuously" used in the cited verse concerning death, of which the verse reads; and death is judged by seventy-three only? Therefore said Resh Lakish: The analogy is in the expression "Dobhor," which is mentioned in both the verses cited.

"*High-priest*," etc. Whence is this deduced? Said Ada b. Ahaba: From the above-cited Ex. xviii. 22, which is explained as the matter of a great man.

"*To decide upon battles*," etc. Whence is this deduced? Said R. Abuhu: From [Num. xxvii. 21]: "And before Elazar the priest shall he stand . . . he and all the children of Israel with him, and all the congregation." "He" means the king. | "All Israel with him" means the priest who was anointed to be the leader of the war. "And all the congregation" means the Sanhedrin. But perhaps the cited verse means that only for the just-mentioned persons the Urim is allowed to be used; but not for common men. And the question, Wherefrom is it taken that seventy-one are needed to decide about battles? remains. Therefore it must be said, as R. Aha b. Bizna in the name of R. Simeon the Pious said: A harp was placed over the bed of David, and when midnight arrived a north wind used to blow in it, so that the harp would play by itself and awake David, who used to get up and occupy himself with the Torah until the

morning star arose. And thereafter the sages of Israel used to enter to him, saying: Lord our king, thy nation Israel needs food. And to his answer: Go, then, and make business among yourselves, they answered him: A handful of food can never satisfy a lion, and a pit can never be filled with the earth taken out from it. Whereupon David decided: They shall go to a battle. Then they consulted Achithophel, took also advice from the Sanhedrin, and asked the Urim, etc.

R. Joseph said: Whence do we know from the Scripture that such was the custom? From [I Chron. xxvii. 34]: "And after Achithophel (came) Yehoyada, the son of Benayahu, and Ebyathar; and the captain of the king's army was Joab. Achithophel was the counsellor, as it reads [II Sam. xvi. 23]: "And the counsel of Achithophel, which he counselled in those days." Yehoyada means the Sanhedrin, as it is written of his father Benayahu [I Chron. xviii. 17]: "And Benayahu, the son of Yehoyada, was over the Kerethites and the Pelethites," which means the Sanhedrin, to whom Yehoyada his son was the head after Benayahu. And why was the Sanhedrin named Kerethites and Pelethites? Because the literal meaning of the two terms in Hebrew is "cutting" and "wonder"; and the Sanhedrin, with their decisions, used to cut off and do wonderful things. "And Ebyathar" means the Urim Vethumim; and then comes "the captain of the king's army, Joab," which means war. And R. Itz'hak b. Ada, and according to others B. Abudimi, said that [Ps. lvii. 9] "Awake, psaltery and harp, I will wake up the morning dawn," is a support to R. Aha b. Bizna's statement.

"*For enlarging the city,*" etc. Whence is this deduced? Said R. Shimi b. Hyya: From [Ex. xxv. 9]: "In accordance with all that I show thee, the pattern of the tabernacle, and the pattern of all instruments thereof, even so shall ye make it"—which means, so shall ye do in the later generations. Rabha objected from the following: "All the utensils which were made by Moses, the anointment sanctified them; however, the utensils which were made after him, the using of them for service consecrated them." And why? Apply, "So shall ye do," etc., to the utensils also; they shall need anointment in the later generations also? With this it is different, as [Num. vii. 1]: "And had anointed them, and sanctified them," means them with anointment, but not those which should be made in a later generation. But how is it inferred from the passage that for the utensils made in the later generations anointing is prohibited?

Said R. Papa: It is written [ibid. iv. 12]: "Wherewith they minister in the sanctuary." We see, then, that the passage makes them sanctified by ministering with them.

"*Appointing supreme councils*," etc. This is taken from Moses, who had established the first Sanhedrin; and the person of Moses is equalized to seventy-one of them.

The rabbis taught: Whence do we know it is a duty to appoint judges? From [Deut. xvi. 18]: "Judges and officers," etc. But whence do we know that it is a duty to appoint them to each tribe? From [ibid., ibid.]: "Throughout thy tribes." (From this verse is deduced that judges as well as officers are to be appointed to each tribe.) R. Jehudah maintains: It was also necessary to appoint one who should rule over all the judges; as this verse reads, "Shalt thou appoint," which means that the Great Sanhedrin, who ruled all the judges in the lower houses, should be appointed by them. R. Simeon b. Gamaliel said: It reads: "Throughout thy tribes, and they shall judge," which means, it is a meritorious act to appoint judges to a tribe from its own people.

"*To condemn a misled town*," etc. Whence is this deduced? From [ibid. xvii. 5]: "Then shalt thou bring forth that man," etc. An individual you may bring to thy gates, but not the whole city, as said above by R. Hama b. Joseph (here mentioned Hyya, instead of Hama).

"*Town on the boundary*," etc. Why so? Because it reads, "From thy midst," but not from a boundary.

"*Nor three of them*," etc. Because it is written [ibid. xiii. 13]: "One of thy cities." But why two? Because of the word "cities."

The rabbis taught: One, but not three. But perhaps one, and not two? Because it reads cities, two are meant. Hence with the term one, one, not three, is meant. Rabh used to say at one time that for one court it is not allowed to make three, but for two or three courts it is allowed; and at another time he said that it is not allowed to do so, even in several courts? And the reason is, that Israel must not be made bald-headed. Said Resh Lakish: This is said only in one country; but in several countries, it may. R. Johanan, however, is of the opinion that even then it must not, for the reason that the land should not be bald-headed. There is a Boraitha in accordance with R. Johanan: Three misled cities must not be made in the land of Israel; two, however, may—*e.g.*, one in Judea and one in

Galilee; but not two in Judea, nor two in Galilee. And if it were near to the boundary, even one must not be proclaimed misled; for, should it come to the ears of the heathens, they might destroy the whole land of Israel. But why not deduce it from the passage which states "from thy midst," and not from the boundary? This is in accordance with R. Simeon, who used to explain the reasons of what is stated in the Scriptures.

"*The Great Sanhedrin*," etc. What is the reason of the rabbis, who said that Moses was as head of them? Because it reads [Num. xi. 16]: "And they shall stand there with *thee*," which means, and thou shalt remain with them. R. Jehudah, who says seventy only, maintains: It was necessary for Moses to remain with them, that the Shekinah should rest upon them.

The rabbis taught: It is written [ibid. xi. 26]: "And there remained two men in the camp." According to some, it means that their names remained in the urn. As, at the time the Holy One, blessed be He, said to Moses: Gather unto me seventy men of the elders of Israel, he thought: How shall I do it? Shall I appoint six of each tribe? Then there will be two more. Or shall I take five of each? Then there will be ten less. Or shall I appoint from two tribes five only, while from the others six each? Then will I bring jealousy among the tribes. So he chose six from each, and wrote on seventy tickets "*Zaqan*" (elder), and two he left blank; then mixed, and put all of them into the urn. Then he said: Go, each, and take your ticket. To those who drew "elder," he said: You are already sanctified by Heaven. But those who drew the blanks had no claim, as such was their lot.

Similar was the case from [ibid. iii. 47]: "Thou shalt take five shekels apiece for the poll." And to this Moses also said: How shall I do it? If I should say to one, "Give the shekels," he may answer, "The Levite has already redeemed me." Therefore he wrote on twenty-two thousand tickets "*Levite*"; and on two hundred and seventy-three he wrote "five shekels," mixed them, put them in the urn, and told the people: Each shall draw his ticket. To the one who drew "*Levite*" he said: You are free, as the Levite has redeemed you. And he who drew five shekels was told to pay the amount and go.

R. Simeon, however, said: Not their names remained in the urn, but themselves remained in the camp in doubt, saying: We

are not worthy of such a high appointment. And the Holy One, blessed be He, said: Because ye were modest, I will increase your grace. And what grace was increased to them? All the seventy had prophesied once, and ceased; but these two did not cease to prophesy. And what was their prophecy? They said: Moses shall die, and Joshua shall bring Israel to his land. Aba Hanin, however, said in the name of R. Elazar: They prophesied about the quail, saying, "Come up, quail. Come up, quail." And R. Na'hman said: About Gog and Magog they prophesied, as it is written [Ezek. xxxviii. 17]: "Then hath said the Lord Eternal: Art thou (not) he of whom I have spoken in ancient days through means of my servants the prophets of Israel, who prophesied in those days (*Shanim*) years, that I would bring thee against them?" Do not read *Shanim*, but *Shnaim*, which means two. And who were the two who had prophesied at one period, with one and the same prophecy? Eldad and Medad.

It is correct in respect to him who said above that their prophecy was, "Moses shall die," what is written [Num. xi. 28]: "My lord Moses, forbid them." But in respect to them who said they prophesied about other things, why, then, should they be forbidden? Because it was not seemly for them thus to prophesy in the presence of Moses. What is meant by the words, "forbid them"? He meant to say: Appoint them, they shall occupy themselves with the needs of the congregation, and they will be destroyed by themselves.

Whence do we know that three more are needed, as, after all, sentence of guilt by a majority of two cannot take place; as, if eleven defend and twelve accuse, then there is only a majority of one; and if ten defend and thirteen accuse, there is a majority of three? Said R. Abuhu: Such a case can be only when there is a necessity to add more judges according to all. (*I.e.*, in case eleven accuse and the same number defend, and one of them says: I am in doubt. And in such a case all agree that judges must be added, as the one who is in doubt cannot be counted; and then two more are to be added. And if the two who were added also accuse, there is a majority of two.) And such also can be found in the Great Sanhedrin, in accordance with R. Jehudah, who said: There was an even number of seventy. R. Abuhu says again: In case more judges are to be added, an even number may be made in the Small Sanhedrin also. Is this not self-evident? Lest one say that the one who says he is in

doubt is counted, and if thereafter he gives a reason for his decision after deliberating he may be listened to, he comes to teach us that as from the time he is in doubt he is not to be counted at all, so after the deliberation he may not be listened to.

R. Kahana said: If all the persons of the Sanhedrin are accusing, the defendant becomes free. Why so? Because there is a tradition that such a trial must be postponed for one night, as perhaps some defence may be found for him; but if all accuse him, it is not to be supposed that some will find any defence for him over night, and therefore they are no longer competent to decide in his suit.

R. Johanan said: The persons who are chosen to be members of the Sanhedrin must be tall, men of wisdom, of good appearance, and of a considerable age; and, also, they should understand something in cases of witchcraft; and they must also know seventy languages, so that they shall not need to hear a case through an interpreter. R. Jehudah in the name of Rabh said: In a city in which there are not to be found two persons who can speak seventy languages, and one who can understand them although he cannot speak, Sanhedrin must not be established. In the city of Bethar were three; and in the city of Yamiam were four, namely: R. Eliezer, R. Jehoshua, R. Aqiba, and Simeon of Tehmon their disciple, who was not of age to become a rabbi.

An objection was raised from the following: A Sanhedrin in which three of them could speak seventy languages was considered a wise one; and if four, it was considered the highest one. We see, then, that three who could speak were needed? Rabh holds with the Tana of the following Boraitha: If two, it is a wise one; and if three, it is the highest one.

There is a rule that, where there is to be found throughout the Talmud the expression "the man who learned in the presence of the sages," Levi before Rabbi is meant; and where the expression, "discussed before the sages," Simeon b. Azi, Simeon b. Zoma, Hanan the Egyptian, and Hayanya b. Hkheinai are meant. R. Na'hman b. Itz'hak taught five persons—the four mentioned above, and the fifth was Simeon of Tehmon. Where it is mentioned, "our Masters in Babylon," Rabh and Samuel are meant; "our Masters in Palestine," R. Abbi is meant; "the judges of the Exile," Karna is meant; "the judges of Palestine," R. Ami and R. Assi; "the judges of Pumbeditha," R.

Papa b. Samuel; "the judges of Nahardea," R. Ada b. Minumi; "the elders of Sura," R. Huna and R. Hisda; "the elders of Pumbeditha," R. Jehudah and R. Eina; "the geniuses of Pumbeditha," Eiphah and Abimi sons of Rabha; "the Amoraim of Pumbeditha," Rabba and R. Joseph; "the Amoraim of Nahardea," R. Hama. If it is said "the Nhardlaïen taught," Rami b. Berokha is meant. But was it not said by Huna himself: "It was said in the college"? Therefore it must be said that "Hamnuna" is meant. "It was said in Palestine," R. Jeremiah is meant; "a message was sent from Palestine," R. Jose b. Hanina is meant. And where it is said, "it was ridiculed in Palestine," R. Elazar is meant. But do we not find a message was sent from Palestine: According to R. Jose b. Hanina it is so and so? Hence R. Jose b. Hanina cannot be meant in the expression, "there is a message from Palestine"? Therefore it must be reversed. Where it is said, "a message from Palestine," R. Elazar is meant; and "it was ridiculed in Palestine," R. Jose b. Hanina is meant.

"*How many shall a city . . . one hundred and twenty,*" etc. What is the reason of that number? Twenty-three of the Small Sanhedrin, and three rows of twenty-three each (hearers), make ninety-two; and ten idle men, who must always be in the houses of prayer and learning, make one hundred and two; and two scribes, two sextons, two parties for defendant and plaintiff, two witnesses, and two men who may be able to prove the witnesses collusive, and still two more who could prove the last ones collusive—hence in the total there are one hundred and fourteen. There is a Boraitha that in a city in which the following ten things do not exist, it is not advisable for a scholar to reside, and they are: Five persons to execute what the court decides; a treasury of charity (which is collected by two and distributed by three); a prayer-house, a bath-house, lavatories, a physician, a barber, a scribe, and a teacher for children. And according to others it was said in the name of R. Aqiba: In the city should be several kinds of fruit, as the consuming of fruit enlightens the eyes.

"*R. Nehemiah,*" etc. There is a Boraitha: Rabbi said: Two hundred and seventy-seven. And there is another: Rabbi said: Two hundred and seventy-eight. And there is no contradiction, as one Boraitha is in accordance with R. Jehudah, who needs only seventy for the Great Sanhedrin.

The rabbis taught: It is written [Ex. xviii. 21]: "And place

these over them, as rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens." Rulers of thousands were six hundred; rulers of hundreds were six thousand; rulers of fifties, twelve thousand; and rulers of tens, sixty thousand. Hence the total number of the officers in Israel were seventy-eight thousand and six hundred.

CHAPTER II.

RULES AND REGULATIONS CONCERNING THE HIGH-PRIEST: IF HE MAY JUDGE AND BE JUDGED, BE A WITNESS AND BE WITNESSED AGAINST; THE LAWS REGARDING A DEATH OCCURRING IN HIS FAMILY AND THE CUSTOM OF THE CONDOLENCE. THE SAME RULES CONCERNING A KING. REGULATIONS AS TO WHAT A KING MAY AND MAY NOT ALLOW HIMSELF: HOW MANY WIVES AND HOW MANY STABLES FOR HORSES HE MAY HAVE; HOW HE MUST BE RESPECTED AND FEARED BY HIS PEOPLE, ETC.

MISHNA I.: The high-priest may judge and may be judged; he may be a witness and may be witnessed against; he may perform the ceremony of Halitzah, and the same may be done to his wife if he dies childless, or his brother may marry his wife in such a case. He, however, must not marry his brother's wife when his brother dies childless—because it is forbidden for a high-priest to marry a widow. If a death occurs in his family, he must not accompany the coffin; but if the coffin with those accompanying it are no longer visible in the street, he goes after them. And so with other streets—when they are not visible, he may enter the street, etc.; and in such manner he may follow the coffin to the gate of the city. So is the decree of R. Meir. R. Jehudah, however, maintains: He must not leave the Temple at all, as it reads [Lev. xxi. 12]: "And out of the sanctuary shall he not go."

When he, the high-priest, condoled with others, it was usual that the people went one after another, and the superintendent of the priests would place him between himself and the people (so that he could say a word of condolence to every one of them); but when he was being condoled with, the people used to say to him: We shall be your atonement (*i.e.*, to us shall occur what ought to occur to you), and his answer was: You shall be blessed by Heaven. And at the condoling meal, all the people were placed on the floor, but he sat on a chair.

A king must not judge, and he is not judged; he must not be a witness, nor be witnessed against. The ceremony of Halitzah does not exist for him, nor for his wife. He does not marry

his childless brother's wife, and his brother must not marry his wife. R. Jehudah, however, maintains: If he was willing to give Halitzah or to marry his brother's wife, he may be remembered among the good. And he was told: Even if he is willing, he must not be listened to.

His widow must not remarry. R. Jehudah said: A king may marry the widow of a king, as so we found with David, who married the widow of Saul; as it reads [II Sam. xii. 8]: "And I gave unto thee the house of thy master, and (put) the wives of thy master into thy bosom."

GEMARA: Is it not self-evident that the high-priest may judge? It was stated, because it was necessary to say that he may be judged. But this is also self-evident; as if it were not permitted to judge him, how could he judge? Is it not written [Zeph. ii. 1]: "Gather yourselves," which Resh Lakish explained in Middle Gate (p. 287): "Correct yourself first, and then correct others"? Therefore we must say, because in the latter part it was necessary to teach that a king must not judge or be judged, it teaches also that the high-priest may judge and be judged. And if you wish, it may be said that it came to teach us what is stated in the following Boraitha: A high-priest who killed a person—if intentionally, he may be killed; and if unintentionally, he may be sent into exile: he transgresses a positive and a negative commandment, and is also, concerning other laws, considered as a commoner in every respect.

Intentionally—he may be killed. Is this not self-evident? It was necessary to state, if unintentionally, he might be sent into exile. But is this also not self-evident? Nay! One may consider, because it reads [Num. xxxv. 28]: "He shall remain until the death of the high-priest," that he who has a remedy to return to his land by the death of the high-priest shall be sent into exile; but he who has no such remedy should not; and there is a Mishna: He who kills a high-priest, or a high-priest who has killed a person, is not returned from the city of refuge for everlasting, and therefore he should not be exiled—it comes to teach us that it is not so. But perhaps it should be so? There is another verse [Deut. xix. 3]: "Every man-slayer," which includes a high-priest.

The Boraitha states: He transgresses a positive and negative commandment. Must he, then, transgress? It means to say that if it happened he should transgress a positive and a negative commandment, he is considered a commoner in every respect.

"*Be a witness, and witnessed against,*" etc. May he be a witness? Have we not learned in the following Boraitha: It reads [Deut. xxii. 1]: "And withdraw thyself." There are cases from which one may withdraw himself, and there are others from which he may not. How so? *E.g.*, a priest who sees a lost thing lying in a cemetery is not obliged to pick it up for the purpose of returning it; or if there were an old, respectable man, and it was not in accordance with his honor to bother with such a thing, or even if one's time is more valuable than the value of the lost thing, he may withdraw himself. Hence it is self-evident that it is not fit for a high-priest to go and witness. Why, then, should he be obliged? Said R. Joseph: He may be a witness in a case that concerns the king. But does not our Mishna state "that a king must not be a witness, and not be witnessed against"? Therefore said R. Zera: He may be witness in the case of a prince, the son of the king. A prince—is he not considered a commoner in all respects concerning the law? Say he may witness before the king. But have we not learned that the king must not be a member of the Sanhedrin; and also that both the king and the high-priest must not take part in the discussion about a leap year? For the honor of the high-priest, the king comes and remains with the Sanhedrin until the testifying of the high-priest ends, and then both depart; and the Sanhedrin themselves deliberate and decide the matter.

The text states that a king must not be a member of the Sanhedrin, nor a king and a high-priest engage in the discussion about a leap year. The first is deduced from [Ex. xxiii. 2].* And the second—a king—because he would not like to add a month to the year, because of the increase of the wages of the military; and a high-priest, because of the cold (*i.e.*, it is prescribed by the Scriptures to take during the Day of Atonement legal baths five times in cold water, and by adding a month, the month of Tishri would fall when in a usual year is the month of Cheshvi, which is much colder than Tishri).

Said R. Papa: Infer from this that the seasons of the year follow the usual months, and not according to the intercalary month. Is that so? We know that it happened, three pasturers

* How it is deduced from this verse it is impossible to express in any living language. Even in the Hebrew we have to make from the word *Rebh*—literally, "quarrel"—the word *Rab*—literally, "great," and to interpret the passage in another fashion altogether. It would therefore be of no use to insert the verse as it is usually translated.

were standing and conversing in the presence of rabbis thus: One of them said: If there were enough heat so that the wheat which was sown in the beginning of the month, and the barley which was sown recently, should sprout, the month could be named Adar; and if not, it remains Shbat. The second said: If in the morning there is such a cold that the ox trembles from it, and in the middle of the day he should hide himself in the shadow of a fig tree, the month may be considered Adar; and if not, it remains Shbat. And the third said: If the winter has already lost its strength, and the air you blow from your mouth moderates the cold brought by the east wind, it is Adar; and if not, it remains Shbat. And as that year was not so in any of these cases, the rabbis intercalated it. Hence we see that the intercalary comes because of the cold, and not *vice versa*?

How can you conceive that the rabbis had relied upon the pasturers to intercalate a year? They relied upon their own reckoning, and the gossip of the pasturers was considered as a support only.

"*He may perform the ceremony of Halitzah,*" etc. The Mishna makes no difference if the widow was from betrothal or from marriage. And this can be correct only with a marriage, as there is a positive commandment that a high-priest must marry a virgin, and a negative commandment that he must not marry a widow; while to marry the wife of his childless brother is a positive commandment only, which cannot invalidate a positive and a negative commandment. But if the widow was from betrothal, she is still a virgin; there remains only one negative commandment, he shall not take a widow. And there is a rule that a positive commandment invalidates a negative commandment? The positive commandment applies only to the first intercourse, but not thereafter, upon which the negative commandments rest. And if the first were allowed, he would come to commit a transgression thereafter, and therefore it is prohibited. And so also a Boraitha states.

"*If death happens,*" etc. The rabbis taught: "He shall not leave the sanctuary" means he shall not go with them, but he may go out after them. How so? "When they are not visible in the street, he may appear," etc.

"*To the gate of the city,*" etc. Is not R. Jehudah correct with his statement? R. Meir may answer: According to your theory, he must not leave the Temple for home? You must then explain this passage, that it means that he must not go out

from his sanctuary; and while he goes after them, when they are no longer visible, he will not come in contact with the corpse. R. Jehudah, however, fears that because of his sorrow it may happen that when he shall accompany them he will come in contact with the corpse, and violate his sanctity.

"*Condole with others*," etc. The rabbis taught: When he goes in the row to condole with others, his vice and the ex-high-priest are placed at his right, and the head of the priest's family at the mourners'; and all other people are placed at his left. But when he stands in the row to be condoled with by others, the vice only is placed at his right, but not the ex-high-priest, as he may be dejected, thinking that the ex-priest sees a revenge in him.

Said R. Papa: From the Boraitha three things are to be inferred: (a) That the vice and superintendent are identical; (b) that the mourners stand and the people pass by; and (c) that the mourners are placed at the left side of the condolers.

The rabbis taught: Formerly the custom was for the mourners to stand and the people to pass by; but there were two families in Jerusalem who had quarrelled, one saying: I must pass first. according to my dignity; and the other said: I must pass first: Therefore it was enacted that the people should stand and the mourners pass. Said Rami b. Aba: R. Jose reëstablished the old custom that the mourners shall stand and people pass, in the city of Sephorias. And he said also: The same enacted in the same city that a woman should not go into the street with her child following her, but that she should follow the child, because of an accident that happened. (Rashi explained: It happened that immoral men had stolen a child who was following its mother, and put it in a house; and while she was crying and searching for it, they said to her: Come with us and we will show it to you. And while doing so, she was assaulted.) He also said: The same enacted in Sephorias that women should talk to each other while they were at their toilet, for the purpose that men should not intrude.

R. Menashia b. Evath said: I questioned R. Jashiah the Great in the cemetery of Huzl, and he told me that a row is not less than ten persons, not counting the mourners, who must not be among them; and there is no difference if the mourners stand and the people pass, or *vice versa*.

"*Being condoled with*," etc. The schoolmen questioned: What did he say when he condoled with others? And they

were answered from a Boraitha, which states: He used to say: Be comforted.

"*A king must not judge*," etc. Said R. Joseph: This is concerning the kings of Israel; but the kings of the house of David are judged and judge. As it is written [Jer. xxi. 12]: "O house of David, thus said the Lord: Exercise justice on every morning." We see that they did judge; and if they were not to be judged, how could they judge?—as is said above by Resh Lakish. And what is the reason it is prohibited to the kings of Israel? Because an unfortunate thing happened as follows: The slave of King Janai murdered a person; and Simeon b. Cheta'h said to the sages: Notwithstanding that he is the slave of the king, he must be tried. They sent to the king: Your slave has killed a man. And Janai sent his slave to them to be tried. However, they sent to him: You also must appear before the court. As it is written [Ex. xxi. 29]: "Warning has been given to its owner"—which means the owner of the ox must appear at the time the ox is tried. He then came and took a seat. Said Simeon b. Cheta'h: King Janai, arise, so that the witnesses shall testify while you stand; yet not for us do you rise, but for Him who said a word, and the world was created. As it reads [Deut. xix. 17]: "Stand before the Lord." And the king answered: It must not be as you say, but as the majority of your colleagues shall decide. Simeon then turned to his right, but his colleagues cast their eyes upon the floor without any answer; and the same did his colleagues at his left. Simeon then exclaimed: You are all troubled in mind (disconcerted)! May the One who rules minds take revenge upon you. Gabriel came then and smote them to the floor, that they died. And at that time it was enacted that a king should neither judge nor be judged, neither be a witness nor be witnessed against.

"*If he was willing to give Halitzah*," etc. This is not so? Did not R. Ashi say: Even he who holds that if a prince has relinquished his honor it holds good, agrees that if a king does so his honor is not relinquished. As it is written [Deut. xvii. 15]: "Set a king over you"—which means, that respect (fear) for the king should always be before thy eyes (*i.e.*, and in the ceremony of Halitzah the woman takes off his shoe, and spits before him, which is a disgrace for a king, and must not be done even if he is willing)? R. Jehudah, however, maintains: Where there is a biblical commandment, it is different.

"*His widow must not remarry*," etc. There is a Boraitha:

The sages answered R. Jehudah: The verse you refer to means, the woman who was ordained to him by the king, Saul; and they were Merab and Michal, his daughters.

The disciples of R. Jose questioned their master: How could David marry two sisters while they were both living? And he answered them: He married Michal after the death of Merab. And R. Jose said so in accordance with his theory in the following Boraitha, which states: He, R. Jose, used to lecture about passages in the Scriptures which were obscure, namely: It reads [II Sam. xxi. 8]: "And the king took the two sons of Rizpah, the daughter of Ayah, whom she had born unto Saul, Armoni and Mephibosheth; and the five sons of Michal, the daughter of Saul, whom she had borne * to Adriel, the son of Barzillai the Meholahite." But was Michal given to Adriel? Was she not given to Palti b. Layish? It reads [I Sam. xxv. 44]: "But Saul had given Michal his daughter, David's wife, to Palti, the son of Layish." Hence the Scripture equalizes the betrothing of Merab to Adriel to the betrothing of Michal to Palti b. Layish; as the betrothing of Michal to Palti was a sin (for she was already the wife of David, and according to the law a second betrothing is not considered at all), so also was the betrothing of Merab to Adriel a sin (for she was already David's wife). R. Jesh b. Karha, however, maintains: The betrothal of Merab to David was by an error. As it is written [II Sam. iii. 14]: "Give up to me my wife Michal, whom I espoused," etc. But what would he say to that passage which reads, "the five sons of Michal, the daughter of Saul"? He might say: Did, then, Michal bear them? Was it not Merab who bore them, whereas Michal merely brought them up? But they bore the name of Michal, because the Scripture considers the one who brings up an orphan as if it were born to him.

R. Hanina says: This is inferred from [Ruth, iv. 17]: "There hath been a son born unto Naomi," etc. Did, then, Naomi bear him? Was it not, in fact, Ruth who bore him? Therefore we must say that, though Ruth bore him, he was nevertheless named after Naomi, because she brought him up. R. Eleaser said: From [Ps. lxxvii. 16]: "The sons of Jacob and Joseph. Selah." Were they, then, born to Joseph, and not to

* Leeser translates "brought up," according to the sense. The term in the Bible, however, is the same as in the first part of this verse; therefore the question in the text.

Jacob? They were born to Jacob, but Joseph fed them, and therefore they were named after him.

R. Samuel b. Nahmeni in the name of R. Jonathan said: He who teaches the Torah to the son of his neighbor, the Scripture considers him as if he were born to him. As it is written [Num. iii. 1]: "And these are the generations of Aaron and Moses"; and the following verse reads: "And these are the names of the sons of Aaron." It is only to say that they were born to Aaron and Moses taught them, and therefore they were named after him.

It is written [Is. xxix. 22]: "Therefore thus hath said the Lord unto the house of Jacob, he who hath redeemed Abraham." Where do we find that Jacob redeemed Abraham? Said R. Jehudah: He redeemed him from the affliction of bringing up his children. (*I.e.*, Abraham was promised by the Lord that He would multiply his children, and so the affliction of bringing them up was to lie upon Abraham; but, in fact, it was Jacob who was afflicted by bringing them up.—Rashi.) And this is what is written [ibid.]: "Not now shall Jacob be ashamed, and not now shall his face be made pale"—which means, he shall not be ashamed of his father and his face shall not become pale because of his grandfather.

In the Scripture there is written in some places "Palti," in other places "Paltiel." Said R. Johanan: His name was Palti; and why was he named Palti-El? "For God saved him from sin" (*i.e.*, "Polat" in Hebrew means "to break through" and "El" means God, and according to tradition Palti did not live with Michal [although he slept with her in one bed], because of her betrothal to David). Said R. Johanan: The strength of Joseph was moderation on the part of Boas, and the strength of the latter was moderation on the part of Palti. "The strength of Joseph was moderation on the part of Boas"—as it is written [Ruth, iii. 8]: "And it came to pass at midnight, that the man became terrified," etc. And Rabh said: His body became as soft as (boiled) turnip heads. "And the strength of the latter was the moderation of Palti"—as with Boas it occurred only on one night, and with Palti it was continually. The same said again: It is written [Prov. xxxi. 29]: "Many daughters have done virtuously, but thou excellest them all." "Many daughters" means Joseph and Boas. "That feareth the Lord shall indeed be praised" [ibid. 30] means Palti b. Layish. R. Samuel b. Nahmeni in the name of R. Jonathan said [ibid. 30]: "False is grace" means Joseph; "and beauty

vain" means Boas"; ". . . that feareth the Lord" means Palti b. Layish. According to others, "False is the grace" means the generation of Moses, "and vain is the beauty" means the generation of Joshua; ". . . that feareth the Lord" means the generation of Hezkiah. And still according to others, "False is the grace" means the generation of Moses and Joshua, "and vain is the beauty" means the generation of Hezkiah; ". . . fear of the Lord," etc., means the generation of R. Jehudah b. Elii. As it was said: In the time of that rabbi six disciples had covered themselves with one garment (as they were very poor), and occupied themselves with the study of the Torah.

MISHNA II.: If a death occurs in the house of the king, he must not leave the gate of the palace. R. Jehudah, however, maintains: If he is willing to accompany the coffin, he may do so, as we find that David accompanied the coffin of Abner [II Sam. iii. 31]: "And King David walked behind the bier." But he was told that David did so only to appease the spirit of the people. And at the condoling meal all the people are placed on the floor and he is seated on the dais.

GEMARA: The rabbis taught: In those places where it is customary for women to follow a coffin, they may do so; and where it is customary for them to precede the coffin, they have to do accordingly. R. Jehudah, however, maintains that women must always precede the coffin, as we find in the case of David, who followed the coffin, as in the above-cited verse in the Mishna. And he was told that this was only to appease the spirit of the people. And they were appeased, because David used to go from the men to the women and from the women to the men for this purpose. As it is written [ibid. 37]: "And all the people and all Israel understood on that day that it had not been of the king." Rabha lectured: It is written [ibid. 35]: "And all the people came to cause David to eat food while it was yet day." (The term "to cause" is expressed in Hebrew *Le habroth*, and according to him it was written *Le hakhbroth*. The first term means food and the second means to destroy—*Korath*); from which it is to be inferred that in the beginning the people came to destroy him because of the death of Abner, but after he had appeased them they caused him to eat.*

* In the Scripture which is before us there is nothing of the kind. However, we have remarked several times that their text of the Scripture was different from ours. And so also is it remarked in a foot-note in the Wilna edition, 1895.

Said R. Jehudah in the name of Rabh: Why was Abner punished? Because he ought to have warned Saul he should not kill the priest of Nob, and he did not do so. R. Itz'hak, however, maintains: He did warn, but was not listened to. And both infer this from the following verses [ibid. 33, 34]: "And the king lamented over Abner, and said, O that Abner had to die as the worthless dieth! Thy hands were not bound and thy feet were not put in fetters" The one who said that he did not warn interprets thus: "Thy hands were not bound and thy feet were not put in fetters." Why didst thou not warn? And he who said that he did, but was not listened to, interprets it thus: "O that Abner should die as the worthless dieth! Thy hands were not bound" And thou didst warn Saul. Why, then, "as one falleth before men of wickedness art thou fallen"? But according to the latter, that he did warn—why was Abner punished? Said R. Na'hman b. Itz'hak: Because he postponed the kingdom of David for two years and a half.

MISHNA III.: And he (the king) declares a war which is not commanded in the Scripture, after consultation with the court of twenty-one judges. He may also establish a way in private property, and nobody has a right to protest against it. The way of a king has no limit. When the military take plunder from the enemy, they must transfer it to the king, and he takes his share first.

GEMARA: Was not this already taught in the first Mishna of this tract: A court of seventy-one judges is needed to decide upon battles which are not commanded, etc.? Because it teaches of other things which belong to the king, this is also repeated. R. Jehudah in the name of Samuel said: All which is written in I Samuel, viii. in that portion relating to a king, the king is allowed to do. Rabh, however, maintains that the whole portion was not said except to warn them. The above Amoraim differ in the same respect as the Tanaim of the following Boraitha: It is written [Deut. xvii. 15]: "Set a king over thee," etc. According to R. Jose, all that is written concerning a king in Samuel, the king is allowed to do. R. Jehudah, however, maintains that the whole portion is written only to frighten them, as the expression, "to set a king over thee," means that the fear of the king shall be always upon you. And thus R. Jehudah used to say: There are three positive commandments which Israel was commanded at the time they entered Palestine, viz.: They shall

know that in the case of Zadok it is so? From the following Boraitha: Rabbi said: It reads [Lev. xxiv. 9]: "And it shall belong to Aaron and to his sons," meaning half to Aaron and half to his sons.

MISHNA IV.: He (the king) must not marry more than eighteen wives. R. Jehudah, however, maintains: He may marry as many as he likes, provided that they shall not turn his heart away. And R. Simeon maintains: Even one wife, should she be liable to turn his heart away, he must not marry her. And the verse which reads, "Neither shall he take to himself many wives," means even when they were similar to Abigail.

GEMARA: Shall we assume that R. Jehudah takes account of the reason mentioned in the Scriptures and R. Simeon does not? Have we not heard elsewhere just the reverse? A widow must not be pledged, no matter if she be rich or poor. As it is written [Deut. xxiv. 17]: "Thou shalt not take in pledge the raiment of a widow." So is the decree of R. Jehudah. R. Simeon, however, maintains: If she be rich she may be pledged, but when she is poor she must not be pledged. And one is obliged to return the pledge to her. And to the question: How is this to be understood? it was said thus: If you take a pledge from her, you are obliged, biblically, to return it every evening, and by this act she will get a bad name, etc. Hence we see that R. Jehudah does not take account of the reason mentioned in the Scriptures (as there it is written: "You shall return to him; as if not, he will not have whereupon to sleep," which treats only of the poor, and R. Jehudah's theory is that even a rich person must not be pledged)? R. Jehudah does not take account of the reason in all other cases. But here it is different, as the verse itself explains the reason—that "his heart shall not be turned away." And R. Simeon may also say: Do we not take account in all other cases of the reason? Why, then, does the Scripture give the reason here? Let it say, "He shall not marry many wives," and we would understand the reason that it is because of his heart. And as the reason is mentioned, it is for the purpose that even if only one, and she is liable to "turn his heart away," he must not marry her.

The number eighteen mentioned in the Mishna, whence is it deduced? From [II Sam. iii. 2-5]: "And there were born unto David sons in Hebron: And his first-born was Amnon, of Achinoam the Yizreelitess; and his second was Kilab, of Abigail the wife of Nabal the Carmelite; and the third, Abshalom, the

appoint a king; they shall destroy the descendants of Amalek; and they shall build a temple. R. N'hurai, however, says: The whole portion was said only because they murmured against Samuel, requesting a king. As it is written [ibid., ibid. 14]: "And thou sayest, I wish to set a king over me," etc.

There is a Boraitha: R. Eliezer said: The elders of that generation rightly asked Samuel for a king. As it reads [I Sam. viii. 5]: "Appoint for us a king to judge us like all the nations." But the commoners who were among them degraded the case. As it reads [ibid., ibid. 20]: "That we also may ourselves be like all the nations; and that our king may judge us, and go out before us, and fight our battles."

There is another Boraitha: R. Jose said: Three positive commandments Israel was commanded when they entered Palestine, viz.: They shall appoint a king; they shall destroy the descendants of Amalek; and they shall build a temple. But it was not known which was the first. However, from [Ex. xvii. 16], "And he said, Because the Lord hath sworn on his throne that the Lord will have war with Amalek from generation to generation," it is to be inferred that the commandment relating to the king was first, because the word "throne" implies a king. As it is written [I Chron. xxix. 23]: "Then sat Solomon on the throne of the Lord as king." But it was still unknown which should be first, the case of Amalek or the temple. But from [Deut. xii. 10], "He will give you rest from all your enemies . . . and then shall it be that the place," etc., it is to be inferred that the cutting off of the nation of Amalek was to be first. And so was it with David. As it reads [II Sam. vii. 1]: "And it came to pass, when the king dwelt in his house, and the Lord had given him rest," etc., he spake then to Nathan the prophet about the Temple.

The rabbis taught: The treasures of kings which are plundered in time of war belong to the king only; all other plunder, however, half to the king and half to the people. Said Abayi to R. Dimi, according to others to R. Aha: It is correct that the treasures of kings belong to the king, as so it is customary. But from where do we know that other plunder is half to the king, etc.? From [I Chron. xxix. 22]: "And they anointed him unto the Lord as chief ruler, and Zadok as priest." We see, then, that he compares the ruler to Zadok. As in the case of Zadok the high-priest, a half belongs to him and a half to his brother, the same is the case with the ruler. And wherefrom do you

son of Maachah the daughter of Thalmi the king of Geshur; and the fourth, Adonijah, the son of Chaggith; and the fifth, Shephatiah, the son of Abital; and the sixth, Yithream by Eglah, David's wife. These were born unto David in Hebron." And the prophet said [ibid., ibid. xii. 8]: "And if this be too little, I could bestow on thee yet many more like these." *

Now let us see! The number of the wives mentioned in the Scriptures is six. "Like this" is six more, "and like this" is again six more, of which the total is eighteen. But was not Michal his wife, who is not mentioned? Said Rabh: Eglah is identical with Michal. And why was she named Eglah? Because he liked her with the liking of a cow for her new-born calf. And so also it reads in Judges, xiv. 18: "And he said unto them, If he had not ploughed with my heifer," etc. (from which we see that he names the wife heifer or calf).† But had, then, Michal children? Is it not written [II Sam. vi. 23]: "And Michal the daughter of Saul had no child," etc.? Said R. Hisda: She had no children after that time (mentioned in the Scripture), but previous to this she had children. But is it not written [ibid. v. 13]: "And David took yet more concubines and wives out of Jerusalem." (Hence it is to be supposed that he married more than eighteen.) Nay, he married more, to fulfil the number of eighteen. What are wives, and what are concubines? Said R. Jehudah: Wives are married by betrothal and marriage contract; concubines are without both of them.

R. Jehudah in the name of Rabh says: Four hundred children were born to David by the handsome women whom he took captive (*i.e.*, those mentioned in Deut. xxi. 11). All of them had never cut their hair. They were placed in golden *carra*. And in time of war they were placed with the chief officers of the military, and they were the mighty soldiers in David's army. The same said again in the name of the same authority: Tamar was a daughter of one of the above-mentioned handsome women. As it reads [II Sam. xiii. 13]: "But now, O speak, I pray thee, unto the king; for he will not withhold me from thee." And if she were really his daughter, how could she say that the king would allow a sister to marry her brother? Infer from this that she was one of the children borne by one of the above-mentioned handsome women. It reads [ibid. 3-10]: "But Amnon had a

* The term in Hebrew is "Khohino ve Khohino"—literally, "like this and like this." Hence the analogy in text.

† Eglah is, literally, "a calf."

friend . . . and Yonadab was a very shrewd man." Said R. Jehudah in the name of Rabh: He was shrewd to advise evil. It reads [ibid. 19]: "And Tamar put ashes on her head, and the garment of divers colors which was on her she rent." There is a Boraitha in the name of R. Jehoshua b. Karha: From that which happened to Tamar, a great safeguard was decreed by the sages, as it was said: If it so happened to daughters of kings, so much the more could it happen to daughters of commoners; and if to the chaste, so much the more to the lewd. And therefore said R. Jehudah in the name of Rabh: At that time a decree was made that one must not stay with a married woman alone, nor with a single one. Is that so? Is this not prohibited biblically? As R. Johanan in the name of R. Simeon b. Johozadek said: Where do we find a hint in the Scriptures that one must not stay alone with a married woman? [Deut. xiii. 7]: "If thy brother, the son of thy mother . . . should entice thee." Does, then, only a brother from the mother's side entice, and not a brother from the father's side? It is but to say that only a son may stay alone with his mother, but it is not allowed for anyone besides to stay alone with a married woman. (Hence it is biblical?) Say that at that time it was decreed that one must not stay alone even with a single woman.

It is written [I Kings, i. 5]: "And Adoniyah the son of Chaggith exalted himself, saying, I shall be king." Said R. Jehudah in the name of Rabh: Infer from this that he wanted to place the crown on his head and could not. (Rashi explains this that there was a band of gold in the crown which fitted the descendants of David who had an indentation in their heads which Adoniyah had not.) It is written further: "And he procured himself a chariot and horsemen, and fifty men who ran before him." What is there exceptional in this for a prince? Said R. Jehudah in the name of Rabh: The milt of all of them was taken out (so that it should be easy for them to run), and also the flesh of the soles of their feet was cut off.

MISHNA V.: He (the king) must not acquire many horses—only sufficient for his chariots; and also he must not acquire more gold and silver than to pay the military. He must also write the Holy Scrolls for himself; when he goes to war he must bear them with him; when he enters the city they must be with him, and the same when he sits judging the people; and when he takes his meals they must be placed opposite him. As it is

written [Deut. xvii. 19]: "And it shall be with him, and he shall read therein all the days of his life."

GEMARA: The rabbis taught: He shall not acquire many horses, and lest one say even those which are needed for his chariots, therefore it is written "for himself," from which it is to be inferred that for the chariots he may; but if so, what, then, is meant by "he shall not acquire many horses"? It means horses which should remain idle. And whence do we deduce that even one horse which is idle is under the negative commandment, "He shall not acquire many horses"? For it is written there [ibid., ibid. 16], "in order to acquire many horses." Is it not said above of even one horse, and it is idle, that he transgresses the commandment, "He shall not acquire many horses"? Why is it written "in order to acquire," etc.? That he should be responsible for the transgressing of the above commandment for each horse which is idle. But how would it be if in the Scripture were not mentioned "for himself"—he would not be allowed even for the chariots? Is this possible? Then, it could be explained, he should have the exact number needed, but not more.

"*Much gold and silver*," etc. The rabbis taught: It is written: "He shall not acquire much gold and silver"—lest one say not even sufficient for paying the military, therefore it is written "for himself." But how would it be if this were not written—he would not be allowed, even for paying the military. Is that possible? Then, it could be explained that he should have the exact amount, but not more. Now, as we see that from the words "for himself" things are inferred, what do you infer from the same words which are written concerning wives? This excludes commoners, who are allowed to take as many as they please.

R. Jehudah propounded a contradiction in the following verses [I Kings, v. 6]: "And Solomon had forty thousand stalls for the horses for his chariots, and twelve thousand horsemen"; and [II Chron. ix. 25]: "And Solomon had four thousand stalls for horses and chariots, and twelve thousand whom he quartered in the cities for chariots, and near the king at Jerusalem." How is it to be understood? If there were forty thousand stables, every one of them contained four thousand stalls; and if it were only four thousand stables, then each contained forty thousand stalls. R. Itz'hak propounded the following contradiction: It reads [I Kings, x. 21]: "None were of silver; it was not *in the*

least valued in the days of Solomon"; and [ibid. 27]: "And the king rendered the silver in Jerusalem *like stones*." (Hence it had some value?) This presents no difficulty. The first verse speaks of before Solomon married the daughter of Pharaoh, and the second after this.

R. Itz'hak said: (Here is repeated from Tract Sabbath, 1st ed., page 109, in the name of R. Jehudah. See paragraph there—same rabbi.)

The same said again: Why does not the Scripture explain the reason of its law? Because in two verses it was so done, and the greatest men of a generation stumbled because of them. They are, "he shall not acquire many wives," for the purpose that they should not "turn his heart away." And King Solomon said: I shall take many wives, and my heart shall not be turned away. However [I Kings, xi. 4]: "And it came to pass . . . that his wives turned away his heart." And the same was the case with the horses, of which he said: I shall acquire many, and shall not return to Egypt. However [ibid. x. 29]: "And a chariot-team came up and went out of Egypt," etc.

"*Write the Holy Scrolls*." There is a Boraitha: He must not suffice himself with those left by his parents. Rabba said: It is a meritorious act for one to write the Holy Scrolls at his own expense, though they were left to him by his parents. As it is written [Deut. xxxi. 19]: "Now therefore write this song." Abayi objected from our Mishna: "He shall write the Holy Scrolls for himself," and must not suffice himself with those of his parents. And this speaks only of a king, but not of a commoner. Our Mishna treats of two Holy Scrolls, as it is explained in the following Boraitha: It is written [ibid. xvii. 18]: "He shall write for himself a copy of this law," which means that he must write for himself two Holy Scrolls, one which he must bear with him wherever he goes, and one which shall remain in his treasury. The one he has to bear with him he shall write in the form of an amulet, and place it on his arm. However, he must not enter with it a bath or toilet house. As it is written [ibid., ibid. 19]: "And it shall be with him and he shall read," which means it shall be with him in those places where it is allowed to read it, but not in those where it is not.

Mar Zutra, according to others Mar Uqba, said: "Originally the Torah was given to Israel in Hebrew characters and in the Hebrew language; the second time it was given to Israel in Ezra's time, but in Assyrian characters and in the Aramaic

language; finally the Assyrian characters and the Hebrew language were selected for Israel, and the Hebrew characters and the Aramaic language were left to the Hediots (Idiots). Who are meant by Idiots? Said R. Hisda: The Samaritans. What is meant by Hebrew characters? Said R. Hisda: The Libnuah characters.*

There is a Boraitha: R. Jose said: Ezra was worthy that the Torah should be given through him, if Moses had not preceded him. Concerning Moses it reads [Ex. xix. 3]: "And Moses went up unto God"; and concerning Ezra it reads [Ezra, vii. 6]: "This Ezra went up." The term "went up" concerning Moses means to receive the Torah, the same being meant by the same expression concerning Ezra. Farther on it is written [Deut. iv. 14]: "And me the Lord commanded at that time to teach you statutes and ordinances." And it is also written [Ezra, vii. 10]: "For Ezra had directed his heart to inquire into the law of the Lord and to do it, and to teach in Israel statutes and ordinances." And although the Torah was not given through him, the characters of it were changed through him. As it is written [ibid. iv. 7]: "And the writing of the letter was written in Aramaic, and interpreted in Aramaic." And it is also written [Dan. v. 8]: "They were not able to read the writing, nor to make its interpretation." (Hence we see that the new characters the Aramaic people could not read.) And why are they named Assyrian? Because they were brought from the country of Assyria.

There is another Boraitha: Rabbi said: In the very beginning the Torah was given to Israel in the Assyrian characters, but after they had sinned it was turned over to them as a dasher. However, after they repented, it was returned to them. As it is written [Zech. ix. 12]: "Return you to the stronghold, ye hopeful prisoners: even to-day do I declare that I will recompense twofold unto thee." And why is it named Assyrian? Because the characters are praised above all other characters. ("Ashur" in Hebrew means "praise.") R. Simeon b. Elazar, however, said in the name of R. Eliezer b. Parta, quoting R. Elazar the Modai, that the characters were not changed at all. As it is written [Ex. xxvii. 10].† And it is also written [Book

* For the explanation of this passage see our "Pentateuch: Its Languages and its Characters" (pp. 14, 15). See also there who Utra or Uqba was.

† We have not inserted the verse, as the translation of it does not correspond at all.

of Esther, viii. 9]: "And to the Jews according to their writing, and according to their language." From which it is to be inferred, that as their language was not changed neither was their writing. But if so, what means the term Mishna † in the verse in Deuteronomy cited above: "He shall write a copy of this law"—the two copies of the Holy Scrolls which a king has to write, as said above: One for the treasury and one which he must bear attached to his arm. As it is written [Ps. xvi. 8]: "I have always set the Lord before me, that, being at my right hand, I might not be moved." But he who maintains that the writing was not changed at all, what does he infer from the verse just cited? That which was said by R. Hana b. Bizna: He who praises should always think that the Shekinah is opposite him, as the cited verse reads.

MISHNA VI.: One must not ride on his, the king's horse, and also must not seat himself on his chair, and must not make use of his sceptre. And none must be present when he cuts his hair, and not when he is naked, and not when he is in the bath-house. As it is written: "Thou shalt set a king over thee," which means that his fear shall be always upon thee.

GEMARA: R. Jacob in the name of R. Johanan said: Abishag was allowed to Solomon but not to Adoniyah, because Solomon was a king; and to a king it is allowed to make use of the sceptre of his predecessor, but not to Adoniyah, who was a commoner. How is to be understood that which is written in I Kings, 4: "And she became an attendant on the king"; and to her request that the king should marry her he answered: You are prohibited to me (as I have already eighteen wives). Said R. Shoman b. Aba: Come and see how hard is divorce in the eyes of the sages: So they permitted Abishag to be with David and did not allow him to divorce one of his wives in order to marry her. Said R. Eliezer: He who divorces his first wife, even the altar sheds tears on account of him. As it is written [Mal. ii. 13]: "And this do ye secondly, covering the altar of the Lord with tears, with weeping and with loud complaint, so that he turneth not any more his regard to the offering, nor receiveth it with favor at your hand." And immediately after it reads: "Yet ye say, Wherefore? Because the Lord hath been witness between thee and the wife of thy youth, against whom thou hast indeed dealt treacherously: yet is she thy companion, and the wife of thy covenant."

* The term "Shana" means to "repeat," and also "change."

R. Johanan, according to others R. Elazar, said: Frequently, one's wife dies when her husband owes money and has not to pay. As it is written [Prov. xxii. 27]: "If thou have nothing to pay, why should he take away thy bed from under thee?" The same said again: To him whose first wife dies, it is as if the Temple had been destroyed in his days. As it is written [Ezek. xxiv. 16 and 18]: "I will take away from thee the desire of thy eyes," etc. "And when I had spoken unto the people in the morning, my wife died at evening"; and [ibid. 21]: "I will profane my sanctuary, the pride of your strength, the desire of your eyes." And R. Alexander said: To him whose wife dies, the whole world is dark for him. As it is written [Job, xviii. 6]: "The light becometh dark in his tent, and his lamp will be quenched above him." And R. Jose b. Hanina adds: Also his steps become shortened, as immediately it reads: "His powerful steps will be narrowed." And R. Abuhu adds: Also his advice is no more of use; as the end of the cited verse reads: "and his own counsel will cast him down."

Rabba b. Bahana said in the name of R. Johanan: It is hard for heaven to appoint marriages as it was to divide the sea; as in Ps. lxviii. 7: "God places those who are solitary in the midst of their families: he bringeth out those who are bound unto happiness."*

R. Samuel b. Na'hman said: For everything there may be an exchange, but for the wife of one's youth. As it is written [Is. liv. 6]: "And as a wife of one's youth that was rejected." R. Jehudah taught to his son R. Itz'hak: One does not find pleasure only in his first wife, as it is written [Prov. v. 18]: "Thy fountain will be blessed; and rejoice with the wife of thy youth." And to the question of his son, Whom do you mean? he answered: *E.g.*, your mother. Is that so? We are aware that the same read before R. Itz'hak his son [Eccl. vii. 26]: "And I find as more bitter than death the woman whose heart is snares and nets," etc. And to the question of his son, Whom do you mean? he answered: *E.g.*, your mother. True, she was hard to him at the start, but finally she overruled herself and did all he pleased. R. Samuel b. Umayya said in the name of Rabh: A wife is similar to a piece of metal, and does not make any covenant but with him who makes her a vessel. As it is written

* The Talmud takes the last cited words for the exodus from Egypt, and explains: "Do not read the Hebrew term so, but otherwise," which it is impossible to give in the English version.

[Is. liv. 5]: "For thy husband is thy master," etc. There is a Boraitha: One dies but to his wife, and the wife dies but to her husband. The first is deduced from [Ruth, i. 3]: "Thereupon died Elimelech Naomi's husband"; and the second from [Gen. xlviii. 7]: "And as for me, when I came from Padan, Rachel died by me."

"*Cuts his hair.*" The rabbis taught: The king must cut his hair every day. As it is written [Is. xxxiii. 17]: "The king in his beauty shall thy eyes behold." A high-priest every eve of Sabbath, and the commoner priest every thirty days. Why every eve of Sabbath? Said R. Samuel b. Na'hman in the name of R. Johanan: Because the watching priests are relieved every eve of Sabbath. And why for a commoner every thirty days? Because it reads [Ezek. xliv. 20]: "And their heads shall they not shave close, nor suffer their hair to grow long: they shall only crop (the hair of) their heads." And there is an analogy of expression from a Nazarite [Num. vi. 5]. As concerning a Nazarite it is thirty days, the same is the case here. And whence do we know that for a Nazarite it is thirty days? Said R. Mathna: It reads: Holy shall he be. Because the generation of *Yihiye* counts thirty (a Yod counts ten, a He, five, and in the word *yihye* there are two Yods and two Hes). Said R. Papa to Abayi: Why not explain the above-cited verse as that they shall not be allowed to let their hair grow at all? And he answered: If it read: "They shall not let their hair grow," your explanation would be correct; but as it reads "to grow long," it must be explained as the rabbis enact: They shall let it grow thirty days. (Said R. Papa again:) If so, in our time, when there is no temple, it is to equalize the cutting of the hair to the partaking of wine, which was prohibited to the priests only when they had to enter the Temple (as after the case of hair-cutting immediately follows the prohibition of the partaking of wine). Is that so? Have we not learned in a Boraitha: Rabbi said: I say that it is prohibited for the priest to drink wine at any time whatever. But what can I do, in that the destruction of the Temple was their remedy: as they were forbidden to drink wine in order that they should not enter the Temple while drunk, so, now that the Temple no longer exists, they do not care? Said Abayi: According to whom do the priests drink wine in our time? In accordance with Rabbi's statement.

Rabbi was questioned: How was the hair-cutting of the high-

priest, which it is told was done very artistically? And he answered: Go and see the hair-cutting of Ben Aleshe. And there is a Boraitha: Rabbi said: Not in vain has B. Aleshe expended his money to learn the art of cutting hair: it was only to show how the high-priests used to cut their hair.

CHAPTER III.

RULES AND REGULATIONS CONCERNING THE QUALIFICATION OR DISQUALIFICATION OF JUDGES AND WITNESSES WHO MAY DECIDE UPON STRICT LAW AND WHO IN ARBITRATION. WHEN A REJECTION AGAINST JUDGES AND WITNESSES MAY OR MAY NOT TAKE PLACE. OF RELATIVES THAT ARE DISQUALIFIED AND THOSE THAT ARE NOT. HOW THE WITNESSES SHOULD BE EXAMINED IN CIVIL CASES. UNTIL WHAT TIME NEW EVIDENCE MAY OR MAY NOT AFFECT A DECISION RENDERED.

MISHNA *I.*: Civil cases by three ; one party may select one and so the other, and both of them select one more ; so is the decree of R. Meir. The sages, however, maintain that the two judges may select the third one. One party may reject the judge of his opponent, according to R. Meir. The sages, however, say : This holds good only when the party brings evidence that the judges selected by his opponent are relatives, or they are unqualified for any other reason. If, however, they were qualified, or they were recognized as judges from a higher court, no rejection is to be considered. The same is the case with the witnesses of each party, according to R. Meir, so that the rejection of each party against the witnesses of its opponent may be taken into consideration. The sages, however, say : Such holds good only in the cases said above concerning the judges, but not otherwise.

GEMARA : How is to be understood the expression of the Mishna : One party selects one, etc.? Does it mean one party may select one court of three judges, and likewise the other; and then both the third court, which would be altogether nine judges? Are, then, three not sufficient? It means, if one party selects one judge its opponent may also do so, and then both may select the third one. And what is the reason of such a selection? It was said in Palestine in the name of R. Zera : Because each party selects its own judge, and both agree in the selection of the third one, the decision will be a just one.

"*The sages, however, say,*" etc. Shall we assume that the point of their difference is what was said by R. Jehudah in the

name of Rabh : Witnesses may not sign a document unless they are aware who will be the others ; and so R. Meir does not hold this theory and the rabbis do ? Nay ! All hold this theory, and the point of their difference is thus : According to R. Meir, the consent of the parties is also needed ; but the rabbis hold that the consent of the judges, but not of the parties, is needed.

The text reads : R. Jehudah said in the name of Rabh : Witnesses, etc. There is also a Boraitha : Pure-minded people of Jerusalem used not to sign a document unless they were aware who was the other who was to sign it, and also would not sit down to judge unless they were aware who was to be their colleague, and would also not go to a banquet unless they were aware who were invited to it.

"Each party may reject," etc. Has, then, one the right to reject judges ? Said R. Johanan : It speaks of the little courts in Syria, where there were Gentile judges who were not recognized by the higher court. But if they were, no objection could be taken into consideration. But does not the latter part state : "and the sages, however, say . . . recognized by the court" ? From which it is to be understood that their opponent R. Meir speaks even of them who were recognized ? They mean to say : If not disqualified (on account of kinship or bad conduct) they are to be considered as if they were authorized judges against whom no rejection can take place.

Come and hear : The sages said to R. Mair : One cannot be trusted with any right to protest against a judge who was appointed by the majority ? Read : One has no right to reject a judge who was appointed by the majority. And so we have learned in the following Boraitha : One may reject the selected judge of his opponent until he has selected a judge who was recognized by a majority. So is the decree of R. Mair. But are not witnesses considered as recognized judges, and nevertheless R. Mair said that one party may disqualify the witness of his opponent ? Aye ! But was it not already said by Resh Lakish : How is it possible that a holy mouth like R. Mair's should say such a thing ? Therefore it must be supposed that R. Meir did not say "witnesses," but "his witness" (*i.e.*, a single witness). Let us see ! What does he mean by one witness ? If concerning a civil case, the law itself disqualifies him ; and if concerning an oath, he is trusted by the law as if there were two witnesses. It speaks of a civil case, and the case was that previously the parties accepted him, saying that his testimony would be considered as

if it were testified by two. But, after all, what news did he come to teach us—that he may retract? This we have learned already in the succeeding Mishna, which states that, according to R. Mair, he may retract, to which R. Dimi b. R. Na'hman b. R. Joseph said that the Mishna speaks of when he has accepted his father as a third judge (and because biblically a father is not fit to judge in a case of his son), he may retract even if he has previously accepted him. Why not say the same in our case, because one is not fit for a civil case he may retract although he had previously accepted him? Both cases were needed, as if the case about his father only were stated one might say that because the same is fit to be a judge in other cases, therefore the rabbis maintain that no retraction is to be considered; but in the case of a commoner, who is not fit to be a judge in any case whatsoever, the retraction would hold good, even in accordance with the rabbis. And if the case of a commoner were stated, one might say that only in that case R. Meir permitted to retract. But in the other case he agrees with the rabbis, therefore both are stated.

But how would the expression of the Mishna be understood? It speaks about the judge in the singular (one may reject the *judge*, etc.), and concerning witnesses, it speaks in the plural (one may reject the *witnesses*, etc.). Hence we see that the Mishna is particular in its expression. How, then, can you say that R. Mair maintains a single witness? Said R. Elazar: It means that he—one of the parties, and also another one who does not belong to this case—come to reject this witness, as then they are two against one, and therefore the rejection holds good. But, after all, why should one of the parties have a right to reject? Is he not interested in this case, and there is a rule that the testimony of such is not to be taken into consideration. Said R. Aha b. R. Ika: The case was that he laid before the court the reason of his protest, which can be examined.

Let us see what was the reason. If, *e.g.*, robbery, it must not be listened to, as he is interested in this case. Therefore we must say that the reason was the incompetence of his family—*e.g.*, that he or his father was a bondsman, who was not as yet liberated. According to R. Mair, he may be listened to, as his testimony is against the entire family. The rabbis, however, maintain that even then he must not be listened to because of his interest in this case, and the court has not to consider his testimony at all.

When R. Dimi came from Palestine, he said in the name of

R. Johanan that the point of their difference is two parties of witnesses, *i.e., e.g.*, the borrower said: "I have two parties of witnesses who will testify to my right," and brought one party of them against which the lender protests. According to R. Mair, the protest holds good because the opponent himself confessed that he had another party. Hence he may bring the other party, against whom no protest would be considered (and his reason is that a proof is needed to each claim, even if it is not so important that it could injure the case); and according to the rabbis, no protest must be listened to even in such a case, as they do not desire a proof to each claim. But when there was only one party of witnesses, all agree that no rejection is considered.

Said R. Ami and R. Assi to R. Johanan: How is it if the other party of witnesses were found to be his relatives, or incompetent to be witnesses for any other reason, should the testimony of the first party be considered, or because of the incompetence of the other party, the first party also loses credit? Said R. Ashi: The testimony of the first party was already accepted, and therefore there is no basis to ignore their testimony because of the incompetence of the other party. Shall we assume that R. Mair and the rabbis differ the same as Rabbi and R. Simeon b. Gamaliel differ concerning one who claims that he has bought a document and "hazakah" (Last Gate, p. 377), and in the discussion we come to the conclusion that the point of their difference is, if one must prove his words or not? Nay! According to R. Simeon b. Gamaliel, they do not differ at all, and the point of their difference is according to Rabbi's statement there. R. Mair holds with Rabbi. The rabbis, however, maintain that Rabbi does so only in case of the claim of hazakah, which is based upon the document; but in our case, where the testimony of the witnesses is not based upon that of others, even Rabbi admits that no proof is needed.

When Rabbin came from Palestine, he said in the name of R. Johanan that the first part of our Mishna treats of incompetent witnesses but competent judges, and because they reject the witnesses the judges are also rejected; and the latter part speaks of the reverse—that the judges were incompetent and not the witnesses, and the witnesses are rejected because of the judges. Rabha opposed: It would be correct to say that because of the incompetence of the witnesses one may reject the judges, as the case can be brought before other judges. But how can the witnesses be rejected because of the judges? Then the

party would remain without witnesses at all. It speaks of when there was another party of witnesses. But how would it be if there were no other witnesses? Then no rejection is to be considered. Thus Rabbin said the same that R. Dimi said? The theory of "because" is the point of their difference. As to R. Dimi, the theory of because is not to be used at all, while according to Rabbin it is.

The text says: Resh Lakish said: "The holy mouth of R. Mair should say such a thing," etc. Is that so? Did not Ula say that he who saw Resh Lakish in the college saw one uprooting hills and crushing them? (Hence how could he say such a thing, which was objected to?)

Said Rabhina: Was it not said of R. Mair that he who saw him in the college had seen one uprooting *mountains* and crushing them (and nevertheless he was criticised by Resh Lakish). Therefore he (Ula) meant thus: Come and see how the sages respected each other (though Resh Lakish was such a genius, he nevertheless, in speaking of R. Mair, named him holy mouth).*

MISHNA II.: If one says, "I accept as a judge in this case your father or my father," or, "I accept certain three pasturers to judge our case," according to R. Mair he may retract thereafter, and according to the sages he must not. If one owes a note to a party, and the latter said to him, "Swear to me by your life, and I will be satisfied," according to R. Mair he may retract, and according to the sages he may not.

GEMARA: Said R. Dimi b. R. Na'hman b. R. Joseph: It speaks of when he has accepted his father as a third judge. Even then he may retract, according to R. Mair. Said R. Jehudah in the name of Samuel: The Tanaim of the Mishna differ in case the creditor said to the debtor: Your or my father may judge this case, and if they should acquit you, I will renounce my claim. But if the debtor said to the creditor: I trust your father, and if they shall hold me liable, I will give you the money—all agree that he may retract. R. Johanan, however, said that they differ in the latter case.

The schoolmen propounded a question: Does R. Johanan mean to say that they differ only in the latter case, but in the former, "I will renounce my claim," all agree that no retraction is to be considered; or, does he mean to say that they differ in both cases? Come and hear what Rabha said: They differ only

* Here is a repetition from Tract Sabbath, pp. 89-92, which is already translated.

if he said, "I will satisfy your claim," but in case of "I will renounce my claim," all agree that he cannot retract. Now let us see! If the question of the schoolmen is to be resolved according to Rabha's decision just mentioned, it is correct, as he is in accordance with R. Johanan; but if the question should be resolved that they differ in case of renouncing, etc., according to whom would be Rabha's opinion? Rabha may differ with both, and declare his own opinion. R. Aha b. Tahlipa objected to Rabha from the latter part of our Mishna's statement, that if he told him to swear by his life, according to R. Mair he may retract, etc. Does not the Mishna speak of one who is to be acquitted with an oath, which is equal to "I renounce my claim"? Nay; it speaks of them who ought to swear and collect, which is equal to "I will give you." But this was stated already in the first part? The Mishna teaches both cases, one in which he is dependent upon himself and one in which he is dependent on the mind of others. And both are needed; as, if there were stated the case when he is dependent upon others—*e.g.*, "I trust your father," etc.—one might say that only in such a case R. Mair permits to retract, as he has not as yet made up his mind to pay, thinking that probably he will be acquitted; but when he depends upon himself—*e.g.*, "Swear by your life," etc.—R. Mair also admits that he cannot retract. And if this case only were stated, one might say that in such a case only the rabbis hold that he cannot retract; but in case he depends upon others, they agree with R. Mair. Therefore both are needed.

Resh Lakish said: The Tana'im of the Mishna differ in case the decision was not yet rendered; but after it was, all agree that no retraction can take place. R. Johanan, however, maintains that they differ in the latter case.

The schoolmen propounded a question: Does R. Johanan mean to state that they differ in a case where the decision was rendered, but in case the decision was not as yet rendered all agree that a retraction can take place, or does he mean to say that they differ in both cases? Come and hear what Rabha said: If one has accepted a relative or one who is legally disqualified to be a judge, if before the decision, his retraction holds good; but if after, no retraction is to be considered. Now let us see! If the saying of R. Johanan is to be explained that they differ when the retraction took place after the decision—but if before, all agree that it holds good—Rabbi's decision is correct, as it is in accordance with R. Johanan's explanation and in accordance

with the rabbis. But if it should be explained that they differ also in case it was before the decision, according to whom would be Rabha's decision just mentioned? Infer from this that they differ in the case after the decision; but before, all agree that a retraction holds good.

R. Na'hman b. R. Hisda sent a message to R. Na'hman b. Jacob: Let the master teach us in which case the Tanaim of our Mishna differ—after or before the decision, and with whom the Halakha prevails. And the answer was: After the decision, and the Halakha prevails with the sages. R. Ashi, however, said that the question was: Do they differ in case he said, "I will renounce my claim," or in case "I will satisfy your claim"? And the answer was: They differ in the latter case: the Halakha prevails with the sages. So was it taught in the College of Sura. In the College of Pumbeditha, however, it was taught: R. Hanina b. Shlamiha said it was a message from the college to Samuel: Let the master teach us how is the law if the retraction took place before the decision, but they have made the ceremony of a sudarium? And the answer was that nothing could be changed in such a case.

MISHNA III.: The following are disqualified to be witnesses: Gamblers (habitual dice-players) and usurers, and those who play with flying doves; and the merchants who do business with the growth of the Sabbatic year. Said R. Simeon: In the beginning they were named the gatherers of Sabbatic fruit; *i.e.*, even those who had gathered the fruit, not for business, were disqualified. However, since the demand of the government to pay duties increased, the gatherers of the Sabbatic fruit were absolved from the disqualification, and only those who did business with same were disqualified. Said R. Jehudah: Then the merchants and all the other persons named above were disqualified only when they had no other business or trade than this; but if they had, they were qualified.

GEMARA: What crime is there in dice-playing? Said Rami b. Hama: Because it is only an *asmachtha*, which does not give title. R. Shesheth, however, maintains that such is not to be considered an *asmachtha*; but they are disqualified because they do not occupy themselves with the welfare of the world—and the difference between them is if they had another business besides. As we have learned in our Mishna, according to R. Jehudah, if they have some business besides, they are qualified. Hence we see that the reason of the disqualification is because they do not occupy

themselves with the welfare of the world—and this contradicts Rami b. Hama's above statement? And lest one say that R. Jehudah's opinion is only of an individual, as the rabbis differ with him, this is not so, as Jehoshua b. Levi said that in every place where R. Jehudah says "this is only," or if he says "provided," he comes only to explain the meaning of the sages, but not to differ with them; and R. Johanan maintains that when he says "this is only," he comes to explain, but when he says "provided," he means to differ. And as in our Mishna he expresses himself "this is only," all agree that he is only explaining. Hence Rami is contradicted? Do you contradict one man with another man? Each of them may have his opinion. Rami holds that they do differ, and Shesheth that they do not. Have we not learned in the following Boraitha that it does not matter if he has another business besides; he is nevertheless disqualified? The Boraitha is in accordance with R. Jehudah in the name of Tarphon of the following Boraitha: R. Jehudah said in the name of R. Tarphon, concerning a Nazarite (Tract Nazir, 34a), that wherever there is any doubt he is not deemed a Nazarite. And the same is in our case, as the gambler is not certain that he will win or lose, it cannot be considered a real business, but robbery, and therefore he is disqualified even when he has another business.

"*Usurers.*" Said Rabha: One who borrows to pay usury is also disqualified. But does not our Mishna state "usurers," which means the lenders, and not the borrowers? It means to say a loan which is usurious. There were two witnesses who testified against Bar Benetus. One said: In my presence he has given money at usury; and the other said: He has loaned to me at usury. And Rabha disqualified b. Benetus from being a witness. But how could Rabha take into consideration the testimony of him who said: I have borrowed from him at usury? Did not Rabha say that the borrower also is disqualified, because, as soon as he has borrowed at usury, he is wicked; and the Torah says: Thou shalt not bring a sinner as a witness. Rabha is in accordance with his theory elsewhere, that one is not trusted to make himself wicked. (Hence his testimony that he himself has borrowed at usury is not taken into consideration, but that part, that Benetus has loaned to him at usury, was.) There was a slaughterer who sold illegal meat in his business, and R. Na'hman disqualified him. And he let his hair and nails grow as a sign of repentance; and Na'hman was about to remove the disqualifica-

tion. Said Rabha to him: Perhaps he is deceiving you. But what remedy can he have? As R. Aidi b. Abin said elsewhere: For him who is suspected of selling illegal meat there is no remedy, unless he goes to a place where he is not known and returns a valuable lost thing, or he recognizes the illegality of meat in his business, even if it is of great value.

"*Flying doves*," etc. What does this mean? In this college it was explained: If your dove should fly farther than mine (such and such a distance), you shall take an amount of money. And Hama b. Oushia said that it means an *ἀρπάζω*, one who uses his doves to entice to his cot doves belonging to other cots—and this is robbery. But to him who maintains, "If your dove shall fly farther," etc., is this not gambling? (Why, then, is it repeated?) The Mishna teaches both cases—depending upon himself and depending upon his dove; as if depending upon himself only were stated, one might say that, because he was sure he would win, he offered such an amount, and he has not made up his mind to pay the sum willingly in case of a loss, and therefore it is considered an *asmachtha*, which does not give title. But in the other case, where he is dependent upon his dove, in which he is not sure, and has nevertheless offered a sum of money, it is to be supposed that he made up his mind to pay willingly in any event, and therefore it is not considered an *asmachtha*. And if this latter case were stated, one might say that he did so probably because the winning of the race depends on the clapping, and he knew better how to clap (at the pigeon race); but when he depends upon himself, it is different. Therefore both are stated.

An objection was raised from the following: Gamblers are counted those who play with dice; and not only dice, but even with the shells of nuts or pomegranates. And when is their repentance to be considered? When they break the dice and renounce this play entirely, so that they do not play even for nothing. And usurers are counted both the lender and the borrower, and their repentance is to be considered only then when they destroy their documents and renounce this business entirely, so that they do not take usury even from a heathen, from whom it is biblically allowed. And among those who play with doves, those who train doves to fly farther are counted; and not only doves, but even other animals; and their renunciation is considered only when they destroy their snares and renounce the business entirely, so that they do not catch birds even in

deserts. Among those who handle Sabbatic fruits are counted those who buy or sell, and their renunciation is considered only when they cease to do so in the next Sabbatic year. Said R. Na'hamia: It is not sufficient that they cease to do so, but they must return the money which they derived from the sale of the fruit. How if one say: I, so and so, have obtained two hundred zuz from the Sabbatic fruit, and I present them for charity? We see, then, that among those who play with doves, those who do so with other animals are also counted; and this can be correct only according to him who explains our Mishna: "If your dove should fly farther than mine," as the same can be done with other animals. But to him who says an *ἀρῶα*, could this be done with other animals? Aye, this can be done with a wild ox; and it is in accordance with him who says that a wild ox may be counted among domesticated animals.

There is a Boraitha: There was added to the disqualified witnesses robbers and forciers (*i.e.*, those who take things by force, although they pay the value for them). But is not a robber disqualified to be a witness biblically? It means even those who do not return a found thing which was lost by a deaf-mute or by minors (which according to the strict law is not to be returned, but it was enacted that it should be returned for the sake of peace—that there should be no quarrel with their relatives), and as this does not occur frequently, they were not counted among the disqualified. Thereafter, however, they were added, as, after all, they take possession of money which does not belong to them. And the same is the case with the forciers, who were not placed among the disqualified, because this does not happen frequently. Thereafter, however, as the rabbis saw that it became a habit, they added them also.

There is another Boraitha: There was secondly added to that category, pasturers, collectors of duty, and contractors of the government. Pasturers were not put in this category previously, because, when it was seen that they led their animals into strange pastures, it was only occasionally; but later, when it was seen that they did it intentionally, they were also added. And the same is the case with the collectors of duty and the contractors, as at first it was thought that they took only what belonged to them; but after investigation, when it was found that they took much more than they ought, they were added. Said Rabha: The pasturer in question—it matters not if he is a pasturer of small cattle or of large ones. Did Rabha indeed say so? Did

he not say that a pasturer of small cattle is disqualified only in Palestine, but not outside of it, and pasturers of large cattle even in Palestine *are* qualified? This was taught of them who raise the cattle for themselves; and if they are small cattle, they are disqualified because it was forbidden to keep small cattle in Palestine, as explained elsewhere. And so it seems to be as the previous Mishna expresses, "three pasturers," and it is to be assumed for witnesses. Nay; it means for judges, and this is to be understood from the number three. As if for witnesses, for what purpose are three needed? But if for judges, why does the Mishna express itself "pasturers"—let it state three laymen who do not know the law? It means to say that even pasturers who spend their time in uninhabited places are nevertheless qualified to judge of the appointment of the parties.

R. Jehudah said: A pasturer of whom it is not heard that he leads his cattle into strange pasture is nevertheless disqualified, but a duty collector of whom it is not said that he takes more than he ought, is qualified.

The father of R. Zera was a collector for thirteen years, and when the governor would come to that city he used to say to the scholars: Go and hide yourselves in the houses, so that the governor shall not see so many people, or he will demand from the city more taxes. And also to the other people, when he saw them crowded in the streets, he used to say: The governor is coming, and he will kill the father in presence of the son, and the son in presence of his father. And they also used to hide themselves. And when the governor came, he used to say to him: You see that there are very few people in this city. From whom, then, shall we collect so much duty? When he departed, he said: There are thirteen maes which are tied in the sheet of my bed; take and return them to so and so, as I took it from him for duty and did not use it.

"*They were named gatherers of Sabbatic fruit,*" etc. What does this mean? Said R. Jehudah thus: Formerly it was said the gatherers of the fruit were qualified, but the merchants were not. But when it was seen that they used to pay the poor that they should gather the fruit for them and bring it to their houses, it was enacted that the gatherers as well as the merchants were disqualified. This explanation, however, was a difficulty to the scholars of the city of Rehaba as to the expression of our Mishna, "since the demand of the government," and according to this explanation it ought to be, "since the increase of buyers,"

and therefore they explain thus : Since the government has increased their duties [as R. Jani announced, "Go and sow in the Sabbatic year, because of the duties"], it was enacted that the gatherers were qualified, but not the merchants.

Hyie b. Zarssuqi and Simeon b. Jehuzdack went to intercalate a year in Essia, and Resh Lakish met them and said : I will go with them to see how they practise. In the meantime he saw a man who was ploughing in the Sabbatic year, and he said to them : Is this man a priest, who is suspected of doing work in the Sabbatic year ? And they answered : Probably he is hired by a Gentile to do so. He saw again a man who was collecting the fluid in a vineyard and putting it back into the bale. And he said again : Is this man a priest, who is suspected, etc. ? And they answered : He who trims vines in the Sabbatic year may say : I need the twigs to make a bale for the press. Rejoined Resh Lakish : The heart knows whether it is done for "ekel" (a legitimate purpose) or out of "ākalkaloth" (perverse-ness). And they rejoined : He is a rebel. When they came to their place, they ascended to the attic and moved the steps that he (Resh Lakish) should not ascend with them. The latter then came to R. Johanan and questioned him : Men who are suspected of transgressing the Sabbatic year, are they fit to establish a leap year ? After deliberating, however, he said : It presents no difficulty to me, as they may be compared with the three pasturers mentioned above (p. 46), and the rabbis recommended them to do so, as so it should be according to their reckoning.

Afterward, however, he said to himself : There is no similarity, as, concerning the three pasturers mentioned thereafter, the rabbis selected the right number needed for intercalation. Here, however, they themselves did it, and they are only a society of wicked men who are not at all qualified to intercalate. Said R. Johanan : I am distressed that you called them wicked. When the above-mentioned rabbis came to R. Johanan, complaining that Resh Lakish called them pasturers of cattle in the presence of R. Johanan and he kept silent, he answered : If he were to call you pasturers of sheep, what could I do to him ?

* Ula said : One's thought for his maintenance injures him in his study of the law (*i.e.*, because of his sorrow it remains not in his mind for a long time, and he forgets it easily). As it is written [Job, v. 12] : "Who frustrateth the plans of the crafty, so that

* The Haggadic passage we have transferred to the last chapter of this tract, which is all Haggadah.

their hands cannot execute their well-devised counsel." Said Rabba, however: If he occupies himself with the Torah for the sake of Heaven, he is not injured. As it is written [Prov. xix. 21]: "There are many thoughts in a man's heart; but the counsel of the Lord alone will stand firm"—which is to be explained: A study which is for the sake of Heaven, no matter in what circumstances one is, it remains forever.*

"*Only then*," etc. Said R. Abuhu in the name of R. Elazar: The Halakha prevails with R. Jehudah. And the same said again in the name of the same authority: All the persons mentioned in the Mishna and in the Boraithas are disqualified only then when their crime was announced by the court. However, concerning a pasturer, R. Aha and Rabhina differ. According to one, even concerning him announcement is needed; and according to the other, no announcement is needed for his disqualification. (Says the Gemara :) It is correct, according to him who holds that no announcement is needed, that which R. Jehudah said above, that a pasturer is disqualified even if we are not aware of any crime; but according to him who holds that even a pasturer must be announced, why, then, Jehudah's decision? Because he holds that the court has to announce of each pasturer, no matter what he is, that he is disqualified. There was a document for a gift which was signed by two robbers, and R. Papa b. Samuel was about to make it valid because they were not announced by the court. Said Rabba to him: When to a robbery which is only rabbinical an announcement is needed, should we say that the same is needed to a biblical robbery?

R. Na'hman said: They who accept charity from idolaters are disqualified to be witnesses, provided they do so publicly, but not if privately; and even publicly, they are disqualified only then when it was possible for them to do same privately and they do not care to disgrace themselves publicly; but if not, one is not disqualified, as he is compelled to get a living. The same said again: He who is suspected of adultery is qualified to be a witness. Said R. Shesheth to him: Master, answer me. Should a man who has forty stripes on his shoulders † be quali-

* Rashi gives also another interpretation to this passage; viz., mental resolution frequently fails, even if it is concerning the study of the Torah—*e.g.*, if one made up his mind to finish such and such a tract in a certain time. And to this came Rabba to say, if it was for the sake of Heaven, it would not fail, etc.

† Rashi explains this, that one who is suspected of such an offence, but cannot be punished with the prescribed punishment because there were no legal witnesses

fied? Said Rabha: R. Na'hman admits that concerning a woman he is disqualified to be a witness. And Rabhina, according to others R. Papa, said: This is said only concerning a divorce, but concerning bringing her into the house of her husband, the suspicion does not matter. R. Na'hman said again: If one has stolen in the month of Nissan at the harvest-time, and has stolen again in the month of Tishri, he is not named a thief so that he should be disqualified, provided he was a gardener and stole a thing of little value, and if it was a thing which could be consumed without any preparation. The gardener of R. Zebid stole a kab of barley, and R. Zebid disqualified him. And also another one stole a bunch of dates, and was also disqualified.

There were undertakers who had buried a corpse on the first day of Pentecost, and R. Papa put them under the ban and disqualified them to be witnesses. However, Huna b. R. Jehoshua qualified them, and to the question of R. Papa: Are they not wicked? he answered: They thought they were doing a meritorious act. But were they not put under the ban for this transgression, and nevertheless did it again? They thought that the putting under the ban was only a kind of atonement imposed by the rabbis for violating the holiday. However, the burial act itself is meritorious, though they will have to be under the ban for a few days for violation of a holiday.

An apostate who eats illegal meat, which is identical with carcasses, because it is cheaper, all agree that he is disqualified. But if he does this not because it is cheaper, but for the purpose of angering his former brothers in faith,* according to Abayi he is disqualified and according to Rabha he is not. The reason of Abayi is because he is wicked, and the Scripture reads plainly: "Thou shalt not bring a sinner as a witness." Rabha's reason, however, is that it speaks of one wicked in money matters only. An objection was raised from the following: "The meaning of the Scripture concerning the testimony of a sinner means one who is wicked in money matters; as, for instance, robbers and perjurers. No matter if the oath was a vain one (*e.g.*, if one has sworn that a stone is a stone), or if the oath was a false one concerning money matters." Hence we see that even a vain swearer

or he was not warned, has nevertheless been punished with stripes, as so it is stated (Tract Kidushin, 81b).

* Our explanation in the case of angering may be new, as we are not in accord with other commentators. However, it seems to us that this is the correct interpretation, as to which we challenge criticism.

is also disqualified? By the expression "vain swearer" is not meant as explained, but that he has sworn in vain concerning money matters—*e.g.*, A owes money to B, which was not necessary at all, as A has never denied it. An objection was raised from the following: "Thou shalt not bring a sinner as a witness," means one wicked in robbery—namely, robbers and usurers. Hence this Boraitha contradicts Abayi's statement. The objection remains.

Shall we assume that the above Amoraim differ in the same respect as the Tanaim of the following: A collusive witness is disqualified in all law cases. So is the decree of R. Mair. R. Jose, however, maintains: Provided he was made collusive in a case of capital punishment; but if in money matters, he is still qualified to be a witness in criminal cases? Now, shall we say that Abayi holds with R. Mair, who maintains that even from a lenient we disqualify to a rigorous one, and Rabha holds with R. Jose, who maintains that only from a rigorous case we disqualify even to a lenient one, but from lenient to rigorous we do not? Nay! In accordance with R. Jose's theory, they do not differ. But the point of their difference is concerning R. Mair's theory, as Abayi holds with him, and Rabha maintains that even R. Mair said so only concerning a collusive witness in money matters, which is both wicked against man and wicked against heaven; but in our case, where the wickedness is in heavenly things only, even R. Mair admits that he is qualified to be a witness in money matters. The Halakha, however, prevails with Abayi. But was he not objected to? The Boraitha which contradicts Abayi is in accordance with R. Jose. But even then, is it not a rule, when R. Mair differs with R. Jose, that the Halakha prevails with the latter? In this case it was different, as the editor of the Mishnayoth taught an anonymous Mishna in accordance with R. Mair's opinion. And where is it? This was explained in the following case: Bar Hama had slain a man and the Exilarch told Aba b. Jacob to investigate the case; and if he really slew the man, they should make the murderer blind. (Since the Temple was destroyed, capital punishments were abolished by Israel, and therefore to make a man blind was to make him dead to the world.) And two witnesses came to testify that he surely killed the man. The defendant, however, brought two witnesses who testified against one of the witnesses. One of them said: In my presence this man stole a kab of barley; and the other said: In my presence he stole the handle of a borer.

And the Exilarch said to him: You wish to disqualify this man to be a witness because of R. Mair's theory, but I know of the rule that the Halakha prevails with R. Jose when he differs with R. Mair; and according to R. Jose, if one was collusive in money matters, he is still qualified in criminal cases. Said R. Papa to him: This is so in other cases; but in this case it is different, as there is an anonymous Mishna in accordance with R. Mair. But which Mishna is it? Shall we assume it to be that which stated that he who is competent to judge criminal cases is competent for civil cases also, which cannot be in accordance with R. Jose, as, according to his theory, there is a witness who was made collusive in civil cases and is still competent in criminal cases? Hence it is in accordance with R. Mair. But perhaps the cited Mishna does not speak about collusive witnesses, but of such as are incompetent to be witnesses because of their family. Therefore we must say that he means our Mishna which states the following are disqualified for witnesses: Players with dice, etc.; and a Boraitha adds: And also slaves. This is the rule in all cases in which women are not allowed to be witnesses—they also are disqualified. And this cannot be in accordance with R. Jose, as he holds that they are qualified to be witnesses in criminal cases, for which women are disqualified. Hence it is in accordance with R. Mair. B. Hama then arose and kissed him, and freed him from paying duties all his life.

MISHNA IV: The following are counted relatives who may not be witnesses: Brothers, brothers of father or mother, brothers-in-law, uncles by marriage from father's or mother's side, a stepfather, a father-in-law, the husband of one's wife's sister, they and their sons and their sons-in-law, and also a stepson himself—but the latter's children are qualified. Said R. Jose: This Mishna was changed by R. Aqiba. The ancient Mishna, however, was thus: One's uncle, one's first-cousin, and all those who are competent to be one's heirs and also all one's relatives at that time; but if they were relatives and thereafter became estranged, they are qualified. R. Jehudah, however, maintains that even if a daughter dies and leaves children, her husband is still considered a relative. An intimate friend, as well as a pronounced enemy, is also disqualified. Who is considered an intimate friend? The groomsman. And who is considered a pronounced enemy? The one who has not spoken to him for three days because of animosity. And the sages answered R. Jehudah: The children of Israel are not suspected of witnessing falsely because of animosity.

GEMARA: Whence is this deduced? From that which the rabbis taught. It is written [Deut. xxiv. 16]: "Fathers shall not be put to death for the children . . . for his own sin," etc. To what end is this written? If only to teach the meaning of it literally, it would not be necessary, as the end of the verse reads, "for his own sin shall every man be put to death." It must therefore be interpreted, fathers should not die by the witnessing of their children, and *vice versa*. From this is deduced fathers by sons, and *vice versa*; and so much the more fathers who are brothers are incompetent to testify for each other. But whence do we know that grandsons (cousins) are also incompetent to testify for each other? It should read, "parents shall not die because of their son." And why "sons" in the plural? To teach that their sons are not competent to testify for each other. But whence do we know that two relatives are not qualified to testify in one case even for a stranger? It should read in the singular, "and a son for his parents." And why in the plural, "and sons"? To teach that two sons are incompetent to testify in one case, even for a stranger. But from this is deduced the relatives from the father's side only. Whence, however, do we know that the same is the case with the relatives from the mother's side? From the repetition of the word "fathers" in the same verse. And as it was not necessary for the relatives on the father's side, apply it to the relatives on the mother's side. But this verse speaks of accusation. Whence do we know that the same is the case concerning advantage? From the repetition of the words, "shall not die," which were not necessary in the case of accusation. Apply it, therefore, to cases of advantage. All this, however, is said concerning criminal cases. But whence do we know that it is the same with civil cases? Hence it reads [Lev. xxiv. 22]: "One manner of judicial law," etc., meaning that all cases must be judged equally.

Rabh said: My father's brother shall not witness in my cases; he, his son, and his son-in-law. And similarly, I, for my part, will not witness in his cases, neither my son nor my son-in-law. But why? Is not one's son a grandnephew, who is a third to a father's brother, and our Mishna teaches that only a cousin is not competent, who is second to the party, but not a second-cousin, who is third to the party? The expression in our Mishna, "his son-in-law," means the son-in-law of his son, who is already a third. But if so, why does it not teach "the son of his son" (grandson)? Incidentally, the Mishna teaches us that the husband

is equal to his wife. But if so, according to whom would be the following Boraitha, taught by R. Hyya: Eight fathers, which counts twenty-four, including their sons and sons-in-law (*i.e.*, father and brother, two grandfathers, and four great-grandfathers—two from each side—and eight sons and eight sons-in-law)? And if our Mishna means the son's son-in-law, then it ought to be thirty-two, viz.: eight fathers, eight sons, eight sons-in-law, and eight grandsons. Therefore we must say that our Mishna means his son-in-law. And why does Rabh name him the son-in-law of his son? Because he is not a descendant from him, but came from strangers, he is considered not of the second generation but as of the third. But, after all, according to Rabh's saying it is a third to a second-cousin, and we are aware that Rabh holds that such is qualified to be a witness? Therefore we must say that Rabh holds with R. Elazar, who says in the following Boraitha: Even as my father's brother cannot be a witness for me, neither his son nor his son-in-law, the same is the case with the son of my father's brother and with his son and son-in-law. Still, this cannot serve as an answer to the objection that Rabh himself has qualified a third to a second-cousin? Say, Rabh holds with R. Elazar only concerning his son, but differs with him concerning the son of his father's brother. And the reason of Rabh's theory is because it reads: "Fathers shall not die because of their sons; and sons," etc.—which means the addition of one more generation. And the reason of R. Elazar is: "For their children" means that the incompetence of the fathers shall extend to their children also.

R. Na'hman said: The brother of my mother-in-law cannot be a witness for me, and the same is the case with his son, and also with the son of the sister of my mother-in-law. And there is also a Boraitha similar to this, viz.: The husband of one's sister, also the husband of the sister of one's father and the husband of the sister of one's mother, their sons and their sons-in-law, are also excluded from being witnesses. Said R. Ashi: While we were with Ula we questioned him: How is it concerning the brother of one's father-in-law and his son, and also concerning the son of the sister of his father-in-law? And he answered: This we have learned in a Boraitha: One's brothers, the brother of one's father and of one's mother, they, their sons and their sons-in-law—all are incompetent.

It happened that Rabh was going to buy parchments, and he was questioned: May one be a witness to his stepson's wife? The

answer to this question was, according to the College of Sura, that the husband is the same as his wife; and according to the College of Pumbeditha, the answer was that the wife is the same as her husband—which means that he is considered as if he were really her father-in-law. And as Huna in the name of Rabh said: Whence do we know that the woman is considered to be the same as her husband? From [Lev. xviii. 14]: "She is thy aunt." Is she indeed his aunt? Is she not the wife of his uncle only? We see, then, that the wife is considered the same as her husband.

"*A stepfather . . . his son and son-in-law.*" Is not his son a brother of the party from the mother's side? Said R. Jeremiah: It means the brother of his brother—*e.g.*, the son of his stepfather from another wife. R. Hisda, however, qualified such a person. When he was questioned: Was he not aware of Jeremiah's explanation of our Mishna just mentioned? He answered: I do not care for it. But if so, it is his brother. The Mishna teaches concerning a brother from the father's side, and also from the mother's side. R. Hisda said the father of the groom and the father of the bride may be witnesses for each other, as their relation is similar to the relation of a cork to a barrel only, which cannot be counted relationship. Rabba b. b. Hana said: One may be a witness for his betrothed, but not for his wife. Said Rabhina: Provided he testified against her; but if his testimony is in her behalf, he is not trusted. In reality, however, (says the Gemara,) there is no difference: One is not trusted in any case, as the reason concerning witnesses is that one is too near in mind to his relatives; and as she is betrothed to him, he is not fit to be a witness in any case.

The rabbis taught: One's stepson only. R. Jose says: The husband of one's wife's sister only. And there is another Boraitha: The husband of one's wife's sister only. R. Jehudah says: One's stepson only. How is this to be understood? Shall we assume that the Tana of the first Boraitha has mentioned only the stepfather, but that the case is the same with the husband of one's wife's sister? And R. Jose with his statement also does not mean to differ, but he mentioned the latter, and the same is it also with the former. Then our Mishna, which states, "the husband of one's wife's sister, he, his son, and his son-in-law are excluded," would be neither in accordance with R. Jedudah nor with R. Jose. Or does the Boraitha mean to say that regarding a stepfather only is he excluded, but concerning the husband of the wife's sister, he, with his sons, etc., is excluded; and R. Jose differs, as, according

to his opinion, the latter only is excluded, but not his sons, etc.; but a stepfather, with his sons, etc., is excluded? Then the Boraitha of R. Hyya, mentioned above, which states that there are twenty-four, would be neither in accord with R. Jose nor with R. Jehudah. Therefore we must say that the Boraitha is to be explained thus: The stepfather only is to be excluded, but concerning the husband of his wife's sister, his children are also excluded. And R. Jose came to teach that even concerning the latter he only is excluded, but not his children, and so much the more a stepfather. And then our Mishna is in accordance with R. Jehudah and the Boraitha in accordance with R. Jose. Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Jose.

There was a deed of gift which was signed by two brothers-in-law—*i.e.*, two husbands of two sisters—and R. Joseph was about to make it valid, based upon the decision of Samuel that the Halakha prevails with R. Jose. Said Abayi to him: Whence do you know that Samuel meant R. Jose of our Mishna, who qualified the husband of one's wife's sister? Perhaps he meant R. Jose of the Boraitha who disqualified him. This could not be supposed, as Samuel said, *e.g.*, I and Pinchas, who are brothers and brothers-in-law—but if only brothers-in-law, they are qualified. And Abayi rejoined: It is still uncertain, as perhaps Samuel meant to say: Because Pinchas was the husband of his wife's sister. Therefore said R. Joseph to the beneficiary: Acquire title to this gift by the testimony of the witnesses who were present when the gift was transferred to you, in accordance with R. Aba's decision. Said Abayi again: But did not Aba admit that if there was a forgery in the deed while writing, it is invalid even in the latter case? And R. Joseph said to the beneficiary: Go! you see people do not allow me to transfer it to you.

"*R. Jehudah said*," etc. Said Thn'hum in the name of Tabla in the name of Bruna, quoting Rabha: The Halakha prevails with R. Jehudah. Rabha, however, in the name of R. Na'hman, and also Rabba b. b. Hana in the name of R. Johanan, said: The Halakha does not prevail with him: There were some others who taught the saying of Rabba with regard to the following: Thus lectured R. Jose the Galilean: It is written [Deut. xvii. 9]: "And to the judge that may be in those days." Was it necessary to state thus? Can it then be supposed that one should go to a judge that is not in his days? Therefore it is to be explained that it means that the judge was previously a relative of

his, and that thereafter he became estranged. And to this said Rabba, etc., the Halakha prevails with R. Jose the Galilean.

The sons of Mar Uqba's father-in-law were relatives, and became thereafter estranged. And they had a case, and came with it to his court. He, however, exclaimed: I am disqualified from being your judge. They then rejoined: Is it because you hold with R. Jehudah? We will bring you a letter from Palestine stating that the Halakha does not prevail with him. Rejoined he: I myself know that I am not attached to you with wax, and my saying that I am disqualified to judge you is because I know that your custom is not to listen to my decision.

"*A friend is a groomsman.*" But how long shall this friendship hold? R. Aba in the name of R. Jeremiah, quoting Rabh, said: All the seven days of the wedding. The rabbis, however, in the name of Rabha said that after the first day the friendship is no longer considered, and he is qualified.

"*An enemy,*" etc. The rabbis taught: It reads [Num. xxxv. 23]: "He was not his enemy and did not seek his harm"—which means, he who is not one's enemy may be a witness and he who does not seek one's harm may be his judge. This is concerning an enemy. And whence do we know that the same is the case with a friend? Read, then, "and he is not his enemy and not his friend"—and then he may be a witness; and if he does not seek his harm and not his welfare, then he may be his judge. But is it, then, written a friend? This is common sense. Why not an enemy? Because his mind is far from doing any good to him; and the same is it with a friend, whose mind is near to do all that he can in his behalf. The rabbis, however, infer from this two things: one concerning a judge and the other that which we have learned in the following Boraitha: R. Jose b. R. Jehudah said: From the verse, "he is not his enemy and does not seek his harm," is to be inferred that if two scholars have animosity toward each other they must not judge in a case together.

MISHNA V.: How were the witnesses examined? They were brought into separate chambers and were frightened to tell the truth. And then all except the eldest were told to go out, and he questioned: How do you know that A owes money to B? And if his answer was: "Because A himself told me that he owes him," or, "C told me that such was the case," he said nothing, unless he testified that, in the presence of myself and my colleague, A confessed that he owed to B two hundred zuz: and then the second witness is brought in and they examine him, and if both

testimonies correspond the court discusses about the case. If two of the judges acquit and one makes him liable, he is acquitted; and if *vice versa*, he is liable. If, however, one acquits and the other makes him liable, and the third one says, "I don't know," then judges must be added. And the same is the case if there were five, and two of them were against two, while the fifth was doubtful. After the conclusion of the judges is arrived at, they are told to enter, and the eldest of the judges announces, "You, R, are acquitted," or, "You, A, are liable." And whence do we know that one of the judges must not say: I was in favor of the defendant, but my colleagues were against, and I could not help it, as they were the majority. As to this it reads [Lev. xix. 16]: "Thou shalt not go up and down as a talebearer among thy people"; and it reads also [Prov. xi. 13]: "He that walketh about as a talebearer revealeth secrets."

GEMARA: How were the witnesses frightened? Said R. Jehudah. Thus [ibid. xxv. 14]: "Like clouds and wind without rain, so is a man that vaunteth falsely of a gift" (*i.e.*, that because of false witnesses, even though it is cloudy, the rain is withheld). Said Rabha: This is no frightening, as they may think what people say, even seven years of famine do not pass the gate of a specialist. "Therefore," said he, "it was said to them [ibid., ibid. 18]: 'A battle-axe, and a sword, and a sharpened arrow is a man that testifieth as a false witness against his neighbor.'" And R. Ashi maintains that even this is not sufficient, as they may think, even in time of a pest one does not die before his time. Therefore said he: I was told by Nathan b. Mar Zutra that they were frightened that false witnesses were disgraced even in the eyes of those who hired them. As it reads [I Kings, xxi. 10]: "And set two men, sons of Belial, opposite to him, and let them bear false witness against him," etc.

"*A' himself told me*," etc. This is a support to R. Jehudah, who said in the name of Rabh: If one wants the case to be recognized by the court, he must insist that the debtor shall say: Ye shall be my witnesses. And so also was taught by Hyya b. Aba in the name of R. Johanan. And there is also a Boraitha as follows: (A said to B:) "I have a mana with you," and he answered, "Yea." On the morrow A asked him, "Give it to me," and B said it was only a joke, he is free. And not this only, but even if A has had two witnesses hidden under a fence (so that B could not see them), and questioned him: "Have I a mana with you?" and B answered, "Yea." And to the question,

"Would you like to confess before witnesses?" B answers, "I am afraid, if I do so, you will summon me to the court"; and on the morrow A asks B to give him the mana, and his answer is, "It was only a joke," he is not liable. However, one must not defend a seducer. A seducer! Who has mentioned this term? The Boraitha is not complete, and should read thus: If, however, B does not defend himself, the court must not question him; perhaps it was a joke. But in criminal cases, a similar question must be asked by the court, although he has not so defended himself, except in the case of a seducer. And why? Said R. Hama b. Hanina: From the lecture of R. Hyya b. Aba I understand that it is because it reads [Deut. xiii. 9]: "Nor shall thy eye look with pity on him, nor shalt thou conceal it for him."

Said Abayi: All that is said above is, provided the defendant claims, "It was a joke"; but if he claims, "I have never confessed," he must be considered a liar and is liable. R. Papa b. R. Aha b. Ada, however, maintains: In the case of a joke, people do not remember their confession, and therefore even such a claim must be investigated.

There was one who had hidden witnesses under the curtains of his bed, and he said to his debtor, "Have I a mana with you?" and he answered, "Yea." And he questioned him again, "May the people who are here sleeping or awake be witnesses?" and he answered, "No." And when the case came before R. Kahana, he said: He cannot be liable, as he said no. A similar case happened with one who had hidden witnesses in a grave, and to the question, "May the living and the dead be witnesses?" he answered, "No." And when the case came before Resh Lakish, he acquitted him. Rabhina, according to others R. Papi, said: The decision of R. Jehudah that it must be said by the party, "Ye are my witnesses," is no matter whether it is said by the lender in the presence of the borrower and he keeps silent, or by the debtor himself. And this is inferred from that which was said above, that the debtor had answered the question with *no*; but if he should remain silent, he would be liable. There was one who was named by the people "the man who has against him a whole kab of promissory notes." And when he heard this, he exclaimed: Do I owe to anyone but B and C? The latter then summoned him before the court of R. Na'hman, and R. Na'hman decided that the above exclamation could not be taken as evidence, as it might be that he said so for the purpose that people should not think him too rich. There was another one who was

named "the mouse who lies on dinars," and at the time he was dying he said: A and B are my creditors. After his death the creditors summoned his heirs before R. Ismael b. R. Jose, and he made the heirs pay, for the reason that, if he said so while in good health, it might be supposed that he did so for the purpose mentioned above, but this could not apply to a man who was dying. The heirs, however, only paid the half, and were summoned for the other half in the court of R. Hyya, who decided, as it is supposed that one may say so for the purpose that he shall not appear too rich, so it may be said that the deceased did so that his children should not appear too rich. The heirs then demanded what they had already paid, to which R. Hyya answered: It was decided long ago by a sage, and the decision must remain.

If one has confessed before two witnesses and they have made the ceremony of a sudarium, they may write it down; but if there was no sudarium, it must not be written. If he has, however, confessed before three without a sudarium, according to Rabh it may, and according to R. Assi it must not, be written. However, there was such a case before Rabh, and he took into consideration R. Assi's decision.

R. Ada b. Ahba said: Such a document of confession is dependent upon circumstances. If the people were gathered by themselves and he confessed before them, then it must not be written; but if he himself caused the gathering, it may. Rabha, however, is of the opinion that even in the latter case it must not be written unless he said to them, "I accept you as my judges"; and Mar b. R. Ashi maintains that even then a judgment is not to be written unless they appoint a place, and summon him to the court.

It is certain, when one has confessed with the ceremony of a sudarium in cases of movable property, that a judgment may be written, but not otherwise. But how is it with real estate—without a sudarium? According to Ameimar it may not, and according to Mar Zutra it may be written. And so the Halakha prevails. It happened that Rabhina came to the city of Damhariah, and R. Dimi b. R. Huna of the same city questioned him: How is the law if the confession was for movable property which is still in full possession of the parties? And he answered: Then it is considered as real estate. R. Ashi, however, maintains that so long as the creditor has not collected it, it is to be considered as money, because if the possessor

would like to sell it, he could do so even after the confession, which is not the case in real estate.

There was a document of confession in which it was not written: "He (the debtor) has said to us, 'Write a document, sign it, and give it to him' (the creditor)," and both Abayi and Rabha decided that this case was similar to that of Resh Lakish, who decided that witnesses would not sign a document unless they were aware that the person who told them to sign was of age; the same is the case here, they would not sign it unless he said to them, "Sign and give." R. Papi, according to others R. Huna b. Joshua, opposed: Is there a thing of which we, the judges, are not sure, and the scribes are? Therefore the scribes of Abayi and of Rabha were questioned, and they were aware of the law, when it must be written and when not. There was another document of confession in which the memoranda, and all the versions which are needed thereto, were written correctly, but the words, "in the presence of us three," were missing, and the document was signed by two only. And Rabhina was about to say that this case was similar to that of Resh Lakish mentioned above; but R. Nathan b. Ami said to him: Thus was it said in the name of Rabha: In such a case it may be feared that it was an error by the court—*i.e.*, they thought that such might be done by two. Said R. Na'hman b. Itz'hak: If in the document was written, "we the Beth Din," although it was signed by two, it is valid without any investigation. But perhaps it was written by an impudent Beth Din of two, of which, according to Samuel, the decision is to be considered, but they are named impudent (and the Halakha does not so prevail). The case was that the document read, "the Beth Din appointed by R. Ashi." Still, perhaps the same holds with Samuel. It means that it was written: Our master, Ashi, thus said.

The rabbis taught: If one said: "I have seen your deceased father hide money in a certain place, saying this belongs to so and so," or, "The money is for second tithe," if this place is to be found in this house, he said nothing. If, however, the place was in a field, where the witness could take it without being prevented, his testimony is to be considered, this being the rule in such a case. If he is able to take it himself without notifying, his word is to be trusted, but not otherwise. Moreover, if they themselves saw their father hide money in a chest, or the like, and he said to them, "This money belongs to so and so," or, "It is for second tithe," if it looks as if he told this as his last will,

he is to be trusted; but if it appears that he desires to deceive them, then his words are not to be considered. The same is the case if one became harassed, searching for the money which his father left for him, and he dreamed that the sum was of such and such an amount and was placed in a certain place, but it was for second tithe. Such a case happened, and the sages decided that the caprices of dreams are not to be taken into any consideration.

"If two of the judges acquit," etc. But how is the judgment to be written? According to R. Johanan, "So and so is acquitted," and according to Resh Lakish, "Such and such judges acquitted, and such hold him liable." R. Elazar, however, says it should be written, "From the discussion of the judges, the decision is that such is acquitted." And what is the difference? The tale-bearing. According to R. Johanan it must not be written who acquits and who holds liable, as this would appear like tale-bearing; and according to Resh Lakish, it must be written, as, if not, it would appear like a unanimous verdict, and it would look as though they had lied; and R. Elazar's decision is: To prevent vainglory it may be written, "From their discussion, the decision is that the defendant is acquitted," in which there is no talebearing and it does not appear unanimous.

"Are told to enter." Who? Shall we assume the parties? It is not stated the parties, but the witnesses, must go out. You must then say that the witnesses are told to enter, and this would not be in accordance with R. Nathan of the following Boraitha: The testimony of the witnesses is not to be conjoined unless both witnesses have seen the case together. R. Jehoshua b. Karha, however, maintains that, even if they have seen one after the other, their testimony is not to be approved by the court unless they both testify together. R. Nathan, however, maintains that the court may hear the testimony of one to-day, and on the morrow from the other one, when he appears. Hence, according to him, both witnesses may not be present? The Mishna means the parties, and it is in accordance with R. Nehemiah, who said in the following Boraitha: So was the custom of the pure-minded in Jerusalem. They let the parties enter, listened to their claims, and thereafter let the witnesses enter, listened to their testimony, and told all of them to go out, and then discussed the matter.

The text says that their testimony is not conjoined, etc. What is the point of their difference? If you wish, it may be said common sense. If, for instance, one testifies that he has

seen A borrow a mana from B, and on the morrow the other witness testifies that he has seen A borrow a mana from B, one may say, *e.g.*, C has seen one mana and D has seen another mana. Hence their testimony cannot be conjoined according to the first Tana of the Boraitha; but according to R. Jehoshua b. Karha it may be conjoined, as both admit that A owes a mana to B. This is common sense. And if you wish, they differ in the meaning of the verse [Lev. v. 1]: "And he is a witness," etc. And there is a Boraitha: It reads [Deut. xix. 15]: "There shall not rise up one single witness against." Why is it written "single"? This is a rule for every case in which is mentioned "a witness," that it means two, and the term single is expressed because their testimony is to be considered only then when they saw it together. So is the explanation of the first Tana. B. Karha, however, gives his attention to the verse cited [Lev. v.]: "And he is a witness, since he either hath seen or knoweth something." Hence it matters not whether they have seen together or singly. And what is the point of difference between R. Nathan and the first Tana? Also, if you wish, it is common sense; and if you wish, in the explanation of the Scripture. "Common sense"—usually one witness is brought not to make the defendant pay, but to make him liable for an oath. Hence, if their testimony does not come together, it cannot be conjoined to make the defendant pay. Such is the meaning of the first Tana. But Nathan maintains: Even when they come together, does, then, their testimony go out from one mouth? They testify one after the other, and we conjoin them. The same is the case when they come on two days. "In the explanation of the Scripture" [ibid., ibid.]: "If he do not tell it, and thus bear his iniquity." And both the first Tana and Nathan hold with the opponents of B. Karha, that both witnesses have to see the case together. And the point of their difference is, if the testimony is to be similar to the seeing of the case. One holds it is: hence it cannot be conjoined if not seen together; and one holds it is not.

Simeon b. Alyaqim was anxious that the degree of Rabbi should be granted to Jose b. Hanina, but the opportunity did not present itself. One day they were sitting before R. Johanan, and the latter questioned: Is there one here who knows if the Halakha prevails with B. Karha or not? And B. Alyaqim pointed to Jose b. Hanina, saying: He knows. Johanan then said: Then let him tell. But B. Alyaqim, however, rejoined: Let the master give him the degree of Rabbi, and then he will tell. And he did so,

and then said to him: My son, tell me just so as you have heard. And he answered: I have heard that B. Karha yielded to R. Nathan. Rejoined R. Johanan: Is that what it was necessary for me to know? Is it not self-evident that B. Karha could not demand that they should testify together, as he does not desire that the seeing shall be together? Nevertheless, since you have already ascended to the degree of Rabbi, it may remain with you. And R. Zera said: Infer from this act that if a great man gives a degree, even conditionally, it remains forever.

Hyia b. Abin in the name of Rabh said: The Halakha prevails with Jehoshua b. Karha concerning real estate, as well as movable property. Ula, however, maintains: It prevails with him concerning real estate only. Said Abayi to Hyia: You say that the Halakha prevails. Is there one who differs with him? Did not Aba say in the name of R. Huna, quoting Rabh: The sages yield to B. Karha concerning the testimony as to real estate. And so also taught Idi b. Abin in the Section Damages, taught by the College of Karna: The sages yield to B. Karha concerning the testimony as to a first-born, as to real estate, as to hazakah, and concerning the signs of maturity—for a male as well as for a female? You contradict one person with another. People may hold different opinions. Said R. Joseph: I say in the name of Ula that the Halakha prevails with B. Karha concerning real estate, as well as movable property. However, the rabbis who came from the city of Mehuza say in the name of Zera, quoting Rabh: Concerning real estate, but not concerning movable property. And Rabh is in accordance with his theory elsewhere, that a confession after a confession, or a confession after a loan, may be conjoined; but a loan after a loan, or a loan after a confession, do not conjoin. (*I.e.*, if one says, "In my presence A confessed on Monday that he owed a mana to B"; and the second witness says, "In my presence A confessed on Tuesday that he owed a mana to B," they may be conjoined. And the same is the case if one says, "On Monday A borrowed from B a mana in my presence," and the other witness testifies, "In my presence A confessed on Tuesday that he owed a mana to B." But if one testifies that in his presence A made a loan to B on Monday, and the other testifies that the same was done on Tuesday, they are not to be conjoined, as they may be two different manas. And the same is the case if one testify that A confessed on Monday that he owed a mana to B, and the other testified that B had made a loan to A on Tuesday.)

Na'hman b. Itz'hak met Huna b. R. Jehoshua, and questioned him thus: Let us see why the testimony of a loan after a loan is not to be conjoined. Because the loan which one witness has seen may not be the same which the other saw. Why, then, not say the same concerning a confession? Say, the confession of Tuesday was not the same as that of Monday? The answer was: He speaks of when he said to the last witness, "The mana which I confess before you is the same as that which I confessed yesterday before so and so." But even then, the second witness only knows this, but not the first. It means that after he has confessed before the second he goes again to the first witness, telling him, "The mana which I confessed before you, I did so also before so and so." Rejoined Na'hman: Let your mind be at rest, for you have set my mind at rest. And Huna asked him: What was the trouble? Because I had heard that Rabha, and according to others R. Shesheth, swung an axe at it (*i.e.*, disproved the opinion), saying: Is this not similar to a confession after a loan? Which means that he said in his confession, "I confess before you that I owe a mana to so and so, which I borrowed yesterday in the presence of so and so." Hence it was already said once by Rabh. Why, then, the repetition? Rejoined Huna: This is what I have heard of your people—when they tear out trees, they plant them again (*i.e.*, you answer questions, and then object to them again). The sages of Nahardea, however, say that, no matter if it is a confession after a confession, a loan after a confession, or a loan after a loan, they are to be conjoined, as they hold with B. Karha.

R. Jehudah said: Witnesses in civil cases who contradict one another in unimportant investigations are to be considered. Said Rabha: It seems that he meant that the contradiction was that one said the purse in which the mana was given was a black one and the other said it was a white one. But if one says that the loan was with old coins and the other said it was with new ones, they are not to be conjoined. But is such a contradiction not to be taken into consideration even in criminal cases? Did not R. Hisda say that if one testifies that he killed him with a sword and the other with an axe, it is not to be considered; but if one says the murdered or the murderer was dressed in white, while the other testifies that he was dressed in black, their testimony holds good? And the answer was: Do you contradict one scholar with another? Each may have his own opinion. The Nahardeans, however, maintain that even if one testifies old coins

and the other new, they are nevertheless to be conjoined; and this is because they hold with B. Karha. But have you then heard B. Karha say that they may be conjoined even when they contradict each other? Therefore we must say that the Nahardeans hold with the Tana of the following Boraitha: R. Simeon b. Elazar said: The schools of Shammai and Hillel do not differ, if there were two parties of witnesses. If one party testifies that he owes him two hundred, and one party testifies one hundred, the latter amount is to be collected, as in the testimony of two hundred one hundred is certainly included. In what they do differ is that, if among one party of witnesses was this contradiction (*i.e.*, one says that he owes two and the other one hundred), according to the school of Shammai the whole party must be disqualified, because one of them is surely a liar; and according to the school of Hillel they are not, as both admit that he owes one hundred (and so the Nahardeans, be it old or new coins, both admit that he owes a mana). Suppose one testifies that he borrowed a barrel of wine and the other of oil. Such a case came before Ami, and he made him liable to pay the value of a barrel of wine, as a barrel of oil amounts to twice as much as a barrel of wine. But according to whom was his decision? Is it in accordance with R. Simeon b. Elazar? He said so, because in the amount of two hundred a hundred is surely included; but did he say so in such a case as that of the barrels? The case was that they testified not for the barrels themselves, but for the value (*i.e.*, one testified that he owed him the amount of a barrel of wine and the other the amount of a barrel of oil, which is twice as much).

Suppose one of the witnesses says the law was made in the first attic, and the other says in the second attic. Said R. Hanina: Such a case came before a rabbi, and he conjoined their testimony.

"And whence do we know that one of the judges must not say?" The rabbis taught: Whence do we know that one of the judges, when he is going out, must not say, "I was in favor of the defendant, but my colleagues were against, and I could not help it, as they were the majority"? To this it reads [Lev. xix. 16]: "Thou shalt not go up and down as a talebearer among thy people"; and it reads also [Prov. xi. 13]: "He that walketh about as a talebearer revealeth secrets." There was a disciple of whom there was a rumor that he told a secret thing which was taught in the college, after twenty-two years, and R. Ami drove him out of the college, saying: This man is telling secrets.

MISHNA *VI.*: So long as the defendant brings evidence to his advantage, the decision may be nullified by the court. If he was told: "All the evidence which you have, you may bring before the court within thirty days," if he found such within thirty days, it affects the decision, but after that it does not. Exclaimed R. Simeon b. Gamaliel: But what should the man do who could not find such within thirty days, but found it after? If he was told to bring witnesses, and he said, "I have none"; "Bring any other evidence," and he said, "I have none," and after the time had elapsed he brought evidence and found also witnesses, it is as nothing. And to this also R. Simeon b. Gamaliel exclaimed: What should this defendant do if he was not aware that there were witnesses and evidence? However, if, after he said "I have no witnesses," seeing that he is about to be liable, he says, "Bring in so and so to testify in this case," or he takes out from under his girdle a new evidence, it counts nothing (even according to R. Simeon).

GEMARA: Said Rabba b. R. Hana: The Halakha prevails with R. Simeon. And the same says again: The Halakha does not prevail with the sages. Is this not self-evident? If it prevails with R. Simeon, it cannot prevail with the sages? One might say the Halakha prevails with R. Simeon to start with; but if some have done in accordance with the sages, it should remain so. He comes to teach us that even if it was so done, it must be changed.

"If he was told to bring witnesses," etc. Said Rabba b. R. Hana in the name of R. Johanan: The Halakha prevails with the sages. And the same said again: The Halakha does not prevail with R. Simeon b. Gamaliel. Is this not self-evident—that if the Halakha prevails with the sages it cannot prevail with R. Simeon? He comes to teach us that only in this case the Halakha does not prevail with R. Simeon, but in all other cases it does; and this is to deny what Rabba b. R. Hana said in the name of R. Johanan, that everywhere R. Simeon b. Gamaliel is mentioned in the Mishnayoth the Halakha prevails with him, etc. (Last Gate, p. 388). There was a young man who was summoned to the court before R. Na'hman, and he asked him: "Have you no witnesses?" and he answered: "No." "Have you some other evidence?" and he answered: "No." And R. Na'hman made him liable. The young man went and wept; and some people heard him cry, and said: We know something in your behalf in the case of your father. Said R. Na'hman: "In such a case even

the rabbis would admit that the young man was not acquainted with the business of his father and therefore the new evidence is to be taken into consideration." There was a woman with whom a document was deposited and she gave it away to some one, saying: "I am aware that this document is already paid," and R. Na'hman did not believe her. Said Rabha to him: Why should she not be trusted? Should she desire to tell a lie, she could burn it. And R. Na'hman answered: Inasmuch as it was approved by the court and known that it was deposited with her, the supposition that if she wanted to lie she could burn it does not apply. And Rabha objected to R. Na'hman from the following: A receipt which was signed by witnesses may be approved by its signer. If, however, there were no witnesses, but he was coming out from a depository; or the receipt was written on the document after the signature of the witness (which was in the hands of the creditor), it is valid. Hence we see that a depository is to be trusted. This objection remains. When R. Samuel b. Jehudah came from Palestine, he said in the name of R. Johanan: The defendant has always a right to bring evidence against the decision of the court, unless all his claims are concluded and he himself confesses that he has no more witnesses nor any other evidence. However, even after this, if witnesses arrived from the sea countries, or the box of documents of his father was deposited with a stranger who has returned it after he was found liable, it may be taken into consideration to change the first decision. When R. Dimi came from Palestine, he said in the name of R. Johanan: If one is summoning a party who says, "I want my case to be brought before the assembly of sages," while the plaintiff says, "It is sufficient that it be tried in the court of this city," the plaintiff may be compelled to follow the defendant to the assembly. Said R. Elazar: Rabbi, is it right that, if the plaintiff claims one mana from the defendant, he shall spend another mana to go with him to the assembly? Therefore the reverse must be done: The defendant should be compelled to bring the case before the court in that city. It was taught also in the name of R. Saphra: If two men were cruel to one another, and one of them insisted, "We shall try our case here," while the other says, "Let us go to the assembly," the latter must be compelled to try his case in that city. However, if there was a necessity to question the assembly, they might write and send it in writing. And also, if the defendant demands, "Write down the reason why you accused me, and give it to me," he

may be listened to. In the case of a widow whose husband dies childless and she has to marry his brother, she is obliged to go to that place where the brother is to be found (that he should marry her or perform the ceremony of Halitzah). And to what distance? Said R. Ami: Even from Tiberias to Sephorus. Said R. Kahana: Whence is this deduced? From the Scripture [Deut. xxv. 8]: "The elders of *his* city"; of his, but not of hers. Said Ameimar: The Halakha prevails that one may be compelled to go to the assembly (and there try his case). Said R. Ashi to him: But did not R. Elazar say: He may be compelled to try his case in that city? This is when the borrower said thus to the lender; but if the lender claims so, we apply to him [Prov. xxii. 7]: "The borrower is servant to the man that lendeth."

A message was sent from Palestine to Mar Uqba: To him to whom the world is light as to the son of Bathiah (it means to Moses), peace may be granted. Uqban the Babylonian complained before us that Jeremiah his brother destroyed his way (*i.e.*, he has treated me badly, through which I have lost my money), and we have decided that he shall be compelled to appear before us in the city of Tiberias. (How is this to be understood? Thus :) They said to him: You may try him. If he will listen to you, well and good; and if not, you must compel him to see us in the city of Tiberias. Said R. Ashi: This was a case of fine, and in Babylon they are not allowed to try cases of fine; and that which they said to Mar Uqba, "You shall try him," etc., was only to honor him.

CHAPTER IV.

RULES AND REGULATIONS CONCERNING EXAMINATIONS AND CROSS-EXAMINATIONS OF WITNESSES IN CIVIL AND CRIMINAL CASES. THE DIFFERENCE IN JUDGING AND IN DISCUSSIONS BETWEEN CIVIL AND CRIMINAL CASES. HOW THE MEMBERS OF THE SANHEDRIN WERE SEATED. HOW MANY RECORDING SCRIBES WERE NEEDED. HOW JUDGES WERE ADDED IF NEEDED, AND FROM WHAT PEOPLE. HOW WITNESSES SHOULD BE FRIGHTENED IN CRIMINAL CASES. THE REASON WHY ADAM THE FIRST WAS CREATED SINGLY.

MISHNA *I.*: Cases coming before the court, be they civil or criminal, the witnesses thereof must be examined and investigated. As it is written [Lev. iv. 22]: "One manner of judicial law shall ye have." But what difference is there between civil and criminal cases? It is the following: (a) The former cases are to be tried by three, and the latter by twenty-three judges. (b) In the former the discussion may commence either with the accusation or with the defence, while the latter must commence with the defence and not with the accusation. (c) In the former case one voice suffices either to accuse or to acquit, and in the latter he is acquitted by one voice, while to condemn two are needed. (d) In the former the judge who proclaimed his view either to advantage or to disadvantage may, after deliberating, announce his view to the contrary. In the latter, however, he may do so only to acquit, but not to condemn. (e) In civil cases the whole body of the court may defend or accuse, while in criminal cases all of them may acquit, but the whole body must not accuse. (f) The former may be discussed in the daytime and the decision rendered at night, while in the latter the decision must be in the daytime. But if they did not come to a conclusion on the same day, they have to postpone it to the morrow. (g) The decision concerning the former may be reached on the same day either to one's advantage or to his disadvantage, while in the latter the decision may be rendered on the same day to free him, but not to condemn him until the next day; and, therefore, cases of capital punishment must not be begun on the eve of Sabbath or of a legal holiday. In civil cases,

and regarding defilement and purity, they begin by asking the opinion of the eldest, while in criminal cases they begin with those who are sitting on the side.

All are qualified to judge civil cases, but not every one is qualified to judge criminal cases; as to the latter—only priests, Levites, and Israelites who may legally marry daughters of priests.

GEMARA: Are investigation and examination indeed needed in civil cases? If so, there is a contradiction from the following Tosephta: A document of which the date shows the first of Nissan in a Sabbatical year and witnesses came, saying, "How can you testify in favor of this document—were you not with us at the same date mentioned in the document in such and such a place?" The document as well as the witnesses are valid, as it is to be supposed that they might have written the document after the date mentioned therein. Hence if investigation and examination are needed, why should they be valid because of the above reason? Would not the investigation show if it were so or not. But according to this theory, how is to be understood the following Mishna: Promissory notes which were written at an earlier date are invalid. However, if they were written at a later date, they are. Now, if an investigation in civil cases is needed, why should that which was written at a later date be valid? (The investigation would show that the witnesses who signed the document were not present when the loan was made, as it was signed at an earlier date. Hence the loan which was made earlier is to be considered a verbal loan, which does not collect from encumbered estates, and the note should be considered a forgery?) This presents no difficulty, the objection mentioned applying more to the statement of the Boraitha, as it speaks of a Sabbatical year, in which people do not usually lend money because of the law [Deut. xv. 2] of that year, and nevertheless it makes valid that which was written in the month of Nissan, because the above-mentioned law concerning promissory notes applies only at the end of the year. However, the contradiction to our Mishna remains!

R. Hanina said: Biblically there is no difference between civil and criminal cases concerning investigations, as it reads, "One manner of judicial law," etc. But why was it enacted that civil cases do not need investigation? So as not to close the door to borrowers. (And our Mishna, which states that it is needed, was taught *before the enactment*; and the Boraitha cited *after the enactment*.) But if so, let the judge who made an error in the

decision of the case not be responsible? If this should be enacted, so much the more would the door be closed to borrowers. Rabha, however, maintains that our Mishna treats of fine cases and the Boraitha of loan cases. However, both were taught after the above-mentioned enactment. And R. Papa maintains that both treat of loan cases. But our Mishna speaks of a case which appears to the court unfair; and to such investigation is needed. The Boraitha speaks of non-suspicious cases. And this is in accordance with Resh Lakish, who used to propound a contradiction to the following: It reads [Lev. xix. 15]: "In righteousness shalt thou judge thy neighbor"; and Deut. xvi. 20 reads: "Justice, only justice, shalt thou pursue," from which it is to be understood that an investigation is needed? And he answered that the first verse speaks of an ordinary case and the second of a suspicious one. R. Ashi, however, maintains that the above answer of R. Papa, concerning the contradiction from the Mishna, holds good. However, the supposed contradiction of the verse is to be explained that the first speaks of a strict law and the second of an arbitration, as the following Boraitha states: "Justice, only justice," etc., one word means strict law and the other means arbitration. How so? If, *e.g.*, two boats are plying on a river and they meet each other, if both try to pass where there is not room, both would be lost; but if one passes after the other, both would be saved. And the same is the case with two camels passing the steps of Beth Chorin, which met each other. If both tried to pass together, both would fall; but if one after the other, both would be saved. Then the strict law is that the unloaded one should wait, and the loaded one pass; or, if one was near to the dangerous place and the other far off, the nearer one has to pass; but if both were loaded, or if both were at the same distance, then arbitration must be used as to which one has to pay to the other for loss of time.

The rabbis taught: "Justice, only justice, shalt thou pursue," means that one shall follow to the city of a celebrated judge, *e.g.*, at Luda, after R. Elazar; at Brur-Heil, after Rabban Johanan b. Zakkai. [There is a Boraitha: (At the time the government had forbidden circumcisions and weddings, they made use of hand-mills to announce a circumcision.) Then, if one heard the sound of a handmill in the city of Burni, he understood that there was a ceremony of circumcision in that city; and if one saw many lights in Bene Heil, he understood that there was a wedding banquet in that city].

There is another Boraitha interpreting the cited verse thus: You should always trouble yourself to follow after the sages in assembly, as, for instance, after R. Elazar at Luda; after R. Johanan b. Zakkai at Brur-Heil; after Jehoshua at Pekiein; after Rabban Gamaliel at Jamnia; after Aqiba at Bene Braq; after Matia at Rome; after Hanania b. Thrduin at Sikhni; after Jose at Sephorius; after Jehudah b. Bathyra at Nzibin; after Hanina, the nephew of Jehoshua, in exile; after Rabbi at Beth-Shearim; and (when the Temple was in existence) after the sages at their assembly in the chamber of the Temple.

"With the accusation or with the defence." But what has the court first to say to the advantage of the defence in criminal cases? Said R. Jehudah: The court may ask the witness: "Whence do we know that it was as you say?" But from such an interrogation the witness will become dejected, and will refrain from saying anything. [But let him be dejected? Have we not learned in a Boraitha, R. Simon b. Eleazar said: The witnesses may be transferred from one place to another that they shall become dejected and retract from their statement if it was not true? What comparison is this? There they become dejected by themselves; but here, if you say to them, "Whence do we know that what you say is true?" *you* cause them to be dejected.] Therefore said Ula: The court questioned the other party, "Have you other witnesses to make collusive the witnesses of your opponents?" Said Rabba to him: Is this what you call *beginning with the defence*? With this saying you begin by accusing witnesses of the other party. Therefore said he: The court may say to the other party, "Have you other witnesses who may contradict the witnesses of your opponent?" R. Kahna says: The court may say, "From your testimony it seems that the defendant may be acquitted"; and thereafter they discuss the matter. Both Abayi and Rabha say: The court may say to the defendant, "Do not fear; if you have not committed the crime, nothing will be done to you." And R. Ashi said: The beginning should be with the announcement of the court: Every one who knows of a defence concerning the defendant may come to tell it before the court. There is a Boraitha in accordance with Abayi and Rabha as follows: It reads [Num. v. 19]: "If thou hast not gone aside to uncleanness behind thy husband, then be thou free." Said Rabbi: Infer from this that in criminal cases the beginning must be with the defence (as it is written first, "then be thou free").

"May after deliberating . . . announce to the contrary."

There is a contradiction from the following: If one has tried a case and made liable him who is not, or *vice versa*; has purified a thing which is unclean, or *vice versa*, his decision holds good, but he has to pay for his error from his own pocket. (Hence we see that he must not retract?) Said R. Joseph: This presents no difficulty. A judge who was appointed by the court, if he made an error, he must pay for it; but if he was appointed by the parties only, he has not. But is there not a Boraitha: If he was appointed by the court, he has not to pay? Said R. Na'hman: The just cited Boraitha treats of when there was a superior judge to him, who ignores his decision; therefore he is free from paying, as the superior judge decides it properly. But if there is no superior and his decision remains, then he must pay for his error. R. Shesheth, however, maintains: It depends in what the error was made. If he erred in that which is plainly taught in a Mishna, then he has not to pay, because his decision will not be executed; but if he erred in his opinion, then he has to suffer. So did he hear from R. Assi. Rabhina questioned R. Ashi: Is it the same even if he has erred in that which was taught in the Boraithas of R. Hyya and R. Oshia? And he answered: Yea. And how is it if he erred in that which was said by Rabh and Samuel? And he answered: Yea. And how is it if he erred in that which was said by you and me? And he rejoined: What, then, are we? Are we splitting wood or gathering splinters in the forest! How is to be understood, "erred in his opinion"? (See the answer in Chapter I., page 9, line 21.)

R. Hammuna objected to R. Shesheth from the following: It happened that a cow of which the womb had been removed was brought before R. Tarphon, and he made the owner give it to the dogs. However, a similar case came before the sages in Jamnia, and they made it valid, because Tudus the physician testified that not one cow or one swine was sent out from Alexandria in Egypt of which the womb was not removed, for the purpose that they should not bring forth offspring. And R. Tarphon exclaimed thus: O Tarphon, thy ass is gone! (*I.e.*, I have to sell my ass to pay for the error.) Said R. Aqiba to him: You are free, as there is a rule that a judge who is appointed by the majority has not to pay for his error. Now, if an error in that which was taught in a Mishna does not hold good and must be reddecided, why does not Aqiba say: You have erred against a

Mishna? R. Aqiba meant to say both—first: You have erred against a Mishna; and secondly: Even if you erred in your own opinion you would also be free, because you were chosen by the majority.

Said R. Na'hman b. Itz'hak to Rabha: How could R. Hamnuna object to Shesheth from the case of the cow? Did not Tarphon give it to the dogs? Hence the cow was no longer in existence, and it could not be redecided. Hamnuna meant to say thus: If the decision should be that the case of one who erred against a Mishna is not to be redecided, it is correct that Tarphon was afraid that he must pay, and R. Aqiba told him that he must not, because he was a recognized judge. But if the Halakha is that in such a case it must be redecided, let Aqiba say to him: How would it be if the cow were still in existence—your decision would not remain and the cow would be declared valid? The same is the case even now that it is not in existence, as you did not yourself give it to the dogs: You had only decided that it was invalid, and as your decision does not count, the owner of the cow, himself, has to suffer for his act.

R. Hisda, however, explains our Mishna that it means: If the judge himself took from the one who was liable in his eyes and gave to his opponent, only then must he pay from his pocket, but not otherwise. But this would be correct in one case only—namely, if he had made liable the just, then we could say that he took from the just and gave to his opponent. But how could this be done in the second case, in which he has acquitted the one who was liable, as he only said to him: You are not liable? His decision, "You are free," is counted as if he would take with his hand and give to him. But if so, how is to be understood the following statement of the Mishna, that the judge may retract from this view, no matter if it is concerning defence or accusation, as this can be explained only in case he said to the just, "You are liable," but did not collect from him, as then he may retract and say, "You are not liable"? But in case he made liable a just man, how could such a case take place, if not by the decision, "You are free"? And it is said above that such a decision is considered as if he would take from one party and give to the other: hence, after such, no retraction can take place. Our Mishna, with its expression, "whether in defence or in accusation," means to say that with the acquittal of one party the other party is accused; namely, a retraction may take place in behalf of one who was erroneously made liable but it was not as yet col-

lected, although it is a disadvantage to his opponent, but in case he has acquitted the one who is liable he has to pay from his pocket. But if so, then in criminal cases a retraction could take place only when it is in behalf of the defendant, but at the same time his opponent is not accused. And this can be said if the criminal case was a violation of Sabbath or a case of adultery; but in case of murder, how can such be found? But how, if there is a retraction that he is not guilty of slaying a person, who is accused? It may be said the relatives of the person murdered; as biblically, if the relatives of the person murdered took revenge on the murderer and slew him, he is freed; and by the retraction from guilty to not guilty, if the relative should put his hand on the murderer, he would be accused. But could such a thing be supposed? You mean to say, because perhaps the relative of the person murdered will take revenge, therefore no retraction shall take place and the defendant shall be put to death. And secondly, does not the Mishna state, whether concerning defence or accusation? This difficulty remains. Rabhina, however, says: Even in case he has acquitted the one liable, it may also be found that the judge did it with his hand—namely, in case he had a pledge and the judge took it away from him and transferred it to the borrower.

"*Criminal cases*," etc. The rabbis taught: Whence do we know that if one was found guilty by the court, and thereafter one came, saying: I know a defence for him, that the case may be retried? Because it reads [Ex. xxiii. 7]: "Him who hath been declared innocent and righteous, thou shalt not slay." Read: Him who was declared innocent even by one person, you shall not slay (without a reinvestigation). And whence do we know concerning the one who was acquitted by the court, and thereafter one says, "I know of a fact which will make him guilty," that he must not be listened to? From the same cited verse: "Him who hath been declared righteous, ye shall not slay." Said R. Shimi b. Ashi. And just the reverse may be done with a seducer, as the Scripture reads [Deut. xiii. 9]: "You shall not have any pity," etc. R. Kahana infers this from [ibid., ibid. 10]: "You shall surely kill him," etc.

R. Zera questioned R. Shesheth: Whence do we know that the same law applies to them who are to be punished with exile? And the answer was: From an analogy of the expression "murder," which is to be found in both cases. And whence do we know that the same is the case with them that are to be punished

with stripes? From an analogy of the expression "wicked," which is to be found in both cases. And so also is it plainly stated in a Boraitha.

"*But not to condemn.*" Said Hyya b. Aba in the name of R. Johanan: Provided he has erred in a thing which the Sadduceans oppose; but if they admit, it must read so plainly in the Scripture. And such a decision is not to be taken in consideration at all, as schoolchildren are aware of it; it must be retried. The same Hyya questioned R. Johanan: How is it if we err in a case of adultery? And he answered: So long as the fire in the stove burns, cut off all that you want to roast, and roast it. (*I.e.*, when you are studying a thing, consider it thoroughly to prevent questions. You have heard from me that, in a thing which the Sadduceans admit, his decision is not counted. Is not adultery one of these?)

"*All of them,*" etc. Does the Mishna mean that even the witness who had accused him may also thereafter defend him? Then our Mishna is in accordance with R. Jose b. Jehudah, and not in accordance with the rabbis of the following Boraitha: It is written [Num. xxxv. 30]: "But one witness shall not testify against any person to cause him to die." It means whether to defend or to accuse. Jose b. Jehudah, however, maintains that he may testify to defend, but not to accuse. (Hence our Mishna is not in accordance with him.) Said R. Papa: Our Mishna, with its expression *all*, means to add one of the disciples who sat in a row before the judges, and such may make use of his opinion according to all.

What is the reason of R. Jose's statement? Because it reads "to cause him to die," we infer that only to accuse he must not testify, but to defend he may. But if so, why do the rabbis differ? Said Resh Lakish: Because it appears that the witness is interested in this case. And what do the rabbis infer from the words "to cause him to die"? They apply this to one of the disciples, as we have learned in the following Boraitha: If one of the witnesses says: "I have something to say in defence of the defendant," whence do we know that he must not be listened to? From the verse cited: "One witness shall not testify." And whence do we know, if one of the disciples say, "I have something to say to the disadvantage of the defendant," that he must also not be listened to? From the same: "One shall not testify to cause him to die."

"*Only to acquit, but not to condemn.*" Said Rabh: This is

said only at the time they discuss this matter ; but at the time of the conclusion he may change his views from defence to accusation also. An objection was raised from the following: "On the morrow they arise early and come to the court. He who defended has to say : I defended yesterday and am of the same opinion to-day. And he who accused has also to say : I accused, and am of the same opinion to-day. However, he who had accused may change his view to defence, while this is not allowed to him who defended." Now, on the morrow it is time for the conclusion, and it nevertheless states that the defendant may not change his view? According to this theory, no discussion is to be prolonged on the morrow ; and this is certainly not so. Hence the Boraitha means that he must not do so at the time of discussion.

Come and hear another objection : " All who take part in the discussion may explain their reasons, until one of the accusers shall yield to one of the defenders (and then the majority of one will suffice to acquit)." Now, if you say that one may change his view from defence to accusation, why does not the Boraitha state, "or to the contrary"? It is simply because the Tana of the Boraitha does not care to repeat a matter of accusation.

Come and hear another objection : " R. Jose b. Hanina said : If one of the disciples has defended and dies at the time of the conclusion, his view should be considered as if he were still alive." And why? Let it be said that if he were alive he might retract from his view? This is no objection, as in reality he did not retract. But how can you explain that the decision of R. Jose b. Hanina may correspond with Rabh's statement? Was not a message sent from Palestine as follows: R. Jose's statement denies our master's (Rabh's) statement? Nay, the message was just the contrary: R. Jose's statement does not deny the statement of our master in Babylon.

"*Discussed in the daytime*," etc. Whence is this deduced? Said R. Aha b. Papa: From [Ex. xviii. 22]: "And let them judge the people at all times." But how is it to be inferred from this that the conclusion must not be at night, and the discussion may? This is in accordance with Rabha, who has propounded a contradiction from the just cited verse to that of Deut. xxi. 16: "Then shall it be, *on the day** when *he divideth* . . . what

* In Leeser's version it is not mentioned "on the day," notwithstanding that the text so reads, which, according to the sense, may mean "the time." The Talmud, however, takes it literally.

he hath"—on the day, "but not at any time"? And the answer was that the beginning of the trial must be in the daytime, but the conclusion may be even at night-time in civil cases. Our Mishna is not in accordance with R. Mair of the following Boraitha: It reads [ibid., ibid. 5]: "Every controversy and every plague."* What have plagues to do with controversies? The Scripture compares controversies to plagues, in order to apply the law of the latter to the former. As concerning plagues it must be in the daytime [Lev. xiii. 14]: "But on the day," etc., the same is the case with controversies. And also as, concerning plagues, it cannot be judged by one who is blind, as the priest must see the signs, the same is the case with controversies. And also the law concerning controversies, which must not be judged by relatives, applies to plagues—that the priest must not be a relative of him who has the plague.

In the neighborhood of R. Johanan there was one who was blind who used to judge cases, and R. Johanan did not protest. But could R. Johanan be silent in such a matter? Is it not against his own decision? Did not he himself declare that the Halakha always prevails with an anonymous Mishna, and there is one which states: Every one who is qualified to judge is also qualified to be a witness? However, there are some who are qualified to witness, but not to judge; and the same R. Johanan has declared that it means one who is blind of one eye, who is qualified to witness, but not to judge. Hence one who is blind, who is disqualified to be a witness because he cannot see, ought also to be disqualified to judge? R. Johanan found another anonymous Mishna for his basis, namely: "Civil cases may be discussed in the daytime and the conclusion at night," which is the same as a case of one who is blind. But why does he give preference to the latter Mishna, and not to the first? If you wish, it may be said because the latter treats of a majority, while the first treats of an individual. And if you wish, it is because the latter is taught concerning the laws of trying cases.

"*If they did not come to a conclusion,*" etc. Whence is this deduced? Said Shini b. Hyya: From [Num. xxv. 4]: "Take all the heads of the people and hang them up before the Lord in the face of the sun." If people have sinned, wherein have the heads of the people sinned, that they should be hanged? Said R. Jehudah in the name of Rabh: Thus said the Holy One, blessed be He, to Moses: "Take the heads of the people, and set

* Leeser's translation does not correspond.

them at separate places, that they shall judge the guilty ones and hang them in the face of the sun (which means in the day-time)." And why in separate places? Shall we assume, because two capital punishments must not be decided on one and the same day? Did not R. Hisda say that this is said only when capital punishments are of different kinds, but if of one kind they may? Therefore it must be said: To hasten the execution of the guilty, that the anger of Heaven shall cease.

"*They have to postpone it until the morrow.*" Whence is this deduced? Said R. Hanina: From [Is. i. 21]: "Righteousness lodged therein; but now murderers"—which means, formerly they used to postpone the condemnation for a night, and now that they are not doing so they are considered murderers.

"*Must not be begun on the eve of Sabbath,*" etc. Why so? Because it could not be done otherwise; as, if they should begin and finish on the eve of Sabbath, perhaps they would need to condemn him, and then they would have to postpone it over night. And to conclude the case on Sabbath and to execute on the same day, the execution does not violate the Sabbath; and should it be executed at night, after Sabbath the law requires, "in the face of the sun"; and should the conclusion be on Sabbath and the execution on the following day, then it would be torture for the guilty one, which is not allowed. Should they begin on the eve of Sabbath and conclude on the day after Sabbath, then they are liable to forget the reasons. Although there were two scribes who used to write down the discussions—the defence as well as the accusation—they wrote only what was said, but could not write the heart of the man. And, therefore, it was impossible otherwise.

"*They used to ask the opinion,*" etc. Said Rabh: I used to be among the judges of the court of Rabbi, and they used to begin the question of opinions with me. But does not the Mishna state that they have to begin with the eldest? Said Rabba b. Rabba, according to others Hillel b. Wals: It was different in the court of Rabbi, as in all cases they used to begin from those who were sitting at the side. The same said again: From the time of Moses until the time of Rabbi we do not find one man who was unique in the possession of wisdom, riches, and glory. Is this so? Was it not so with Jehoshua? Nay, there was Elazar the high-priest, who was equal to him. But was not Pinchas such a man? Nay, there were the elders who ruled with him. But was there not King Saul, of whom the same could be

said? Nay, there was Samuel. But did not Samuel die before Saul? It means, all the years of his life. But was not David such a man? There was Era of Ja'ir. He also departed before him. It means, also, all the years of his life. Was not King Solomon such a man? There was Shimi b. Geara. But did not Samuel slay him? It means, all the years of his life. Was there not Hezekiah? There was Shbna. Was there not Ezra? There was Nehemiah. Said R. Ada b. Ahbah: I can add thus: From the time of Rabbi until the time of R. Ashi there is also not to be found a man who was unique in all that is said above. But was there not Huna b. Nathan? R. Huna was under the influence of R. Ashi.

"Criminal cases they began from those sitting at the side." Whence is this deduced? Said R. Aha b. Papa: It is written [Ex. xxiii. 3]: "Neither shalt thou speak in a cause." (The term for "cause" is "rib," literally "quarrel," and "rab" means "great.") Do not read "rib," but "rab," which means: You shall not contradict one who is greater than you. Rabba b. b. Hana in the name of R. Johanan said: This is inferred from [I Sam. xxv. 13]: "Gird ye on every man his sword, and they girded on every man his sword; and David also girded on his sword." (We see that first it was done by the people and afterwards by the master.)

Rabh said: One may teach his disciple, and at the same time may judge in association with him in criminal cases. An objection was raised from the following concerning purification and defilement. A father with his son, or a master with his disciple, are counted as two voices. However, in civil cases, in criminal cases concerning stripes, in consecration of the month and in the establishment of leap year, a father with his son, or a master with his teacher, is counted as one voice only. (Hence we see that the master with his disciple cannot judge together in criminal cases, so that they should be counted two.) Rabh speaks of such disciples as R. Kahana and R. Assi, who needed only Rabh's tradition, but not his sagacity, to equalize things.

R. Abuhu said: In ten things civil cases differ from criminal cases. However, all of them do not apply to the case of an ox which is to be stoned, except as to the number of judges, twenty-three being needed, similar to all other criminal cases. But whence is this deduced? Said R. Aha b. Papa: From [Ex. xxiii. 6]: "Thou shalt not wrest the judgment of thy poor in his cause"; *i.e.*, thou shalt not wrest the case of thy poor, but thou

mayst wrest the case of the stoning of an ox. (And as this law does not apply to the stoning of an ox, so do not apply the other laws except the one of the twenty-three judges mentioned above.) But are there not some other things in which criminal cases differ from civil? Have we not learned in a Boraitha that among the Sanhedrin must not be any one of great seniority, a castrate, and those who have no children? R. Jehudah also adds to these a cruel man.

"All are competent to judge civil cases." What does the Mishna mean by the expression "all"? Said R. Jehudah. To add a bastard. But this was taught already in the above-mentioned Boraitha, that all who are competent to judge criminal cases are competent for civil cases. However, there are those who are competent for civil cases but not for criminal. And in our discussion we have debated: "What does it mean by all who are competent?" The same R. Jehudah said: It means to add a bastard. One means to add a proselyte and the other means to add a bastard; and both cases are necessary to be stated. For if a proselyte only were stated, one might say, it is because he is eligible to marry a daughter of an Israelite; but a bastard, who is not allowed to do so, is not competent. And if a bastard only were stated, one might say, because, after all, he is a descendant of an Israelite; but a proselyte, who is a descendant of a heathen, is not competent. Therefore both statements are necessary.

"But not all of them are competent to judge criminal cases." What is the reason? That which was taught by R. Joseph: As the court must be select in its uprightness, so it must be select in all other things—without any blemish. And R. Ameimar said: Where is there to be found an allusion to this in the Scripture? In [Solomon's Song, xiv. 7]: "Thou art altogether beautiful, my beloved, and there is no blemish on thee." But perhaps it means literally that the judges shall be without any bodily blemish? Said R. Aha b. Jacob: It reads [Num. xi. 16]: "And they shall stand there *with thee*"—which means those who are equal to thee (*i.e.*, in birth, but not a proselyte and a bastard). But perhaps there is a difference, because of the glory of the Shekinah. Therefore said R. Na'hman b. Itz'hak: This is inferred from [Ex. xviii. 22]: "When they shall bear with thee." This means they shall be equal to thee in birth.

MISHNA II.: The Sanhedrin sat in a half-circle in order that they could see each other. Two scribes of the judges stood before them, one on the right and one on the left, and they wrote

down the reasons of the accuser and of the defender. According to R. Jehudah there were three—one who wrote down the reasons of the accuser and one the reasons of the defender, and one the reasons of both. And before them sat three rows of scholars (disciples). To every one of them his seat was known. If it was necessary to add a judge, one from the first row was elevated, and one from the second came and took the latter's place, and one from the third took the place of this one; and for the place in the third row one of the standing people was selected, but he did not take the same seat as the one departed occupied, but that to which he was entitled.

GEMARA: Whence is this deduced? Said R. Aha b. Hanina: From [Solomon's Song, vii. 3]: "Thy navel is like a round goblet which lacketh not the mixed wine." By "navel" is meant the Sanhedrin. And why were they named navel? Because they used to sit in the middle of the world (according to the Talmud, Jerusalem was the middle of the world and the Temple was in the centre of Jerusalem), and also protected the whole world. And why were they named a "round goblet"? Because the Sanhedrin sat in a circle: "Which lacketh not the mixed wine"—*i.e.*, if one wished to leave, it must be seen that besides him twenty-three remained, and if there were less, he must not. "Thy body is like a heap of wheat fenced about with lilies," means that as from a heap of wheat all derive benefit, so all were pleased to hear the reasons given by the Sanhedrin in their discussions. "Fenced about with lilies" means that even a fence of lilies was not broken by them to go out of it. This is what was said by a certain Minn to R. Kahana: Your law permits a man to stay alone with his wife during the days of her menstruation. Is it possible that flax and fire should be together and should not burn? And he answered: The Torah has testified that we are such a kind of people that even a fence of lilies is sufficient for us, and will never be broken. Resh Lakish said: This is inferred from *ibid.* vi. 72, which means that even thy vain fellows are full of meritorious acts—like the pomegranate.* R. Zera said: From [Gen. xxvii. 27]: "And he smelled the smell of his garments," etc. Do not read "bgadov," which means dress, but "bagdov," which means his transgressor. There were *ῥβριον*†

* It is useless to quote the passage, as its translation does not correspond with the saying of Resh Lakish at all.

† We have translated in accordance with Schönhack's Dictionary, as it seems to us correct.

(insolent fellows) in the neighborhood of R. Zera, who nevertheless associated with them and showed them respect, to the end that they should repent. The rabbis, however, were not satisfied with this. But after the soul of R. Zera had gone to its resting-place the above-mentioned people took this to heart, saying: Hitherto there was the little man who prayed for us, but now who will do so? And they repented and became good.

"*Three rows*," etc. Said Abayi: Infer from this that if one left his place, all in the row had to change their places. But could one not protest, saying: Hitherto I have sat in front, and now you place me in the back? Said Abayi: To such a protest he was answered: There is a parable that it is better for one to be the tail of a lion than the head of a fox.

MISHNA III.: How were the witnesses awestruck in criminal cases? They were brought in and warned: Perhaps your testimony is based only on a supposition, or on hearsay, or on that of another witness, or you have had it from a trustworthy man; or perhaps you are not aware that finally we will investigate the matter by examination and cross-examination. You may also be aware of the fact that there is no similarity between civil and criminal cases. In civil cases one may repay the money damage and he is atoned; but in criminal cases the blood of the person executed, and of his descendants to the end of all generations, clings to the originator of his execution. So do we find in the case of Cain, who slew his brother. It reads [Gen. iv. 10]: "The voice of the 'bloods' of thy brother are crying unto me from the ground." It does not read "blood," but "bloods," which means his blood and the blood of his descendants. [According to others it reads "bloods" in the plural, because his blood was scattered all over the trees and stones.] Therefore the man was created singly, to teach that he who destroys one soul of a human being, the Scripture considers him as if he should destroy a whole world, and him who saves one soul of Israel, the Scripture considers him as if he should save a whole world. And also because of peace among creatures, so that one should not say: My grandfather was greater than yours; and also that the heretic shall not say: There are many creators in heaven; and also to proclaim the glory of the Holy One, blessed be He. For a human being stamps many coins with one stamp, and all of them are alike; but the King of the kings of kings, the Holy One, blessed be He, has stamped every man with the stamp of Adam the First, and nevertheless not one of them is like the other. Therefore

every man may say : The world was created for my sake, hence I must be upright, just, etc. Should you (witnesses) say : Why should we take so much trouble upon ourselves ? To this it is written [Lev. v. 1] : "And he is a witness, since he hath seen or knoweth something ; if he do not tell it, and thus bear his iniquity." And should you say : After all, why should the blood of this man cling to us ? To this it is written [Prov. xi. 10] : "When the wicked perish, there is joyful shouting."

GEMARA : The rabbis taught : What means a supposition ? The court may say to them : Although you saw that one ran after his companion to a ruin and you ran after them, and found a sword in his hand from which the blood dripped, and you also saw the one killed move convulsively, you saw nothing (so long as he did not kill him in your presence).

There is a Boraitha : Simeon b. Shetha said : May I not live to see the consolation of our people if I did not see one who ran after his companion to a ruin, and I ran after him, and saw a sword in his hand from which blood dripped, and the one killed moved convulsively, and I said to him : You wicked one, who has slain this man—I or you ? But what can I do that your blood is not legally in my hands, as it reads [Deut. xvii. 6] : "Upon the evidence of two . . . be put to death." But He who knows the thoughts of man shall take revenge on this man who has slain his companion. It was said that both (Simeon and the murderer) had not moved before a snake came and stung the guilty one that he died.

But was this man liable to be killed by a snake ? Did not R. Joseph say, and so also taught the disciples of Hiskia : Since the Temple was destroyed, although the court of the Sanhedrin existed no longer, the punishment of the four kinds of death prescribed in the Scripture was not abolished by Heaven—as, *e.g.*, he who is liable to be stoned finds his death by falling from a roof or by being trodden down by a wild beast ; he who is liable to be burned finds his death by fire or by the bite of a snake ; he who is liable to be slain by the sword falls into the hand of the government, which slays him, or he comes to death by the sword of murderers ; and he who ought to be hanged finds his death by drowning in the river or by diphtheritis. (But the murderer is only to be slain, and not burned ?) This man was liable to be burned for another crime ; and the master said elsewhere that he who is guilty of two crimes is to be punished by the heavier death.

"*Supposition.*" We see that a supposition does not hold good

CHAPTER V.

RULES AND REGULATIONS CONCERNING PRELIMINARY QUERIES, EXAMINATION, AND CROSS-EXAMINATION IN CRIMINAL CASES. WHAT MAY OR MAY NOT BE CONSIDERED A CONTRADICTION OF WITNESSES. HOW IS IT IF A DISCIPLE NOT BELONGING TO THE JUDGES SAYS: "I HAVE SOMETHING TO SAY TO HIS ADVANTAGE OR DISADVANTAGE"? BY WHAT MAJORITY ONE MAY BE ACQUITTED AND BY WHAT ACCUSED; AND TO WHAT NUMBER JUDGES MAY BE ADDED, IF THEY CANNOT COME TO ANY CONCLUSION.

MISHNA I.: The court used to examine the witnesses with the following seven inquiries: (a) In what Sabbatic period? (b) In what year of the latter? (c) In what month? (d) On what date of the month? (e) On what day? (f) At what hour? (g) And in what place? R. Jose, however, maintains: "Only on what day? At what hour? In what place?" And also: Did you know this man? Did you warn him?

If the crime was idolatry, they were questioned which idols they worshipped and what kind of worship? He who is more particular and who enlarges the examination is praiseworthy. It happened that Ben Sakkai had examined the witnesses concerning the kind and the size of the figs of a certain fig tree which was connected with the crime.

What is the difference between examination and queries? In the latter, even if only one answered, "I don't know," the complaint is dismissed; while in examination, if one of the witnesses, and even two, claim that they did not know, their testimony holds good. In both cases, however, if they contradict each other, their testimony is ignored. If one says, "It happened on the second of the month," and the second says, "on the third of it," their testimony holds good, as it is to be supposed that to one was known the intercalation of the last month and to the other it was not. However, if one says "on the third" and the other says "on the fifth of the month," their testimony is ignored. If one says "in the second hour" and the other says "in the third," it holds good; but if one says "in the

third" and the other "in the fifth hour of that day," it is ignored. R. Jehudah, however, maintains that it still holds good; but if one says "in the fifth hour" and the other says "in the seventh," even according to R. Jehudah it is ignored, as in the fifth hour the sun is in the east, while in the seventh hour it is already in the west.

After one witness was examined they let the second enter and examined him. And if their testimony correspond, the discussion begins with the defence. Should one of the witnesses say, "I have something to say in behalf of the defendant, or one of the disciples, "I have something to say to the disadvantage of the defendant," the court silences him. If, however, one of the disciples says, "I have something to say in his behalf," they take him out of his place, and set him among them, and he remains there the whole day; and if his words are reasonable, he is listened to. Furthermore, if the defendant says, "I have something to say in my behalf," he is to be listened to if there is something in his defence. If the judges find a good reason to acquit him, they do so immediately; and if not, they postpone the trial to the morrow. The judges then go out in pairs, and eat something—not much, but do not drink wine the whole day. They continue their discussion (outside of the court) all night, and on the morrow they come early to the court. He who was among the defenders says: I defended yesterday, and am still of the same opinion. The same is it with the accuser—he has to say: I accused, and am still of the same opinion. The one who has accused may retract from his statement of yesterday, to the advantage of the defendant. This is not allowed to him who has defended. If some of them erred in their statements, the scribes of the judges remind them of it. And again, if the conclusion is to the advantage of the defendant they free him immediately; and if not, they arise to be numbered. If twelve of them acquit and eleven accuse, he is acquitted. But if twelve accuse and eleven acquit, and even if eleven accuse and eleven acquit, but the twenty-third says, "I am in doubt"; even if twenty-two are for acquitting or accusing and one says, "I don't know," judges are to be added. And to what number? Two and two, till the whole number reaches seventy-one. And then if thirty-six acquit and thirty-five condemn, he is acquitted; but if *vice versa*, the discussion is prolonged until one of the accusers accepts the opinion of the acquitters.

GEMARA: Whence is all this deduced? Said R. Jehudah:

From Deut. xiii. 15 : "Then shalt thou inquire and make search, and ask diligently." And it reads also [ibid. xvii. 4] : "And it be told thee, and thou hearest of it, thou shalt inquire diligently"; and also [ibid. xix. 18] : "And the judges shall inquire diligently." But perhaps the Scripture does not require seven queries in one case, and it is meant literally (namely, in the crime of a misled town three queries, and concerning idolatry two, and the same also concerning collusive witnesses; as in the former searching is mentioned three times and in the latter searching is mentioned twice). As if seven in one case were needed, let the Scripture state all the above cases together, and then all other criminal cases would be inferred from this. Because searching is mentioned in all three cases above, we infer one from the other, so as to apply everything which is in one case to the others. But the law concerning those cases is not similar, as the case of a misled town cannot be equalized to the other two cases, as they are punished only in their body, but not in their estate; while in the case of a misled town all its estates must be destroyed. Neither can idolatry be equalized to the two cases, as the latter are put to death by the sword, while an idolater is to be stoned. And the case of collusive witnesses is also in one respect more rigorous than the others, as they are put to death without warning? One is inferred from the other, because of the analogy of the expression "diligently," which is to be found in all the cases, and would be superfluous if it were not written for that purpose. And to such an analogy, which comes from a superfluous expression, an objection is not to be made. Hence we infer the case which is to be punished with hanging by an *a fortiori* conclusion, from those which are to be punished by stoning or by the sword; and those by burning, by an *a fortiori* conclusion from those by stoning, etc. But such an *a fortiori* conclusion would be correct if all of the rabbis agreed that stoning is a more rigorous death than all the others. But there are some who hold that burning is more rigorous. Hence, according to them, the above *a fortiori* conclusion could not be drawn. Therefore said R. Jehudah : The seven queries of examination are inferred from [ibid. xiii. 15] : "And behold, if it be true—the thing is certain," which term is again repeated in ibid. xvii. 4. The words "certain" and "true," which are repeated, make four, and in the above three cases "searching" is mentioned seven times. These altogether make eleven, of which seven are to be taken for the seven queries, three of them for an analogy, and the one

which remains applies to that case of which the punishment is burning, in accordance with R. Simeon's theory that burning is more rigorous. And concerning the rabbis, who hold that stoning is more rigorous, it does not matter if a thing which is to be inferred by the drawing of an *a fortiori* conclusion is nevertheless mentioned in the Scripture.

R. Abuhu ridiculed this statement. Why not say that the superfluous word of the eleven in question is to teach that eight queries are necessary in the examination? Eight queries! What is this? How many minutes are there in the hour? And so, also, a Boraitha states that queries were used. But such a question is correct, according to Abayi, who said that R. Mair maintains that one is not liable to err in the minutes at all, or in a few minutes. But according to him, after R. Jehudah, who maintains that one is liable to err in a half hour, and according to Rabha, who maintains that one can err even in a whole hour, what should be the eighth query? "What period of the jubilee year?" However, he who maintains that the eleventh word mentioned above is applied to something else, maintains that the latter query is not necessary, as they were already questioned: What period of the Sabbatic year?

"R. Jose said," etc. There is a Boraitha: R. Jose said to the sages: According to your theory, if a witness came before the court testifying, "Yesterday this man killed some one," may he be questioned in what period of the Sabbatic year, or in what year, month, and on what day of the month? And he was answered: The same as, according to your theory, that the queries should be: On what day, at what hour, and in what place? How is it if one testifies before the court, "This man has just killed a man"? Nevertheless the above queries are put to him: On what day, and at what hour? Hence, although not necessary, nevertheless he is to be questioned in accordance with the theory of R. Simeon b. Elazar, who maintains that the examination should be made severe, that the witnesses may lose heart in case they do not tell the truth. The same is the case with the other queries—they have to be put although it is not necessary. R. Jose, however, may say: Usually the case is not tried just after the crime is committed, and therefore it is very seldom that the witness has to say: He killed him just now. However, one or a few days after the crime has been committed, it frequently happens that the case is tried.

"Do you know this man?" etc. The rabbis taught: The

query was: Do you recognize this man as the murderer of him who was slain? Was he a heathen or an Israelite? Have you warned him? Did he accept the warning? Did he answer in spite of this? Did he commit the crime just after he was warned? And if the crime was idolatry: Which idol has he worshipped—the idol Peor or Markulis? How did he worship it? Did he sacrifice an animal or incense to it, or pour out wine for it, or bow himself down before it?

Ula said: Whence do we deduce that the warning is prescribed biblically? From [Lev. xx. 17]: "And if a man take his sister, the daughter of his father, or the daughter of his mother, and see her nakedness." Is he guilty because he has seen it? It must therefore be said that it means he is aware of the crime (*i.e.*, aware that she is his sister and that it is a crime). Hence the same is it with all other crimes—that he is not to be sentenced unless he was aware that it was a crime; and to be certain that he was aware, it can only be through warning. And as this verse speaks of a crime for which he is punished with 'korath,' which means through Heaven, to which warning is not applied, apply to it the punishment of stripes. The school of Hiskia deduces it from [Ex. xxi. 14]: "But if a man come presumptuously upon his neighbor, to slay him with guile," which means it was presumptuously done even after he was warned. The school of R. Ismael inferred this from [Num. xv. 33]: "And they that find him gathering sticks," which means that after they warned him he still gathered the sticks. And the school of Rabbi deduced this from [Deut. xxii. 24]: "Because he had done violence."* And all of them are needed; as if it were stated only in the case of his sister, as to which it was explained that it means the punishment of stripes, one might say that this applies only to stripes, but not to capital punishment. Therefore the cited verse in Ex. xxi. And if the two only were stated, one might say that it applies only to a kind of death which is more lenient than stoning, but to the punishment of stoning, which is very rigorous, it does not apply. Therefore all are needed.

The Boraitha states: Did he answer in spite of this? Whence do we know this? Said Rabha, and according to others Hiskia:

* The expression in Hebrew is *al dbar asher enah*, etc.—literally, "the thing which he has violated," etc.; and it should be written "because he has violated," without the term "dbar" (thing). The Talmud takes the term "dbar," which means "thing," and which if punctuated "dibur" means "talk," to mean that he was *told* it was a crime and he did not listen.

From [ibid. xvii. 6]: "Shall he that is worthy of death be put to death," which means, provided he answered, "I will do this even should it cause my death."

R. Hanan said: Witnesses who testified in case of a betrothed woman, if they be found collusive, are not to be put to death, as they may say: Our intention was to make it unlawful for her to be his wife only, but not that she should be put to death. But did they not warn her? It speaks of when they did not. But in such a case it is self-evident, as without warning she is not to be put to death. He speaks of a scholarly woman, and this is in accordance with R. Jose b. Jehudah, who said in the following Boraitha: Warning does not apply to a scholar, as the purpose of warning is only to recognize if the perpetrator of the crime did it while he was not aware that such was a crime, or he did it although he was aware; and as a scholar is aware of this crime, no warning is needed. And as they are not to be put to death, she also is exempted from death, as the Scripture requires that the collusive witnesses should be punished with the same punishment as the perpetrator of the crime, if it were true; and as they claim that they intended only to make it unlawful for her to be the wife of her betrothed, such a punishment is not applicable to the witnesses, and therefore she also is acquitted.

R. Hisda said: If one of the witnesses testifies that he slew him with a sword and the other says "with a razor," it is not admissible. But if one says that the murderer or the one murdered was dressed in white, and the other testifies, "He was in black," it is to be considered admissible. An objection was raised from the following: "It should exactly correspond," means that if one testifies that he slew him with a sword and the other with a razor, or if one says that he was dressed in black and the other that he was dressed in white, it does not? R. Hisda explains this Boraitha, that it means if both have testified that he strangled him with a muffler, and one said "It was a white one," and the other said "It was a black one." Come and hear another objection: If one says, "He wore black sandals," and the other says, "white ones," it is not considered corresponding? Also this Boraitha may be explained that he kicked him with his sandals and killed him. Come and hear another objection from our Mishna: It happened that Ben Sakkai examined the witnesses . . . of a certain fig tree? Said R. Jose: Do you want to contradict a man from Ben Sakkai's theory? He was of the opinion that there is no difference between examination and query, and his

theory is individual. Who was Ben Sakkai? Shall we assume that it means Rabban Johanan ben Sakkai? Was he, then, among the Sanhedrin? Is there not a Boraitha that the age of R. Johanan was one hundred and twenty: the first forty years he was engaged in business, the middle forty he studied, and the last forty he taught? And there is another Boraitha: Forty years before the Temple was destroyed, the Sanhedrin was exiled from the chamber of the Temple to a store. And R. Itz'hak b. Abudimi explained that it means that from that time the Sanhedrin did not try cases of capital punishment. And there is also a Mishna which states that after the Temple was destroyed R. Johanan ben Sakkai enacted, etc. Hence we see that during forty years of his life there were no cases of capital punishment in the court of the Sanhedrin, and it cannot be that the examination in question was made by him. Therefore it must be said that this Ben Sakkai was some one else. And so it seems to be, as if it were R. Johanan b. Sakkai, how is it possible that Rabbi, the editor of the Mishnayoth, should name him Ben Sakkai only. But have we not learned in a Boraitha: It happened that *R. Johanan b. Sakkai* examined . . . the kind of figs? Therefore it must be said that at that time he was a disciple who was sitting in the row before the Sanhedrin, and he said something which was accepted by the Sanhedrin, and therefore it was established in his name. Hence while he was as yet a student he was named Ben Sakkai; and afterwards, when he began to teach, he was named Rabban Johanan. And the Mishna which mentioned him by the name of Ben Sakkai did so because when this happened he was still Ben Sakkai; the Boraitha, however, mentioned him by his name of the latter period.

"*What is the difference between examination?*" etc. How is to be understood: If two claim, etc.? Is it not self-evident that if the testimony holds good when one says, "I don't know," the same is the case also when two say so? Said R. Shesheth: This statement applies to the first part—namely, if the investigation shows that two of them are aware and the third says, "I don't know," even then their testimony is ignored; and it is in accordance with R. Aqiba, who compares three witnesses to two. As with two, if there is a difference in their testimony, the case is to be dismissed, the same is it with three, if even only one of them says, "I don't know." Said Rabba: How can such an explanation hold good? Does not the Mishna state that their testimony holds good? Therefore said he: It is to be ex-

plained just in the reverse. Even concerning queries, if two witnesses are aware, but the third one says, "I don't know," their testimony holds good; and it is not in accordance with R. Aqiba.

R. Kahana and R. Saphra used to learn the Tract Sanhedrin in the college of Rabba, and when Rami b. Hama met them, he questioned them: What new have you found in the Tract Sanhedrin, as taught by Rabba? And they rejoined: And how would it be if we had learned Tract Sanhedrin other than at Rabba's college—would you ask us for any news? It must be that there is some difficulty to you in this tract. Tell us, then, what it is. And he answered: The statement of the Mishna, which makes a difference between queries and examination—the reason for which is unknown to me. Are not both prescribed biblically? And they answered: What comparison is this? In the inquiry, if one said, "I don't know," their testimony is annulled, because the witnesses of such a testimony cannot be made collusive. And there is a rule that such a testimony is not to be taken into consideration; while in examination, if one said, "I don't know," their testimony still holds good. Hence they remain legal witnesses who can be made collusive. Rejoined he: If it is so, then you have brought with you very great news. Rejoined they: Because of the kindness of you, master, not to object to us, it may be named good news; but if you were to use your sagacity to object to us, we would have nothing to say.

"The intercalation of the month," etc. Until what date of the current month should the supposition of the ignorance of the intercalation of the last month hold good? Said R. Aha b. Hanina in the name of R. Assi, quoting R. Johanan: Until the greater part of the month is passed (*i.e.*, *e.g.*, if one says, "It was on the twentieth of the month," and the other says, "on the twenty-first," the supposition of the intercalation is not to be taken into consideration, and their testimony is annulled). Said Rabha: This we infer also from our Mishna, which states that, if one says "on the third," and the other "on the fifth," their testimony is ignored. And if the intercalation were taken into consideration, why not say that one of the witnesses was aware of two intercalations (*i.e.*, from the last two months), and the other was not aware of it? Hence the reason must be, because one may not be aware of it during the first half of the month, but in the second half it is impossible that he has not heard of it. (Says the Gemara:) This, however, is not to be taken as a support, as it

may be said that one is not aware of it even during the second half of the month. And the reason why the Mishna does not say that he was not aware of two intercalations is because, usually, each intercalation was announced by blowing in the cornet; and it could happen that one might overhear one blowing, but not two.

R. Aha b. Hanina said again in the name of the same authority: Until what time may the benediction of the moon be pronounced? Until it becomes more round. But until what date? R. Jacob b. Bibi in the name of R. Jehudah said: Until the seventh. And the sages of Nahardea said: Until the sixteenth. And the basis of both is R. Johanan's statement. They differ, however, in the explanation of it. According to R. Jehudah, his expression, "until it becomes more round," means when it is already half; and according to the others, R. Johanan means a full moon. Said R. Aha of Diphthi to Rabhina: Let one pronounce, after the time of the month's benediction has elapsed, the benediction of "Who is good, and does good to the world," And he answered: Do we then pronounce the benediction of "Blessed is He who judges true" when the moon diminishes, so that we shall pronounce the blessing, "Who is good," etc., after the full moon? But why not pronounce both? Because to a custom no such benedictions are used. The same said again in the name of the same authority: He who pronounces the benediction of the moon in time is considered as if he had received the glory of the Shekinah. And this is deduced from the analogy of the expression "zeh" mentioned in Ex. xiii. 2 and *ibid.* xv. 2.

In the school of R. Ismael it was taught: If Israel should have only the meritorious act of receiving the glory of their heavenly Father once a month, it would be sufficient. Said Abayi: Therefore we must pronounce the above benediction standing. Miramar and Mar Zutra used to stand shoulder to shoulder, pronouncing this benediction. Said R. Aha to R. Ashi: In the West they used to pronounce the benediction, "Blessed be He who renews the moon." And he answered: Such a blessing our women also pronounce. We, however, have adopted that which was composed by R. Jehudah: "Blessed be He who with His words has created the heavens, and with the breath of his mouth all their hosts, to whom he gave order and time, that they should not change His command; and they rejoice and are happy in doing the will of their creator. They work truthfully,

and what is done through them is truth." * And to the moon He commanded that she renew herself every month, and that she should be a crown and a guide to the people who were selected by Him from their birth. It is a symbol to the children of Israel that, finally, they also will be renewed like unto her (the moon), and they will praise their Creator, his name, and the glory of His kingdom. Blessed be Thou, Eternal, who dost renew the moon.

[R. Aha b. Hanina in the name of R. Assi, quoting R. Johanan, said: With whom can you fight a war of the Torah? With him who possesses bundles of Mishnayoth. And R. Joseph, who was a master in Mishnayoth, applied to himself (Prov. xiv. 4): "But the abundance of harvests is (only) through the strength of the ox." †]

"If one says, 'in the second hour,'" etc. Said R. Shimi b. Ashi: This is only when they differ concerning the hour; but if one says, "It was before sunrise," and the other says, "It was after," their testimony is to be ignored. Is this not self-evident? *I.e.*, even if one says, "It was before sunrise," and the other says, "At the sunrise." Is this also not self-evident? Lest one say that the one who says it was before the rising of the sun stood at such a place that he could not see it well, he comes to teach us that it is not so.

"The whole day," etc. The whole day only? Have we not learned in a Boraitha that if they accepted his reasons he remains with them all the time; but if his reasons were not accepted, he nevertheless remains there the whole day to the end that his descent should not be a disgrace to him? Said Abayi: Explain, then, our Mishna that he remains there the whole day if his reasons were not accepted.

"They do not drink wine," etc. And why not? Said R. Aha b. Hanina: Because of [Prov. xxxi. 4]: "Nor for *rausnim* (princes) strong drink." By "*rausnim*" is meant that those who occupy themselves with *raus* (secrets) of the world should not drink strong drinks.

* This benediction, which is copied in the prayer books, is not exact as in the original Talmud. And also not of that which was copied by Hananiel, but of that which was copied by Asher. And there is a great difference in the translation. We, however, have translated according to that of the Talmud, as so is our method.

† It is unknown to us why the passage in the text is inserted here; it also quotes a verse from Prov. xxiv., which does not correspond. However, according to our method, we could not omit it.

"*The opinion of the acquitter.*" But how is it if he does not accept it? Said R. Aha, and so also R. Johanan: They have to acquit him. Said R. Papa to Abayi: If so, why was he not acquitted previously when they (were still twenty-three)? And he answered: So said R. Johanan: Because they should not leave the court disputing, According to others the answer was: R. Jose of the following Boraitha holds with you. As there is no addition to the court of seventy-one, so there is no addition to the court of twenty-three (but if there is no majority for condemning, the defendant is freed).

The rabbis taught: In civil cases the court may say: The case becomes old. But this cannot be said in criminal cases. What does this mean? If it means it becomes so old that it is hard to reach a conclusion, and that therefore it must be postponed, then the reverse should be the case. It means, in criminal cases they must postpone it, as perhaps they will find some defence, but not in civil. Said Huna b. Monoach in the name of Aha b. Ika: Reverse the Mishna. R. Ashi, however, said: The Mishna must not be reversed, as the expression "become old" means that the matter has received a thorough discussion and may not be further prolonged. An objection was raised from the following: The oldest of the judges may proclaim the case old. And this is correct according to the explanation of R. Ashi, as such a proclamation belongs to the oldest. But according to the first explanation, should the oldest blame himself? Nay, it would be a disgrace if some one else should say this to him. But if he himself proclaims this, there is no disgrace. According to others, it was questioned: How could the oldest praise himself, saying that the matter has become so clear that objection cannot be made? Is it not written [Prov. xxvii. 2]: "Let another man praise thee, and not thy own mouth." With a trial it is different, as it rests upon the shoulders of the oldest; for the Mishna states: After the conclusion, the oldest of the judges proclaims: "You, so and so, are acquitted"; or, "You, so and so, are guilty."

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE EXECUTION BY STONING AND THE MANNER OF HERALDING. HOW THE CRIMINAL WAS URGED TO CONFESS BEFORE DEATH. THE STRIPPING OFF BEFORE DEATH OF THE DRESS OF A MALE AND OF A FEMALE. THE HANGING AFTER STONING, AND HOW IT WAS PERFORMED.

MISHNA I.: If the conclusion was to condemn, the guilty one was taken out immediately to be stoned. The place where he had to be executed was outside of the court, as it reads [Lev. xxiv. 13]: "Lead forth the blasphemer." One stood at the gate of the court with a flag in his hand, and one who rode on a horse stood so far distant that he could see the signal of the flag in case there were any. And then if one came before the court, saying, "I have something to say in his defence," the man raised up the flag, and he who was on horseback rushed and stopped the procession; and even if the guilty one himself says, "I have something new to say in my defence," he is to be brought back to the court, even four and five times, provided there is something in it which is worthy of consideration. And then, if the court finds that he is not guilty, he is acquitted, and if not, he is taken back to be stoned. And a herald goes before him, heralding: So and so, the son of so and so, is taken to be stoned, because he committed such and such a crime, and A and B are his witnesses. Every one who knows something in his defence may come and tell it before he is executed.

GEMARA: Was, then, the place of execution outside of the court only? Does not a Boraitha state that it was outside of all the three camps (when they were in the desert), and when they were in the cities the place of execution was outside of them? Yea! it is as you say, and the expression of the Mishna, "outside of the court," means that if it happened that the court took its place outside of the three camps or outside of the towns, even then the place of execution must be outside of the court, for the purpose that it should not appear that the court itself executed him, or for the purpose that there should be a proces-

sion, to give time to one who might have some defence for the guilty.

Whence is this deduced? From that which the rabbis taught: It reads: "Lead out the blasphemer to without the camp," meaning out of all the three camps. But perhaps only out of one camp? There is an analogy of the expression "camp" which is mentioned here, with that in the case of the burning bullocks [ibid. iv. 20]: "And he shall carry forth the bullock to without the camp, and burn him"; and as there it means outside of all three camps, as explained elsewhere, the same is the case here. R. Papa, however, maintains that this is to be inferred from the following: Let us see. Moses sat in the camp of the Levites, and the Merciful One said to him: "Lead out the blasphemer to without the camp." Hence, out of the camp of the Levites. And thereafter it reads [ibid. xxiv. 23]: "And they led forth the blasphemer to without the camp, and they stoned him," which means out of the camp of the Israelites.

But is not the verse necessary in itself, to state that it was done as Moses commanded? This is written plainly farther on: "And the children of Israel did as the Lord had commanded Moses." But to what purpose is it written, "they have stoned him with stones?" It is already written they did it, and it is self-evident that they stoned him? It is needed, as we have learned in the following Boraitha: It reads, "they stoned him with a stone," which means him—his body—but not his garments; *i.e.*, they had to undress him before the execution. "With a stone" means that if he dies by the first stone no others are needed. In Num. xv. 35 it reads: "With stones," in the plural. And both expressions are needed, as if it were stated only in the singular, one might say that one stone should be thrown, and should it not cause death, no other stones must be thrown; and if it were mentioned in the plural only, one might say that many stones are needed to start with. Therefore both are stated.*

But how could R. Papa differ from the Boraitha mentioned above? Does not the Tana state it was said so? Hence the analogy of expression was traditional, to which an Amora had no right to object. The Tana meant to say that if there were not a verse it could be inferred from the analogy; but inasmuch as there is a verse, the analogy is not necessary. R. Ashi said

* Leeser translates all the verses in the plural; in the text, however, in Leviticus it is in the singular and in Numbers in the plural.

that from the same cited verse this is inferred. Let us see! Moses was in the camp of the Levites, and the Merciful One commanded him: "Lead out the blasphemer," etc.—meaning from the camp of the Levites. "Out of the camp," means the camp of Israel.

"*One stands with a flag*," etc. R. Huna said: "I am certain that the stone with which the executed was stoned, as well as the tree upon which he was hanged, the sword with which he was slain, and also the cloth with which he was choked must be at the expense of the congregation. However, I doubt who had to bear the cost of the flag and the horse mentioned in the Mishna. The defendant, as they are provided only for his sake, or the congregation, because they are obliged to do all they can to save him? I am in doubt also as to that which was said by R. Hyya to R. Ashi in the name of R. Hisda. When one was going to be killed, they used to put a grain of frankincense in a goblet of wine and gave him to drink, so that he should become dazed. As it is written [Prov. xxxi. 6]: "Give strong drink unto him that is ready to perish, and wine unto those who have an embittered soul." And there is a Boraitha that the wine and the frankincense were donated by the respectable women of Jerusalem. Now, if it happened that they were not donated, who must bear the expense? Says the Gemara concerning the latter: Common sense dictates, at the expense of the congregation, as the verse reads "give," which means the congregation.

R. Aha b. Huna questioned R. Shesheth: How would it be if one of the disciples said, "I have something to say in behalf of the defendant," and thereafter he became dumb? Gestured R. Shesheth, saying: Then we would have to consider that there was some one at the other end of the world who had some defence for him. But, after all, it was said by the disciple that he had a defence, and when he became dumb, would it not be right for the court to investigate again—perhaps they would find out what he meant? Come and hear that which was said above by R. Jose b. Hanina: If one of the disciples who defended him at the time of the discussion dies, it will be seen at the time of the conclusion whether he is still alive and defends him. Hence we see that if he has already defended, and he says: "I have something to say in his defence," and he becomes dumb before he gives his reasons, it is not to be taken into consideration. Rejoined R. Aha: Notwithstanding that it is certain to you that R. Jose meant when his defence was already made by him, but

not otherwise, it is still a question to me. For perhaps R. Jose said so because it is usual, if one has something to say, that he says it immediately; but if it happened that he became dumb before telling the reasons, it might be that even R. Jose would admit that the court must look the matter up again.

"Which is worthy of consideration," etc. Does the Mishna mean that for the first two times it must be examined while he is yet at his place—if there is something, etc.? Have we not learned in a Boraitha, that the first two times he is to be brought back to the court, even if he does not give a good reason; and only at the third time it is to be examined if there is something in his defence before he is taken back? Said R. Papa: I interpret it that the Mishna means after the second time. But who decides whether it is a good reason or not? Said Abayi: After the second time the court appoints a pair of the rabbis to follow him, and if he has something to say, they examine him and decide if there is a good reason to take him back or not. But why should not the same rabbis be appointed previously, so that even at the first time he should not be brought back unless the rabbis found a good reason? Because he is affrighted he cannot say at the beginning all he wishes to say.

"Such and such a crime," etc. Said Abayi: "The herald must also proclaim the day, the hour, and the place, for the purpose that perhaps there will be found some people who know that the witnesses were not in that place on that day or at that hour, and they will come to make them collusive.

"The herald goes before him," etc. It means only when he is already sentenced, but not before. R. Jehoshua b. Levi said: Him who repents and mortifies his passions after they have taken a firm hold of him, and he confesses before Heaven, the verse considers him as if he should glorify the Holy One, blessed be He, in both this world and the world to come. As it is written [Ps. l. 23]: "Whoso offereth thanksgiving, glorifieth me."* The same said again: When the Temple was in existence, if one brought a burnt-offering the reward for such was with him; a meat-offering, the reward of such was with him: but him who is modest, the verse considers him as if he should sacrifice all the sacrifices mentioned in the Scripture. As it reads [ibid. li. 19]: "The sacrifices of God are a broken

* The term in Hebrew is "zobeah touhda yichabdon'ni"—literally, "He who slaughters thanks-offering, glorifieth me"; and as the last word is written with a double Nun instead of one, he infers both worlds.

spirit." Furthermore, his praying is never despised, as it reads farther on: "A broken and a contrite heart, O God, wilt thou not despise."

MISHNA II.: When he (the guilty one) was far from the place of execution—a distance of ten ells—he was told to confess, as so is the custom, that all who are to be executed should confess, and they who do so have a share in the world to come. And so do we find with Achan, to whom Joshua said: "My son, give . . . and make confession." And [ibid., ibid. 20] Achan answered Jehoshua: "Truly, I have sinned, and thus and thus have I done." And whence do we know that he was atoned after his confession? From [ibid., ibid. 25]: "And Joshua said, How hast thou troubled us! So shall the Lord trouble thee this day." *This day*—but not in the world to come. However, if the guilty one does not know how to confess, he is told to say: My death shall atone for all my sins. R. Jehudah said: If he knew that he was innocent of this crime, he might say: My death shall atone for all my sins, except this one. And R. Jehudah was answered: If it were so, all those who were to be executed would say so, to the end that they should be innocent in the eyes of the people.

The rabbis taught: In the verse cited—in what Jehoshua said to Achan—the term "na" is used, and "na" means "I pray." At the time the Holy One, blessed be He, saw [Joshua, vii. 11]: "Israel hath sinned," Jehoshua said before Him: "Lord of the Universe, who has sinned?" To which He answered: "Am I a talebarer, to tell you who. Go and draw lots." And he did so, and the lot fell on Achan. And he said to him: Joshua, do you accuse me on account of a lot? Thou and Elazar, who are the greatest of this generation, if I were to draw lots between thee and him, to one of you the lot would fall. And Jehoshua rejoined: I pray thee, do not discredit the decision of the lots, as the land of Israel will be divided by lots. As it is written [Num. xxvi. 55]: "Through the lot shall the land be divided." "Give confession!" Said Rabhina: He bribes him with words. We want of you only the confession. Give the confession, and you will be free: And Achan answered Jehoshua, and said: "Truly, I have indeed sinned against the Lord the God of Israel, and thus and thus have I done." Said R. Assi in the name of R. Hanina: Infer from this that Achan had committed a similar crime twice—twice in the days of Moses and once in the day of Jehoshua. As it reads: "And thus and thus I have done."

R. Johanan in the name of R. Elazar b. Simeon said: Five times—four in the time of Moses and once in the time of Jehoshua. As it reads: "I have sinned, and thus and thus I have done." But why was he not punished until the last crime? Said R. Johanan in the name of the same authority: Because Israel was not punished for crimes which were committed secretly until they passed the Jordan.

On this point the Tanaim differ. It is written [Deut. xxix. 28]: "The secret things belong unto the Lord our God, but those things which are publicly known belong unto us and to our children for ever, to do all the words of this law." Why are the words "unto us and to our children" and the Ayin of the "ad" pointed? To teach that they were not punished for secret crimes until they passed the Jordan. So is the decree of R. Jehudah. Said to him R. Nehemiah: Where is the place in which it is written that they were punished for secret crimes at any time? Is it not written in the cited verse, "forever?" Say, then, as they were not punished for secret crimes, so they were not punished for crimes which were done publicly until they passed the Jordan. But why was Achan punished—his crime was in secret? Because his wife and children were aware of it. "Israel hath sinned!" Said R. Abbah b. Zabda: Although he had sinned he was still called an Israelite. And said R. Abbah: This is what people say: "A myrtle which stands between thorns is still a myrtle," and so it is named. In Joshua, vii. 11, five times is "gam" (also) written in the cited verse: Infer from this that he had transgressed all that is written in the five books of Moses.

The Exilarch said to R. Huna: It reads [ibid., ibid. 24]: "And Joshua took Achan the son of Zerach, and the silver, and the mantle, and the wedge of gold, and his sons, and his daughters, and his ox, and his ass, and his sheep, and his tent, and all that he had; and all Israel were with him, and they brought them up unto the valley of Achor." Yea! he had sinned; but wherein had his sons and daughters sinned? And he answered: According to your theory, what had all Israel to do with this? Hence it was only to terrify them. The same was it with his sons and daughters. It reads farther on: "And all Israel burned them with fire and stoned them with stones."* Were they, then, pun-

* Leeser has translated this improperly. The real translation is thus: "And all Israel stoned him with a stone, and they burnt them with fire and stoned them with stones. Hence the supposition of Rabbina.

ished with both? Said Rabhina: That which was fit for burning, *e.g.*, silver, gold, and garments, was burned, and those which were fit for stoning, *e.g.*, oxen and other cattle—were stoned. It reads [ibid., ibid. 21]: "I saw among the spoil a handsome Babylonish mantle, and two hundred shekels of silver." Rabh said: A silk mantle; and Samuel said: A *σαραβαλλα*. It reads farther on [ibid., ibid. 23]: "And as they laid them out before the Lord." Said R. Na'hman: Joshua cast them down before the Lord, saying: Lord of the Universe, were these little things worth that the majority of the Sanhedrin should be killed on account of them? It reads [ibid., ibid., 5]: "And the men of Ai smote of them about thirty and six men." There is a Boraita: Thirty-six men were slain. So said R. Jehudah. Said R. Nehemiah, to him: "Is it, then, written thirty-six? It reads, "about," and it means that only Joer b. Menasseh, who was equal to the majority of the Sanhedrin, was put to death.

R. Na'hman said in the name of Rabh: It reads [Prov. xviii. 23]: "The poor speaketh entreatingly, but the rich answereth roughly." "The poor speaketh," means Moses; and "the rich," etc., means Joshua: But why? Is it because he cast them down before the Lord and said: "Little things," etc.? Did not Pinchas do the same? As it reads [Ps. cvi. 30]: "Then stood up Phinehas," etc. It ought to be written, "vayitpalel," which means, "and he prayed," instead of "vayiphalel (debated). Infer from this that he had debated with his Creator. He cast them before the Lord, saying: "Lord of the Universe, were they, then, worthy that on account of them twenty-four thousand persons of Israel should fall?"—as it reads [Num. xxv. 9]. So said R. Elazar. And if because of [Joshua, vii. 7]: "Wherefore hast thou caused this people to pass over the Jordan?"—did not Moses say similar to this [Ex. v. 22]: "Wherefore hast thou let so much evil come upon this people?" Therefore it must be said, because Joshua said at the end of the above-cited verse (7): "Would that we had been content, and dwelt on the other side of the Jordan." It reads [ibid., ibid. 10]: "Get the eup," etc. R. Shilla lectured: The Holy One, blessed be He, said to him: Thou thyself hast transgressed more than Israel, as I have commanded [Deut. xxvii. 4]: "And it shall be so, as soon as ye are gone above the Jordan, that ye shall set up these stones," and ye went a distance of sixty miles before ye did this.

After Shilla went away, Rabh appointed an interpreter and lectured: It reads [Joshua, xi. 15]: "As the Lord had com-

manded Moses and his servant, so did Moses command Joshua, and so did Joshua; he left nothing undone of all that the Lord commanded Moses." But why is it written, "Get thee up?" It means that the Lord said to him: "Thou thyself hast caused all the evils, because thou didst excommunicate the goods of Jericho, and no crime would have been committed if thou hadst not done so." And this is what is written [ibid. viii. 2]: "Only its spoil and its cattle shall ye take for booty unto yourselves." It reads [ibid. v. 13, 14]: "And it came to pass, when Joshua was by Jericho . . . And he said, No; for as a captain of the host of the Lord, am I now come. And Joshua fell on his face to the earth," etc. How could Joshua do so? Did not R. Johanan say: One must not greet a stranger, with peace in the middle of the night, as perhaps he is a demon, and so much the more must he not bow before him? There it was different, as he said: I am a captain of the Lord. But perhaps he lied? We have a tradition that even the demons do not pronounce the name of the Lord in vain. And then the angel said to him: "Yesterday you abolished the presenting of the daily eve-offering, and to-day you abolished the studying of the law." And to the question, "For which of the two transgressions hast thou come?" he answered: For that of to-day. Hence it reads [ibid. viii. 18]: "And Joshua went that night into the midst of the valley." And R. Johanan said: Infer from this that he had occupied himself the whole night with the deepness of Halakhoth.* Samuel b. Unya in the name of Rabh said: The study of the Torah is greater than the sacrifices of the daily offerings, as the angel said: For that of to-day.

Abayi said to R. Dimi: It reads [Prov. xxv.]: "Do not proceed to a contest hastily, lest (thou know not) what thou wilt have to do at its end, when thy neighbor has put thee to confusion. Carry on thy cause with thy neighbor; but lay not open the secret of another." How do the people of the West explain this passage? And he answered: At the time the Holy One, blessed be He, said to Ezekiel [Ezek. xvi. 3]: "And thou shalt say . . . thy father was an Emorite and thy mother was a Hittite," the arguing spirit (Gabriel) before the Holy One, blessed be He, said: "Lord of the Universe, if Abraham and Sarah should come and stand before thee, and thou saidst to them this, they should become ashamed." "Carry on thy cause with thy

* The term in Hebrew, "emek," has two meanings—"valley" and "deep." Hence the explanation of R. Johanan.

neighbor; but lay not open the secret of another." Had he, then (Gabriel) a right to say such a thing? Yea! As R. Jose b. Hanina said: Gabriel has three names—Piskon, Aitmun, Zigoron. *Piskon* means that he argues before Heaven for Israel's sake; *Aitmun* means that he restrains the sin of Israel; *Zigoron* means that when he concludes his defence for Israel and it does not have any effect, none of the other angels would attempt any further defence, being certain that none would accomplish anything if Gabriel had not done so.

It reads [Job xxxvi. 19]: "Hast thou prepared thy prayer before thy trouble came?" * said R. Elazar: One should always proceed with prayer before trouble comes. As if Abraham had not proceeded with his prayer until the trouble between Bith-El and the city of Ai, not one of Israel would have remained alive when the trouble happened at the city of Ai. Resh Lakish said: He who strengthens himself with prayer on the face of the earth has no enemies on the face of Heaven. R. Johanan said: One should always pray mercy, that all shall support his strength to pray, and he should not have enemies to accuse him in Heaven.

"*Atoned after confession*," etc. The rabbis taught: Whence do we know that his confession has made atonement for him from Joshua: "How hast thou troubled us! so shall the Lord trouble thee this day." *This day*, but not in the world to come. And it is also written [1 Chron. ii. 6]: "And the sons of Zerach: Zimri and Ethan, and Heman and Calcol and Dara, in all five." To what purpose is it written "in all five"? It means all five have a share in the world to come. Here it reads "Zimri," and in Joshua he is named Achan. Rabh and Samuel—according to one, his name was Akhan. And why is he named Zimri? Because his acts were according to Zimri of the Pentateuch. And according to the other his name was Zimri. And why is he named Akhan (circle)? Because he caused the sins of Israel to rest upon them like a circle.

"*To the end that they should be innocent*," etc. But what harm could he do, if he should say so? He could cast suspicion on the court and the witnesses. The rabbis taught: It happened with one who was going to be executed, that he said: If I am guilty of this crime, my death shall not atone for all my sins. And if I am innocent of this crime, my death shall atone for all

* We translate according to the Talmud. Leeser's translation, among others, does not correspond.

my sins, and I have nothing against the court and all Israel; but to the witnesses I do not surrender my innocence, and they shall not be atoned for, for ever. When the sages heard this, they said: It is impossible to bring him back, as the sentence is already rendered; but he shall be executed, and the collar shall rest upon the neck of the witnesses. Is this not self-evident—for who could trust such a man? The case was, that the witnesses retracted from their first statement. But even then, what did it amount to? Is there not a rule that after testimony has been made and accepted no retraction can take place? The case was, that they gave a good reason for their retraction, and nevertheless they were not listened to. (So did it happen with the contractor Bar Mayon.)*

* Rashi thus explains this: It happened with a contractor, who was wicked, that he died and was to be buried on the same day as a great man in Israel. And all the inhabitants of the city came to take part in the funeral of the latter, and the relatives of the contractor were also occupied in bearing the coffin of the contractor in the same street, following after the coffin of the great man. Suddenly, however, enemies fell upon them, and all of them left the coffins and ran away, except one disciple, who did not leave the coffin of his master. Thereafter, when they returned, people exchanged the coffin of the contractor for that of the great man, notwithstanding the disciple's cry that it was an error, and buried the contractor with great honor instead of the great man; and the relatives of the contractor buried the scholar. And the disciple was much grieved because his master was buried in such disgrace and the contractor with such honor. Finally his master appeared to him in a dream, and counselled him not to grieve, saying: Come with me and I will show you my glory in the garden of Eden, and also the place of that wicked man in Gehenna. And the reason why I was punished was because I was present when a scholar was disgraced, and I did not protest. And the contractor prepared a banquet for the governor of his country, and as the governor did not appear he donated the banquet to the poor of the city, and this was his reward. And to the question of the disciple: Till when shall this man be in Gehenna? The answer: Until Simeon b. Shetha shall die and take his place. And what is the sin of b. Shetha? There are many Israelitish women who occupy themselves with witchcraft in the city of Askalon, and Simeon b. Shetha, who is the head of the court, does not seize them. On the morrow this disciple told this to Simeon b. Shetha. And he selected eighty tall young men, gave to every one a big pitcher which contained a mantle, to the end that it should be kept dry, as that day was a rainy day, and told them that they should be careful to complete the task, as there were eighty witches, and every one of them had to lift up one woman, as then they could not employ any more witchcraft. He then visited the witches at their palace, leaving the young men outside. And to the question who he was and what he wanted, he answered: I am a witch, and am come to try how far you are skilled in it. And they said to him: What can you do? To which he answered: To-day is a rainy day, but nevertheless I can bring you eighty young men, all of whom are wrapped in dry mantles. And they said to him: Bring them in. He went out, and at his hint they took out the mantles from the pitchers, wrapped themselves in them, and entered. Each of them lifted up a woman; and so they overcame them, took them out, and all of them were hanged. Their relatives, how-

MISHNA III.: When he came to four ells from the place of execution, he was stripped of his garments. If a male, he was covered in front; and if a female, she was covered on both sides. So said R. Jehudah. The sages, however, say: A male was stoned while naked, but not a female.

GEMARA: The rabbis taught: If it was a male, he was covered a little in front, but a female was covered in the greater part of the front and back. So said R. Jehudah. But the sages say: Only a male was stoned while naked, but not a female. And what is their reason? [Lev. xxiv. 14]: "And all the congregation shall stone him." And what does it mean? It cannot be said "him," but not "her" (a female), as it reads [Deut. xvii. 5]: "Then shalt thou bring forth that man or that woman," and therefore it must be said, it means him without his garments, but her with her garments. Hence he is to be stoned while naked, but not a female. R. Na'hman in the name of Rabba b. Abuhu said: (The reason why a woman was not stripped is because it reads [Lev. xix. 18]: "Thou shalt love thy neighbor as thyself," which means, in case he is sentenced to death, select for him a decent death, that he shall not be disgraced.*)

MISHNA IV.: The stoning-place was two heights of a man. One of the witnesses pushed him on his thighs (that he should fall with the back to the surface), but if he fell face down, he had to be turned over. If he died from the effects of the first fall, nothing more was to be done. If not, the second witness took a stone and thrust it against his heart. If he died, nothing more was to be done; but if not, all who were standing by had to throw stones on him. Thus [Deut. xvii. 7]: "The hand of the witnesses shall be first upon him, to put him to death, and the hand of all the people at the last."

GEMARA: There is a Boraitha: With his own height he was

ever, who grieved over them, plotted against Simeon's son, and two of them plotted together that their false testimony concerning a crime which results in capital punishment should correspond, and so testified before the court, and he was condemned. And when he was brought to be executed, he said: If I am guilty of this crime, etc. After the witnesses heard this they retracted, and gave the execution of the women as a reason for their false testimony; and nevertheless he was executed. This legend is to be found in the Palestine Talmud—Tract Hagigah, Chapter II.—with many changes; and according to the Aruch, the name of this contractor mentioned was Bar Mayon.

* In the text there is repeated here a contradiction from Tract Suteh, its proper place, which we therefore omit.

thrown down from the height of three men. Was such a height necessary? Does not a Mishna in First Gate state that as a pit which causes death is of ten spans, so all other heights which may cause death must be no less than ten spans. Hence the height of ten spans is sufficient? Said R. Na'hman in the name of Rabba b. Abuhu: From the above-cited verse [Lev. xix.], it is inferred that a decent death must be selected for him. If so, why not from a still higher place? Because his body would be mangled.

"One of the witnesses pushed him," etc. The rabbis taught: Whence do we know that he must be pushed? From [Ex. xix. 13]: "But he shall surely be stoned, or shot through." From the term "yorauh yeyoreh," which means pushing. And whence do we know that he must be stoned? From the term "soqueul." And whence do we know with both stoning and pushing? Therefore it reads "soquoul yisoquel auyorauh yeyoreh." And whence do we know that when he died from pushing nothing more was to be done? From "au," which means "or." And because the term is future, we infer that the same shall be in later generations.

"Took a stone," etc. Took! Have we not learned in a Boraitha: R. Simeon b. Elazar said: There was a heavy stone, which two men had to carry, and this he took and thrust against his heart, and if he died he fulfilled his duty. (Hence if two men had to carry it, it could not be taken by one.) He lifted it up with the support of his comrade, and then he alone threw it, that the blow should be stronger.

"To throw stones," etc. Is there not a Boraitha: It never happened that he did not die from the hand of the witnesses, so that one should need to throw another stone? Does, then, the Mishna state that it was so done? It states, "should it be necessary."

The master said: "There was a stone," etc. But does not a Boraitha state that the stone with which he was stoned, as well as the tree upon which he was hanged, or the sword with which he was killed, or the muffler with which he was choked, must be buried with him? It means that before it was buried they prepared another like it, which remained. But is there not another Boraitha which states that the above things were *not* buried with the one executed? Said R. Papa: It does not mean that it was buried just with him, but near him, at a distance of four ells.

Samuel said: If before the execution the hands of the witnesses were cut off, he becomes free from death, because the commandment, "the hand of the witnesses should be on him first," cannot be fulfilled. But if so, should witnesses who have no hands be disqualified? There it is different, as the verse reads, "the hand of the witnesses," which means that when they testified they had hands. An objection was raised from the following: Every one, of whom two witnesses testify that he was sentenced at such and such a court, and A and B were his witnesses, he is to be put to death. Hence we see that in any case he is executed? Samuel may explain the Boraitha that it means that the witnesses themselves testified that they were witnesses in the former court. But is it indeed needed that it should be done as the verse dictates? Is there not a Boraitha: It reads [Num. xxxv. 21]: "He that smote him shall surely be put to death; (for) he is a murderer." We know that one is to be put to death by that which applies to him; but whence do we know that if it is impossible that he should be killed by that which applies to him, he is nevertheless to be executed by any death which is possible? From the verse cited, "he shall surely die," which means in any case? That case is different, as it reads, "he shall surely die." But let all other cases be inferred from it? Because the verse cited, which speaks of a murder, and the verse which speaks of the avenger of the one murdered, are two verses which dictate one and the same thing (death), and there is a rule that from two such verses nothing is to be inferred. What verse of the avenger is meant? [Ibid., ibid., 19]: "The avenger of the blood himself shall slay." Infer from this that it is a meritorious act for the avenger to do so himself. And whence do we know that if the murdered one had none such, that the court is obliged to appoint one? From the end of the verse, "when he meeteth him, shall he slay him?" Said Mar the elder b. R. Hisda to R. Ashi: How can one say that it is not needed as the verse dictates? Does not Mishna 5 in Chapter viii. of this tract state that it must be done just as the verse dictates, and it is deduced from the Scripture. With the verse cited in the Mishna in question it is different, as that verse is altogether superfluous, and is written only so that it should be done just as it dictates. But does not a Boraitha say in the eleventh chapter, concerning a misled town, that if there was not a main street in this city, according to R. Ismael such is not to be recognized as a misled town, as the verse dictates, "You

shall gather all its goods in the main street," and according to R. Aqiba a main street should be made? We see, then, that they differ only if such should be made or not, but both agree that it must be done just as the verse dictates? In this case Tanaim differ, as a Mishna in Tract Negaim (xiv. 9) states: If he (referring to Lev. xiv. 25) lacked the thumbs of his right hand and foot, or the right ear, he can never be purified. R. Eliezer, however, said: It may be done at the place they are lacking. And R. Simeon said: It shall be placed on the left one.

MISHNA V.: All who are stoned are also hanged. So is the decree of R. Eliezer. The sages, however said: Only a blasphemer and an idolater are hanged (but no others). A male is hanged with his face toward the people, and a female with her face toward a tree. So R. Eliezer. The sages, however, say: A male is hanged, but not a female. Said R. Eliezer to them: Did not Simeon b. Shetha hang females in the city of Askalon? And he was answered: He hanged eighty women in one day, and there is a rule that even two must not be sentenced in one day, if the punishment is with the same death. (Hence Simeon's act was only temporary, because of the need of that time, and nothing is to be inferred from it.)

GEMARA: The rabbis taught: It reads [Deut. xxi. 22]: "And he be put to death, and thou hang him on a tree." And lest one say: "All who are put to death must also be hanged," therefore it is written in the second verse [ibid., ibid. 23]: "For he that is hanged is a dishonor of God" (a blasphemer), and as a blasphemer is to be stoned, the same is the case with all others who are to be stoned. So R. Eliezer. The sages, however, say: that as with a blasphemer who has denied the cardinal principle of our faith (*i.e.*, he does not believe in God), the same is the case with an idolater who denies the might of God, but all others who are stoned are not to be hanged. And what is the point of their difference? According to the rabbis, when there is a general expression and an explicit statement, we infer from the general expression and from the explicit statement which comes after it. And R. Eliezer infers from additions and exclusions. According to the rabbis, "He should be put to death and hanged," is a general expression; "The dishonor of God—hangs," is an explicit statement. And if they were in one verse it might be said, that the general expression applies only to that which is in the explicit statement; *viz.*, only those which are mentioned in that case, but no others. But as they

are in two verses, we infer from these an idolater, who is equal to a blasphemer in all particulars. And according to R. Eliezer, "He shall be put to death and hanged," is considered an addition; "the dishonor of God" is considered an exclusion. And if they were in one verse, we would add an idolater only; but, seeing that they are in two verses, all the cases of stoning are to be added.

"*A male is to be hanged,*" etc. What is the reason of the rabbis? It reads, "thou hang him," which means him, but not her. And according to R. Eliezer, it means him, without his garments; and the rabbis also hold this theory. But as it reads, "And if a man has committed," etc., it means a man, but not a woman. And R. Eliezer infers from the word "man," to exclude a stubborn and rebellious son. But is there not a Boraitha which states that, according to R. Eliezer, even a stubborn and rebellious son is stoned and hanged? Therefore said R. Na'hman b. Itz'hak: R. Eliezer infers from this to include a stubborn son, and his reason is this: It reads, "If a man," meaning a man, but not a son; "committed a sin," means he is put to death, because he has already committed a sin; but a stubborn son is put to death, not because he has sinned, but because in the future he will sin. And this is an exclusion after an exclusion, of which the rule is, that it comes to add.

"*Said R. Eliezer to them,*" etc. Said R. Hisda: Two must not be judged on the same day, provided there are two kinds of death; but if there is only one kind, two may be judged. But was not the case of Simeon b. Shetha one kind of death? And nevertheless it was said to him: Two cases of capital punishment must not be judged on one day. Therefore if it was taught in the name of R. Hisda, it was thus: Provided there is one kind of death applicable to two kinds—namely, for two separate crimes; but if there was only one crime, and only one kind of death, it may. R. Ada b. Ahabah objected from the following: Two must not be judged in one day, even in the case of adultery—the two adulterers, he and she? R. Hisda explained this Boraitha, that it speaks of a daughter of a priest, and her paramour, in which case, according to the law, she is to be burned and he is to be stoned. Hence there are two different kinds of death. There is a Boraitha: R. Eliezer b. Jacob said: I have heard that the court may punish with stripes and even capital punishment, not in accordance with the biblical law—not with the intention to violate the law, but to make a safeguard for it.

So it happened with one who rode on a horse on Sabbath, at the time Palestine was under the Greeks, and this man was brought before the court, and stoned, not because he deserved such a punishment, but because it was a necessity of that time, to warn others. And it also happened that one had connection with his wife under a fig tree, and he also was brought to the court, and was punished with stripes, not because he deserved such a punishment, but because of the necessity of that time.

MISHNA VI.: How was one hanged? The beam was put in the earth, and it was fastened at the top, and he tied the hands of the culprit one upon the other, and hung him up. R. Jose said: The beam was not put in the earth, but the top of it was supported by the wall, and he hung him up as the butchers do, and he took him off immediately. And should he leave him over night, he transgressed a negative commandment, as it reads [Deut. xxi. 23]: "Thou shalt not leave his corpse on the tree over night, but thou shalt surely bury him on that day (for he that is hanged) is a dishonor of God," etc. How so? "Why is this man hanged?" "He is a blasphemer." Hence the name of Heaven is violated. [Said R. Mair: When a man is in trouble, in what language does the Shekinah lament over him? Qalleni meiraushi, qalleni miz'raay.* Now, if the Omnipotent grieves over the blood of the wicked which was shed, so much the more about the blood of the upright!] And not only of him who was executed it was said that he should not remain over night? But even every one who leaves unburied his corpse over night transgresses the negative commandment. However, if he left it over night for the sake of its honor, as for instance to prepare for it a coffin or shroud, he does not transgress.

The one executed was not buried in the cemetery of his parents, but two cemeteries were prepared by the court, one

* We cannot find in the English idiom any equivalent for this. In the German translation of the Mishna (Berlin, 1823) it is translated in accordance with Rashi. "Wie lässt sich gleichsam die Gottheit bei solcher Gelegenheit aus? Mein Kopf ist mir zu schwer! Meine Arme sind mir zu schwer!" notwithstanding that such is objected to by Rabha in the Gemara farther on, and his explanation is: As one who is in trouble says, "The world is ignominious to me." And all this is taken from the term "qillelath elohim" [Deut. xx. 23], (translated by Leeser "dishonor of God"), which one reads, "qal leth," literally, "not easy," and the other "qollal-eth," literally, "an ignominy" (according to Thosphath and Hananel). And therefore it seems to us better to give the original expression of the Mishna, without any explanation, leaving the matter to the reader, as we could not omit it, according to our method.

for those who were slain with a sword and choked, and one for those who were stoned and burned. After the flesh of the corpse was consumed, the relatives gathered the bones and buried them in their right place. And the relatives came, and greeted in peace the judges, as well as the witnesses, to show they had nothing in their heart against them, as the judgment was just. The relatives also did not lament for him loudly, but mourned in their heart.

GEMARA: The rabbis taught: If the verse read, "If a man committed a sin, he shall be hanged," we would say that he should be hanged until death occurs, as the government does; but it reads, "He shall be put to death and hanged," which means he shall be put to death and thereafter hanged. How was it done? They kept him till near sunset, condemned him, killed him, and then hanged him; one hangs him up, and the other immediately loosens the knot, as his hanging was only to fulfil the commandment.

The rabbis taught: It is written, "on a tree," from which ought to be inferred that it makes no difference if the tree was still attached to the ground or not. Therefore is it written, "Thou shalt surely bury him," from which it is to be understood that everything should be already prepared for the burying. And if the tree were still attached to the ground, it could not be considered prepared, as the tree was not as yet cut off. R. Jose, however, maintains that this verse excludes also a beam which is put in the ground, as it is not considered prepared, for the tree was not as yet taken out from the ground. But the sages say that the taking out is not to be considered.

"*Why is he hanged? Because he is a blasphemer.*" There is a Boraitha: R. Mair used to say: There is a parable. To what can this be compared? To two twin brothers, one of whom was selected for a king and the other became a robber, and was hanged at the command of the king. Now, people who saw him hanged would say that the king was hanged, and therefore the king commanded the corpse to be taken off (i.e., as man was created in the image of God).

"*And not only for him who was executed,*" etc. R. Johanan in the name of R. Simeon b. Jochi said: Where is to be found an allusion to this in the Torah? In "thou shalt surely bury him." King Sabur questioned R. Hama: Whence do you deduce from the Torah that one must be buried? And the latter remained silent—without answer. Said R. Aha b. Jacob: The

world is transferred into the hands of fools. Why did he not answer from the above-cited verse? Because the above is to be explained that it means a coffin and shroud are to be prepared for him. But let him say: Because all the upright were buried. This is only a custom, and not a command of the Torah. And why not say: Because the Holy One, blessed be He, buried Moses? It may be said that this also was not to change the custom. Come and hear [I Kings, xiv. 13]: "And all Israel shall mourn for him, and bury him." This, also, was not to change the custom. But is it not written [Jer. xvi. 4]: "They shall not be lamented for; nor shall they be buried"? Them Jeremiah cautioned, that with them should be a change of custom.

The schoolmen propounded a question: Is the burying because the corpse shall become disgraced if not buried, or is it because of atonement? And what is the difference? If one says, "I do not wish to be buried," if it is because of the disgrace, he must not be listened to; but if it is for atonement, he should be listened to, as he says, "I don't want any atonement." Come and hear! "Because all the upright were buried." And if the reason should be for atonement, do, then, the upright need atonement? Yea, as it reads [Eccl. vii. 20]: "For no man is so righteous upon earth that he should do always good, and never sin." Come and hear the above-cited verse about Jeroboam, in which it reads that only he should be buried. Now, if the reason is atonement, why should not the others also be buried and atoned? He who was upright ought to be buried and atoned, the others who were wicked were not worthy to be atoned. The same is the case with them who were cautioned by Jeremiah that they should not be buried, because they were not worthy of atonement.

The schoolmen propounded another question: Is the lamentation an honor for the living or for the deceased? And what is the difference? If, *e.g.*, one says, "I do not wish to be lamented," if it is an honor for the deceased only, he may be listened to; and if for the living, he may not. Or, on the other hand, if his heirs do not want to pay the mourner, if it is an honor for the deceased, they may be compelled to pay; and if it is for the living, they may not. Come and hear [Gen. xxiii. 2]: "And Abraham came to mourn for Sarah, and to weep for her." Now, if this were only an honor for the living, should the body of Sarah have been kept till Abraham came, for his

honor? Nay! Sarah herself was pleased that Abraham should be honored because of her. Come and hear! "All Israel shall mourn for him." Now, if it is for the honor of the living, were, then, the people of Jeroboam worthy to be honored? The upright are pleased that any human being should be honored on their account. But is it not written that they shall not be mourned for and buried? The righteous do not wish that they shall be honored because of the wicked. Come and hear Jeremiah [xxiv. 5]: "In peace shalt thou die; and as burnings were made for thy fathers, the former kings who were before thee so shall they make burnings for thee; and, 'Ah Lord,' shall they lament for thee." Now, if it is to the honor of the living, what good can this do to Zedekiah? The prophet said to him thus: Israel shall be honored because of thee as they were honored because of thy parents. Come and hear! It is said elsewhere [Ps. xv. 4]: "The despicable is despised," meaning King Hezekiah, who bore the remains of his father on a bed of ropes. Now, if it is for the honor of the living, why did Hezekiah do so? For the purpose that his father should have an atonement. But has he a right to invalidate the honor of Israel because of the atonement of his father? The people themselves were pleased to relinquish their honor, because of the atonement of Achaz. Come and hear what was said by Rabbi in his will: "Ye shall not lament me in the small cities, but in the large ones." Now, if it is for the honor of the living, why such a will? He thought: Let the people be more honored because of me. Come and hear the statement in our Mishna: If he left it over night for its honor, to prepare for it a coffin and shroud, he does not transgress. Hence we see it is to the honor of the dead? Nay, "for his honor" means for the honor of the living. But has one the right to leave the corpse over night, for the sake of his own honor? Yea, as the commandment not to let the corpse hang was because of the disgrace; but if it is not disgraced, the honor of the living is to be considered. Come and hear another Boraitha: If he left him over night for his honor, that his friends in other cities should hear of his death or bring for him the lamenting-women, or prepare for him a coffin and a shroud, he does not transgress the negative commandment; for all he does is for the honor of the dead? It means to say that all he does for the sake of his own honor is not considered a disgrace for the dead. Come and hear another Boraitha: R. Nathan said: It is a good sign for one deceased if he was punished after his

death; namely, if he was not lamented, not buried properly, or a wild beast seized upon his corpse, or if, while carrying him to burial, rain wet the corpse. All these are good signs that it was done for his atonement. Hence we see that all these are to be done for the honor of the dead. Infer from this that so it is.

"*But two cemeteries,*" etc. And why so? Because a wicked person must not be buried with an upright one. As R. Ahha b. Hanina said: Whence do we know that a wicked person must not be buried with an upright? From [II Kings, xiii. 22]: "And it came to pass, as they were burying a man, that, behold, they saw the hand; and they cast down the man into the sepulchre of Elisha; and as the man came and touched the bones of Elisha, he revived, and rose up on his feet." Said R. Papa to him: But perhaps this was done to fulfil what is mentioned [ibid. ii. 9]: "Let there be, I pray thee, a double portion of thy spirit upon me." And as Elijah restored only one man, so did Elisha also restore one while he was alive; and the second was restored after his death. And he answered: If it were so, why, then, does a Boraitha state that the restored only stood upon his feet, but did not go home? And if it were for the purpose said above, he would remain alive. But if, as you say, Elijah's promise was not fulfilled? As it was said by R. Johanan: This was fulfilled with the cure of Na'hman from his leprosy, for leprosy is equal to death. As it reads [Num. xii. 12.]: "Let her not be as a dead-born child." And as it is prohibited to bury an upright person with a wicked, so also it is not allowed to bury a lesser wicked with a greater one. But if so, there should have been four cemeteries. The two cemeteries were traditional.*

The rabbis taught: They who are put to death by the gov-

* Here are omitted two pages of the text, as their contents are repeated in different places. Much of it is already translated, and the rest will appear in the proper place. However, the following difference of Abayi and Rabha is important—namely, according to Abayi, if one dies a usual death, while he is still wicked, without repentance, his death does not make atonement for him. And the same is the case even if he is executed by the court, if he did not repent. But if one were slain by the government, his death atones. And his reason is, because the government does not always act justly in its decisions, while the court does. But according to Rabha, even if he is executed by the court, death atones; as, according to him, there is no comparison between a death from a usual sickness and that by an execution; and therefore in the latter case he is atoned, but not in the former. And Ameimar said that the Halakha prevails in accordance with Abayi, but the rabbis said that the Halakha prevails with Rabha, with which the Gemara agrees.

ernment, their estates belong to the government; and they who are killed by the court, their estates belong to their heirs. R. Jehudah, however, maintains that their estates belong to the heirs even when they are killed by the government. Said the sages to him: Is it not written [I Kings, xxi. 16]: "And it came to pass, when Achab heard that Naboth was dead, that Achab rose up to go down to the vineyard of Naboth, the Yizreelite, to inherit it"? And he answered: Achab was his brother's son and was a legal heir. But had not Naboth many sons? Rejoined R. Jehudah: He slew him and his sons. As it reads [II Kings, ix. 26]: "Surely I have seen yesterday the blood of Naboth, and the blood of his sons." The rabbis, however, maintain that the expression "sons" means those who would come out from him had he remained alive. It is correct for him who says that the estates belong to the government, as it reads [I Kings, xxi. 13]: Naboth hath blasphemed God and the king." But to him who says the estates belong to the heirs, why was it necessary to add "and the king"? But according to your theory that they belong to the heirs, why was God mentioned? You may say it was done to increase the anger of the people. For the same reason, it was also mentioned, "and the king." It is correct to him that it belongs to the government, as it is written [ibid. ii. 30]: "No; but here will I die"—which means: I do not wish to be counted among those who were killed by the government, so that my estate should belong to it. But according to him who says that it belongs to the heirs, what difference did it make to Joab? The simple one of remaining alive one hour longer. It reads [ibid., ibid. 30]: "And Benayahu brought the king word again, saying, Thus hath Joab spoken, and thus hath he answered me." Joab said to Benayahu thus: Go and tell the king: You cannot do two things with me. If you wish to slay me, you must accept for yourself the curses with which your father cursed me. And if you will not accept them, you will have to leave me alive. Farther on it is said: "Then said the king unto him, Do as he hath spoken, and fall upon him, and bury him." Said R. Jehudah in the name of Rabh: All the curses with which David cursed Joab fell on the descendants of David. They were [II Sam. iii. 29]: "And may there not fail from the house of Joab one that hath an issue, or that is a leper, or that leaneth on a crutch, or that falleth by the sword, or that lacketh bread." The first fell on Rehoboam (this is inferred from an analogy of expression which

we do not deem it necessary to translate); the second—"leper"—on Uzziyahu. As it reads [II Chr. xxvi. 9]: "The leprosy even broke out on his forehead." "Leaneth on a crutch"—Azza, of whom it reads [I Kings, xv. 23]: "Nevertheless, in the time of his old age he became diseased in his feet." And R. Jehudah in the name of Rabh said: Podagra caught him. Said Mar Zutra b. Na'hman to R. Na'hman: What kind of a sickness is this? And he answered: It pains like a needle in raw flesh. (Asked the Gemara: Wherefrom did he know this? He himself suffered from this sickness. And if you wish, he had it as a tradition from his master; and also, if you wish, from [Ps. xxv. 14]: "The secret counsel of the Lord is for those that fear him; and his covenant, to make it known to them.") Falleth by a sword—on Josiah, as it reads [II Chr. xxxv. 23]: "And the archers shot at king Josiah; and the king said to his servants, Carry me away, for I am sorely wounded." And R. Jehudah said in the name of Rabh: They made his body like a sieve. "Lacketh bread"—fell on Jechonyah [II Kings, xxv. 30]: "And his allowance was a continual allowance," etc. Said R. Jehudah in the name of Rabh: This is what people say: It is better for one to be cursed than to curse, as usually a curse in vain falls upon the invoker—Rashi. Joab was brought before the court to justify himself for the killing of Abner; and he answered that he was the revenger of the blood of Asahel. But did not Asahel prosecute Abner? And he said: Then he could save himself by striking on one of the members of his body. And to the question: Perhaps he could not do so? he answered: Did he not strike him [II Sam. ii. 23] "On the fifth rib"? to which (according to R. Johanan) the bile and the liver are attached. Now, if he could aim at the fifth rib, could he not do so at some other member? The court then said: Let us leave out Abner. But why did you kill Amassa? And he answered: He was a rebel to the king. As it reads [ibid. xx. 5]: "So Amassa . . . he remained longer than the set time." And he was answered: Amassa was not a rebel, as he had a good reason for his delay.* But you are indeed a rebel, as you were inclined to Adoniyahu against David's will. It reads [I Kings, ii. 28]: "And the report came to Joab; for Joab had turned after Adoniyahu, though he had not turned after Abshalom." Why is it mentioned here that he had not turned after Abshalom? Said R.

* In the text the reason is given, but if translated it would not sound well in English; and, besides, it is unimportant, and therefore omitted.

Jehudah: He was inclined to turn, but did not. And why? Said R. Elazar: Because the "moisture of David" was still in a good condition. And R. Jose b. Hanina said: Because the active force of David were still in their strength. As it is said above (p. 55) in the name of Rabh: "Four hundred children," etc. All the Amoraim mentioned above differ with R. Abbah b. Kahana, who said: "If not for Joab, David would not have been able to occupy himself with the law; and if not for David, Joab would not have been able to wage the war. As it is written [II Sam. viii. 16 and 17]: "And David did what is just and right unto all his people. And Joab the son of Jeruyah was over the army." It means that, because Joab was over the army, David was able to do justice, etc.; and also *vice versa*. It reads [ibid. iii. 26]: "Who brought him back from the well of Sirah." What does "well of Sirah" mean? Said R. Abbah b. Kahana: The well means the pitcher of water which David took from under the head of Saul; and Sirah—literally "a thorn"—means the piece of cloth which David cut off from the garment of Saul, which were good reasons for Abner to reconcile Saul with David, if he should care to do so; but he did not. It reads farther on [ibid., ibid. 27]: "Joab took him aside in the gate, to speak with him in private." Said R. Johanan: He brought him before the Sanhedrin to try him for having killed his brother Asahel. And to his answer that Ashael was his persecutor, he was told as said above. It reads [I Kings, ii. 32]: "And may the Lord bring back his bloodguiltiness upon his own head, because he fell upon two men more righteous and better than he." Better than he? Because they were commanded verbally (to kill the priests of Nob) and did not listen, and Joab was commanded in a letter to kill Uriah, and he listened. It reads farther on [ibid., ibid. 34]: "And he was buried in his own house in the wilderness." Was, then, his house in the wilderness? Said R. Jehudah in the name of Rabh: It was like a wilderness. As a desert is ownerless, and every one who wishes can derive a benefit from it, so was the house of Joab. And also as a desert is free of robbery and adultery, so was the house of Joab. It reads [I Chr. xi. 8]: "And Joab repaired the rest of the city." Said R. Jehudah: Joab supplied to the poor of that city everything to which they were accustomed, even little things and fishes.

CHAPTER VII.

RULES AND REGULATIONS CONCERNING THE FOUR KINDS OF DEATH PRESCRIBED IN THE SCRIPTURE, AND HOW THEY OUGHT TO BE EXECUTED. THE ENUMERATION OF THOSE WHO COME UNDER THE CATEGORY OF STONING. HOW THE EXAMINATION CONCERNING BLASPHEMY SHOULD BE CONDUCTED. CONCERNING THOSE WHO TRANSFER THEIR CHILDREN TO MOLECH; FAMILIAR SPIRITS, ETC. CONCERNING CURSING FATHER AND MOTHER, SEDUCERS AND MISLEADERS, ETC.

MIHSNA I.: Four kinds of capital punishment are prescribed to the court by the Scriptures; viz., stoning, burning, slaying by the sword, and choking. R. Simeon, however, maintains: Their order is: burning, stoning, choking, and slaying by the sword. The laws of stoning are already explained above (in the preceding chapter).

GEMARA: Rabha in the name of R. S'hora, quoting R. Huna, said: Where the sages give an arrangement (plan of action), one must not be particular with it, as it does not matter if one changes the order and acts with the latter before the former, except in the case of the seven dyes with which a spot of menstruum is to be tested, which are mentioned in Chapter IX., Mishna 4, of Tract Nida, of which the Mishna says: If one tested with them not according to the order mentioned, or one mixed all the seven together and tested with them, he has done nothing. R. Papa the Elder in the name of Rabh said: The same is the case in the four kinds of capital punishment mentioned in our Mishna. As R. Simeon differs in their order, it must be understood that the Mishna is particular in their arrangement. But why does not R. Huna mention them? R. Huna speaks of that in which all agree, but where there is dissension he does not. R. Papa himself said: Also concerning the arrangement of worshipping on the Day of Atonement (when the Temple was in existence), as there is a Mishna (Yoma, p. 84). All the rites on the Day of Atonement, whose order is prescribed by the Bible . . . if they are performed in a wrong order, one has done nothing. R. Huna, however, did not mention this.

For the reason of not changing the order prescribed by the Scripture is because of the holiness of that day, and not because one act is more rigorous than the other. R. Huna b. R. Jehoshua maintains that the order of the daily offerings is also not changeable, as there is a Mishna (in Tract Thamid): *This is the arrangement.* However, R. Huna, who did not mention it, maintains that this is only meritorious. And the rule mentioned above in the name of R. Huna excludes also the ceremony of Halitzah, and also the dressing of the priests at their worship in the Temple, as explained elsewhere.*

"*Stoning, burning,*" etc. Stoning is more rigorous than burning, as blasphemers and idolaters are punished with it. And why are these two crimes considered more rigorous than others? Because the sinners laid their hands on the main principle of the Jewish faith (*i.e.*, disbelief and denying the power of God). But why not say, on the contrary, that burning is more rigorous, as it applies to the daughter of a priest who has sinned? And why should this crime be more rigorous? Because it reads that she violates her father, which means that her father loses his priesthood. The rabbis hold that only a married woman who was the daughter of a priest is to be burned if she sinned; but if betrothed, stoning is applied. And because a betrothed woman is distinguished from a married one, who bears the name of her husband and not of her father, while a betrothed still bears the name of her father, we see that stoning is more rigorous. The same is also more rigorous than slaying by the sword, because of the reason stated above. But why not say that the sword is more rigorous, because it applies to the men of a misled town? And what is the rigor of a misled town—that their property is to be destroyed? It may be answered that a misleader is always considered more criminal than those who are seduced. And there is a Boraitha that the punishment of a misleader is stoning. Stoning is also more rigorous than choking. And lest one say that choking is more rigorous, as it applies to one who strikes his father or mother, and the rigor is because the honor of the parents is equalized with the honor of the Omnipotent, it is inferred from the case of a daughter of a common Israelite, who is excluded from choking, which applies to a married daughter of the same, and is included in the category of stoning; and it is already explained above that a be-

* Mishnas mentioned in the text will be translated in their proper places.

trothed disgraces her father and his whole family, while the disgrace of a married one belongs more to her husband.*

Burning is more rigorous than the sword, as it applies to a sinning daughter of a priest, whose crime is more rigorous for the reason stated above. But why not say, on the contrary: The sword is more rigorous, because it applies to a misled town, the property of which is to be destroyed? We find the term "her father" concerning stoning, and the same term is used concerning burning. And it is to be said: As the term "her father," used concerning stoning, is more than the sword, the same is it with the term which is used by burning—that burning is also more rigorous than the sword.

Burning is also more rigorous than choking. This is inferred from the fact that a married daughter of a priest is excluded from choking, which applies to a married daughter of a common Israelite, and is included in the category of burning. And lest one say that choking is more rigorous, as it applies to him who has struck his father or mother, the honor of whom is equalized with the honor of the Omnipotent, it is already decided above that they who laid their hands on the main principle, etc., are considered the greatest criminals.

"*R. Simeon said,*" etc. According to him, burning is more rigorous than stoning because it applies to a daughter of a priest who has sinned; and it is considered more criminal because her father loses his priesthood. And he (Simeon) differs from the rabbis, who make a distinction between a betrothed and a married woman, as according to him both are punished with burning; and because the greatest criminal is punished with burning, it is to be inferred that this punishment is more rigorous than all others.†

R. Simeon also differs concerning the punishment of misleaders of a misled town, as according to him they also are punished with choking.

R. Johanan used to say: A betrothed young girl, who is the daughter of a priest, is to be stoned if she has sinned; but according to R. Simeon, she must be burned. And the same is

* The text here is very complicated, and Rashi, who tries to explain it at length against his method, admits that there may be objections to it, and maintains that the reason of betrothed and married does not hold good. But the basis is, what is said above, that stoning applies to a blasphemer, etc., who laid their hands on the main principle. We have done our best to give an idea of the text to the reader.

† Here also is repeated why stoning is more rigorous than the two others, and the same reasons are given, which it is not necessary to repeat.

the case if she had sinned with her father. (Although, if such a case happened with a commoner, burning is applied, nevertheless she is to be stoned, according to the rabbis); as according to their theory stoning is more rigorous, and there is a rule that he who is guilty of two crimes liable to capital punishment is to be executed with the more rigorous one. And according to R. Simeon, that burning is more rigorous, she is to be put to death by that. And where do we find R. Simeon saying so? In the following Boraitha: R. Simeon said: There are already two general expressions about adultery; viz. [Lev. xx. 10]:

"Then shall the adulterer be put to death, "together with the adulteress." And this applies either to a betrothed or to a married woman, with whom the daughter of a priest is certainly included. Why, then, does the Scripture distinguish a daughter of a priest [ibid. xxi. 9]: "And if the daughter of any priest profane herself by committing harlotry, her father doth she profane: with fire shall she be burnt," which makes no difference between a betrothed and a married woman? To exclude her from the punishment of a betrothed commoner, to whom stoning applies; and if married, choking applies, and puts her in the category of those who are to be burned. Now, as to the punishment of a married one, which applies to a daughter of a priest, all agree that it is more rigorous than that of a commoner; the same is the case with a betrothed one, whom the Scripture excluded from an easier punishment, for a severer one. Hence burning is more severe than stoning. However, collusive witnesses (to whom, according to the Scripture, the same must be done as to the defendant, if their testimony were true) are not excluded from that punishment which they would have to suffer if they had been found collusive in the case of a daughter of a commoner, and are punished with the death of their accused; no matter if the accused were the daughter of a commoner or of a priest; namely, if they had testified regarding a betrothed one, and thereafter were found collusive; the death which would apply to her, were she a daughter of a commoner, applies to them. And the same is the case if they had testified regarding a married one.

The rabbis taught: It reads: "And if the daughter of any priest profane herself." Lest one say that it means that she profaned herself by violating the Sabbath, Therefore it reads further, "by committing harlotry." But lest one say, even if she were single, it reads here, "her father." And the same ex-

pression is used concerning a betrothed woman; as there the sin is because of her bond to a husband, the same is the case here. It is considered a crime liable to capital punishment if she were already betrothed or married. But perhaps it means when she has sinned *with* her father, and not with some one else? Therefore it reads, "she profane," which means that she has profaned him, and not he her. Hence from the analogy of expression, father, we infer that the sin is because of her husband. But from this analogy of expression it is inferred when she was betrothed. Whence do we know that, if she was not of age and nevertheless married, or of age and betrothed or married, or even if she were already an old woman, that the same is the case? Therefore it is written: "And the daughter of any priest," which means, whatever her condition. But lest one say: It speaks only when she was married to a priest, but if to Levite or to a common Israelite, to a heathen, to a descendant of one who has profaned the priesthood, to a bastard, or to a descendant of the Gibeonites who were temple-servants, it is different? Therefore it is written: "The daughter of any priest," which means, even though she was not the wife of a priest. She is to be burned, but not her paramour. She is to be burned, and not her collusive witnesses.

R. Eliezer said: With her father, burning applies; with her father-in-law, stoning applies. How is this to be understood? Shall we assume that he means she has sinned with her father? Then why only a daughter of a priest? Is not the case the same even when she was a daughter of a common Israelite? Burning applies to committing a crime with a daughter, and stoning to the crime with a daughter-in-law. We must then say that with the expression, "with her father," he means when she was still under the control of her father; and the same is it with the expression, "with her father-in-law." Now, let us see in accordance with whom is his theory. It is not in accordance with the rabbis, as they hold that only a married woman is to be burned, but not a betrothed. It is also not in accordance with R. Simeon, as he holds that there is no difference between betrothed and married—both are to be burned. And also not in accordance with R. Ishmael, as he holds that only a betrothed is to be burned, but not one married. And he also holds that if she had committed a crime with her father-in-law, choking applies. As to this, Rabin sent a message in the name of R. Jose b. Hanina: This Boraitha is to be explained thus: It is in

accordance with the rabbis. And the expression of R. Eliezer, "with her father," means thus: If such a crime be punished, with an easier death than if the crime had been committed with her father—*e.g.*, that of a married woman, daughter of a commoner, to whom choking applies, in her case, because she is a daughter of a priest, the death of her father, if he should commit the crime with her, applies to her—*viz.*, burning. And if such a crime by a commoner were punished with a heavier death than if the crime were with her father—*e.g.*, a betrothed daughter of a commoner, to whom stoning applies, no exception is to be made, and the punishment of her sinning with her father-in-law applies—*viz.*, stoning. R. Jeremiah opposed: Does, then, the Boraitha read "easier" and "heavier death," which it should do according to your explanation? "Therefore," said he, "it must be said that R. Eliezer is in accordance with R. Ishmael; and the expression, 'with her father,' means under the control of her father—*viz.*, a betrothed, not yet married, to whom burning applies; and 'with her father-in-law' means, literally, if she had sinned with her father-in-law she is to be stoned, but if with some one else choking applies."

Said Rabha: This explanation is still more complicated than the first one, as both expressions must be explained equally: either both are to be taken literally, or both mean "under the control." And therefore said Rabbhina: R. Eliezer is in accordance with the rabbis, and his decision was just the reverse. "With her father," stoning applies, and "with her father-in-law," burning applies. And both expressions mean "under the control." And although a betrothed woman is no longer considered under the control of her father, he so expressed himself because of the latter expression, "under the control of her father-in-law."

Said R. Na'hman in the name of Rabha b. Abuhu, quoting Rabh: The Halakha prevails according to the message which was sent by Rabbin in the name of R. Jose b. Hanina. Said R. Joseph: Do you come to teach a Halakha which will be used only then when the Messiah shall appear? Said Abayi to him: According to your theory, why should we study the section Holiness (which treats about sacrifices, at the time when the Temple was in existence) at all? Is not the whole for the time when the Messiah shall appear? You must then say that we must study and be rewarded for it by Heaven. The same is the case here. We have to study, although it is not for use to us

at this time, and the reward will come from Heaven." Answered R. Joseph: I mean to say, may one name Halakha in the explanation of a Boraitha (*i.e.*, the message of Rabbin was only concerning the explanation of the Boraitha)? To which it may be said, that such an explanation is correct. The expression "Halakha," however, means "law," which does not correspond with his meaning.

Where do we find R. Ishmael's opinion, of which it is said above that Eliezer holds with him? In the following Boraitha: It reads, "the daughter of any priest profane," etc., speaking of a young betrothed maiden. But perhaps it means a married woman? This is not the case, as the law about adultery is already written in Lev. xx., in which a daughter of a priest is included. However, we find that the Scripture has distinguished a daughter of a commoner, and applied stoning to her, if she was betrothed and not married. The same is the case with the distinction of a priest's daughter, to whom the Scripture applies burning, meaning also when she was betrothed only. Her collusive witnesses, however, are to be punished with the same death that applies to her paramour, because it reads [Deut. xix. 19]: "Then shall ye do unto him as he had purposed to do unto his brother." "To his brother," but not to his sister. So is the decree of R. Ishmael. R. Aqiba, however, maintains: There is no difference whether she was betrothed or married, as in both cases burning applies. And to the question of R. Ishmael: Why should we make a distinction concerning a daughter of a priest, the expression for which is "Naahra" (a maiden), while the same expression is used concerning a commoner who is betrothed only? R. Aqiba rejoined: Ishmael, my brother, I infer it from the word *and*, which begins the verse—"and the daughter of any priest." Rejoined R. Ishmael: "Do you desire that this should be burned, because the Vav (which means *and*) is in your way?"

Let us see! R. Ishmael infers the punishment of a priest's daughter from an analogy of expression. How does he explain the above-cited verse, "her father has she profaned"? He explains it as in the following Boraitha: R. Meir used to say: This phrase means that if, until now, their custom was to consider her father holy, from that time they consider him common; if until that time he was honored, from that time he is disgraced. As people say: "Cursed be such a man who has born such a daughter; cursed is he who has brought her up; cursed

is he that he has such an offspring." Said R. Ashi: According to whom do we name a wicked person, "wicked, the son of a wicked," although his father was upright? In accordance with the Tana of the just-mentioned Boraitha.

MISHNA II.: The prescribed punishment of burning was thus: The sinner was placed in waste knee-deep. Then, placing a twisted scarf of coarse material within a soft one, they wound it around his neck. One (of the witnesses) pulled one end toward himself, the other doing the same, until he opened his mouth. Meanwhile the executioner lights (heats) the string, and thrusts it into his mouth, so that it flows down through his inwards and shrinks his entrails. To which R. Jehudah said: Should the culprit die before the string is thrust into his mouth, the law of burning has not been properly executed, and therefore his mouth must be opened forcibly with a pair of pincers. Meanwhile, the string having been lighted, is thrust into his mouth so that it may reach his intestines and shrink his entrails. R. Eliezer b. Zadok, however, said: Once a daughter of a priest, having sinned, was surrounded with fagots and burned. He was answered: The court which so decided was ignorant of the exact law.

GEMARA: What kind of a string was it? Said R. Matnah: A string of lead. And whence is this deduced? They infer this burning from the burning of the congregation of Korah. As there the souls only were burned, but the bodies remained, so also here only the soul is to be burned, but the body is to remain. R. Elazar said: They infer this burning from the burning of the sons of Aaron. As there the souls only were burned and the bodies remained, the same is the case here.

Let us see! He who infers it from the congregation of Korah, wherefrom does he know that the soul, and not the body, was burned? From [Num. xvii. 3]: "The censers of these sinners against their own souls." * Which means that the souls only were burned, but the bodies remained. And the other, who infers it from the sons of Aaron, maintains that this phrase means they were burned bodily, and the expression "own souls" means that they were liable to be burned because of their souls. And it is in accordance with Resh Lakish, who said elsewhere: It reads [Ps. xxxv., 16]: "With flattering, babbling mockers, they gnashed upon me with their teeth," which

* Leeser translates "own lives" according to its sense. We, however, translate it literally, according to the Talmud.

means that, because they had flattered Korah for the sake of entertainments (to which he used to invite them), the ruler of Gehenna gnashed upon them with his teeth. And he who inferred this from the sons of Aaron, wherefrom does he know that their souls only were burned, etc.? From [Lev. x. 2]: "And there went out a fire from before the Lord, and consumed them, and they died before the Lord," which means that, although they died before the Lord, they died as all others—only their corpses remained. And the other maintains that the sons of Aaron were burned bodily, and the expression, "they died," means, that the beginning was from inside the body. As we have learned in a Boraitha: Abba Jose b. Dusthai said: Two fire cords came out from the Holy of Holies chamber, and were divided into four: two of them entered the nostrils of one, and two the nostrils of the other, and burnt them. But is it not written, "and consumed them"? From which it is to be inferred "them," and not something else. Yea—"them," and not their garments.

But why should burning not be inferred from the offerings of the bullocks, which were burned bodily? Common sense dictates that a man must be inferred from man, and not from cattle: as a man sins, and one infers a man who has sinned from another man, and from him whose soul was taken for his sin to him whose soul is to be taken. But he who infers it from Korah's congregation—why did he not infer it from the sons of Aaron? Because he maintains that the sons of Aaron were burned bodily, and to infer from them would not be proper, as R. Na'hman said in the name of Rabha b. Abuhu: From the phrase "Thou shalt love thy neighbor as thyself," we deduce that one may select a decent death for the sinner. But as the theory of R. Na'hman is accepted—why, then, the analogy of expressions at all? If not for the analogy, one might say that the burning of the soul, while the body remains, is not called burning at all, and that which is written, "Thou shalt love thy neighbor," etc., could be done by increasing the fire by bundles of fagots so that he should die quickly. Therefore the analogy of expression shows that such a burning, although the body remains, is called burning.

There is a tradition that Moses and Aaron used to walk, and Nadob and Abihu followed them, and all Israel after them. And Nadob said to Abihu: When will the two old men die, and you and I be the leaders of Israel? To which the Holy One,

blessed be He, said: Time will show who will bury whom. Said R. Papa: This is what people say: "There are many old camels who are laden with the skins of young ones." R. Elazar said: A scholar, in the eyes of a commoner, at first acquaintance (the scholar) appears to him (the ignorant man) like a golden kithon. However, after he holds conversation with him, he appears like a silver kithon; if he accepts a benefit from him, he appears like an earthen one, which, once broken, cannot be mended.

Aimretha bath Tli was the daughter of a priest, who had sinned, and R. Hama b. Tubiah surrounded her with bundles of twigs and burned her. And R. Joseph, when he heard this, said: He erred twice. In the explanation of the Mishna, in which, according to R. Na'hman, the sinner was burned with lead; and (b) he was not aware of the following Boraitha: It is written [Deut. xvii. 9]: "And thou shalt come unto the priests the Levites, and unto the judge that may be in those days." At that time, when the priests acted, judgments concerning capital punishments might be rendered; but when there were no more acting priests, no such judgment could be rendered.

"*Said Elazar b. Zadok*," etc. Said R. Joseph: The court in question was of the Sadducees (who take the commandments of the Scripture literally). Did, indeed, Elazar say so? And the answer was as stated in the Mishna? Is there not a Boraitha which states: R. Elazar b. Zadok said: I recollect, when I was a child, being carried upon the shoulders of my father, and a daughter of a priest, who was a sinner, was brought, and was surrounded with bundles of twigs and burned? To which the sages answered: At that time you were a child, and we cannot accept any evidence from a child? Two such cases happened in the days of R. Elazar, and when he was answered that no evidence of a child is to be taken into consideration, he related before them the other case which he saw when he was already of age, and to this they answered him: That court was an ignorant one.

MISHNA III.: The prescribed punishment of slaying was thus: He was decapitated, as was customary with the Roman government. R. Jehudah, however, maintains: Such a death is repulsive. But they put his head on the (executioner's) block and cut it off with a butcher's hatchet. And he was answered: There is not a more detestable death than this.

GEMARA: There is a Boraitha: R. Jehudah said to the sages: I myself am aware that the death I explained is repul-

sive; but what can we do against the Scripture, which reads [Lev. xviii. 13]: "And in their customs shall ye not walk," etc.? To which the rabbis answered: As this is written in the Scripture, we are not learning this from them, but they learned it from us. And should one disagree with us, then what would he say to the following Boraitha: Garments and some other valuable things may be burned on the grave of kings, for the sake of their honor. And this custom is not considered the custom of the Amalekites. And why? It is because it is mentioned in the Scripture [Jer. xxxiv. 5]: "And as burnings were made for thy father," etc., we do not learn from them. The same is the case here.

Let us see! In the succeeding chapter, there is a Mishna: The following are slain with a sword: a murderer, and the men of a misled town. It is correct, "a misled town," as it is plainly written [Deut. xiii. 16], "with the edge of a sword." But whence do we know that the same is the case with a murderer? From the following Boraitha: It reads [Ex. xxi. 20]: "And if a man smite his servant or maid with a rod, and he die under his hand, it shall be surely avenged." And as we do not know what "revenge" means; therefore it is written [Lev. xxvi. 25]: "And I will bring unto you the sword avenging." Hence *avenge* means with a sword.

But whence do we know that they decapitated him—perhaps they killed him with the sword in another part of the body? It reads, "with the edge of a sword," which excludes stabbing. But perhaps it means splitting the head. It is already inferred by Rabba b. Abuhu from the phrase: "Thou shalt love thy neighbor as thyself," that one must select a decent death. But all this speaks of when one has slain a bondman. Whence do we know that the same is the case with a freeman (whose punishment is death in general, and there is a rule that wherever the kind of death is not mentioned, it means choking)? This cannot be, as an *a fortiori* conclusion is to be drawn: A slave, who is less in value than a freeman, if one kills him, he is punished with slaying by the sword (which is more rigorous than choking); if one kills a freeman, so much the more should he be punished with a more rigorous death. But this would be correct only to him who holds that the sword is more rigorous than choking. But to him who holds the contrary, what can be said? He infers this from another verse, as is stated in the following Boraitha: It is written [Deut. xxi. 9]: "And thou

shalt put away (the guilt of) the innocent blood from the midst of thee." From this we see that all shedders of blood are compared to the heifer in that connection. And lest one say that as the heifer is killed with a butcher's knife toward the back part of the neck, the same shall be done with all other shedders of blood, it is already inferred above that a decent death must be selected.

MISHNA IV.: The prescribed punishment of choking was thus: The sinner was placed in waste knee-deep. Then, placing a twisted scarf of coarse material within a soft one, they wound it around his neck. One (of the witnesses) pulled one end toward himself, the other doing the same, until the soul of the culprit departed.

GEMARA: The rabbis taught: It reads [Lev. xx. 10]: "And if there be a man"—"man" means to exclude a minor, "Who committeth adultery with a man's wife"—"man's wife" means to exclude the wife of a minor (whose marriage is not considered). "With his neighbor's wife" means to exclude those people who live with their wives in common.* [Ibid.]: "Then shall the adulterer be put to death" means choking. But perhaps it means some other kind of death which is prescribed by the Scripture? It was said that wherever it is written in the Torah "death," without specifying which, you must not apply a rigorous one, but an easier one (and choking is the easiest of all the kinds of death mentioned in the Torah). So is the decree of R. Jashiah. R. Jonathan, however, maintains: The reason is not because choking is an easier death, but because there is a tradition that in any place where death is mentioned in the Scripture, without specifying which, it is choking. Rabbi said: The reason is because there is mentioned in the Scripture a heavenly death [Gen. xxxviii. 10], and there is also mentioned death from human hands. And as a heavenly death does not leave any marks on the body of the man, the same must it be by death from human hands. But perhaps burning is meant, which also does not leave any signs outside of the

* The text reads, "לְאִשֵּׁת אַחֲרִים," literally, "the wife of many strangers," and so it means. The explanation of Rashi that the word *acherim* means a Samarite, is probably because he did not know of the existence of such a sect who live in common with their wives. It may also be that the word "Samaritan," in Rashi, was corrected by the censor instead of "heathen" or idolator. However, this is certain, that the expression "acherim" in the Gemara is original, and if it meant a heathen or a Samarite, it would not hesitate to say so. It therefore seems to us, that our translation is correct.

body? As the Scripture prescribed burning to a daughter of a priest, it is to be understood that all other sinners are not punished with the same.

It is correct that choking is to be used, according to R. Jonathan, who says that it is a tradition; and Rabbi gives the reason. But R. Joshiah, who wants only an easier death—whence does he deduce choking at all? (Such is never mentioned in the Scripture.) And perhaps there is no more than three kinds of death, and from these three the easier one must be selected, which is the sword? Said Rabha: The four kinds of death are known traditionally. And the expression of R. Jonathan, “not because it is easier,” shows that he and R. Joshiah differ concerning choking, whether it is an easier death. In the same manner differ R. Simeon and the rabbis.

R. Zera said to Abayi: There are sinners who are punished with stoning, although it is not so mentioned in the Scripture. But they are inferred from an analogy of expression, “from a familiar spirit.” I question you which expression of the two following is meant—“put to death,” or “their blood shall be upon them”? And he answered: The latter expression, as the first is needed, “to death,” which is explained above (page 000).

MISHNA *IV.*: To the following sinners stoning applies: viz., one who has had connection with his mother, with his father’s wife, with his daughter-in-law, with a human male, or with cattle; and the same is the case with a woman who uncovers herself before cattle; with a blasphemer; an idolater, he who sacrifices one of his children to Moloch; one that occupies himself with familiar spirits; a wizard; one who violates the Sabbath; one who curses his father or mother; one who has assaulted a betrothed damsel; a seducer who has seduced men to worship idols, and the one who misleads a whole town; a witch (male or female); a stubborn and rebellious son.

One who has had connection with his mother is guilty of transgressing two negative commandments—the negative commandment as to his mother and the negative commandment as to his father’s wife. R. Jehudah, however, maintains: He is guilty only for his mother. One who has connection with his stepmother is also guilty in respect to two negative commandments—the commandment of adultery and the separate commandment as to his father’s wife. There is no difference if he has done it while his father was still alive or after his death; and there is also no difference if she was only betrothed to his

father, or already married. One that commits a crime with his daughter-in-law transgresses also two commandments—adultery and of the separate commandment of his son's wife. And there is also no difference if it was done while his son was still alive or after his death, after her betrothal or after marriage.

GEMARA: There is a Boraitha: R. Jehudah said: "If his father had married his mother illegally; he transgresses only the commandment as to "mother" and not as to "his father's wife." And the expression illegally means that by marrying, he has transgressed a negative commandment which is not punished capitally or with korath. As to such, even according to the rabbis, such a marriage is not considered at all. But to death which is only of a negative commandment—e.g., a widow to a high-priest—according to the rabbis the marriage is considered, and according to R. Jehudah it is not, as he holds with R. Aqiba, who is of the same opinion. R. Oushia objected: There is a Mishna in Yebamoth [Chap. II., 3]: "Owing to other legal prohibitions, or on account of the holiness of station" [ibid. ix.]. By "legal prohibitions" (to marry as above mentioned) are meant the secondary degrees of relationship prohibited by the rabbis as to intermarriage. Those prohibited to intermarry on account of holiness of station are a widow to a high-priest; a woman who had been divorced or performed the ceremony of Halitzah; who had (unlawfully) been married to an ordinary priest. To which a Boraitha adds: R. Jehudah changes the expression, viz., by "legal prohibition," a widow to a high-priest, etc., is meant; and "on account of holiness of station," the secondary degrees of relationship, etc., are meant. Hence we see that R. Jehudah changes the expression only, but nevertheless the ceremony of Halitzah is required. And if it were in accordance with R. Aqiba (that a marriage within secondary degrees is not considered at all), why, then, the ceremony of Halitzah? R. Jehudah collected only the expressions which ought to be in accordance with the opinion of the first Tana, but he himself does not require anything of that kind.

When R. Itz'hak came from Palestine, he taught just as our Mishna teaches, viz.: R. Jehudah said: He is guilty only concerning the negative commandment as to the mother. And what is the reason? Said Abayi: Because it reads [ibid. xviii. 7]: "She is thy mother," which means: You have to make him guilty only because of his mother, but not because of the wife of his father. But why do the rabbis make him guilty con-

cerning two commandments? Do they not hold this theory? The rabbis apply this expression to that which was said by R. Shesha b. R. Idi, which is stated farther on. But does not R. Jehudah also hold the theory of R. Shesha? Hence, his theory cannot be inferred from it. Therefore said R. Aha b. Iki: It reads [ibid. 7]: "She is thy mother, thou shalt not uncover her nakedness," meaning, "for one nakedness you can make her guilty, but not for two." But if so, why does not R. Jehudah differ concerning a daughter-in-law, who is guilty, according to our Mishna, as to two commandments? It then must be said, because there is one body, although there are two transgressions, he is culpable only for one, as it reads, "her nakedness." The same should be the case concerning the mother? Therefore said Rabha: R. Jehudah holds: At the beginning of the verse, "the nakedness of thy father" means "thy father's wife." And that it means thus he infers from an analogy of expression, as stated farther on. And "father's wife" means that there is no difference whether she is his mother or not. But whence do we know that it is the same with his mother, who is not his father's wife? Therefore it is written: "She is thy mother, thou shalt not uncover her nakedness." Hence only for the crime as to the mother you make him guilty, but not as to that of his father's wife.

There is a Boraitha according to Rabha: "A man" means to exclude a minor [Lev. xxii.]: "That lieth with his father's wife" means that there is no difference whether she is his mother or not. But whence do we know that the same is the case with his mother who is not his father's wife? Therefore it reads: "His father's nakedness," which is pleonastic,* and is written only for the purpose of an analogy of expression. "Both of them shall be put to death" means by stoning—but perhaps with some other death? It is written here: "Their blood shall be upon them"; and in the case of "familiar spirits" there is also the same expression. And as concerning the latter stoning is plainly applied by the Scripture, the same is the case here. But here we have heard only of the punishment. Whence do we know of the warning? Therefore it is written: "The nakedness of thy father," etc., which means of "thy father's wife." But perhaps it means literally the father himself? It is written here, "The nakedness of thy father thou shalt not un-

* For the explanation of a pleonastic term we refer the reader to Mielziner's "Introduction to the Talmud" (page 150).

cover," and there it is written, "The nakedness of his father he had uncovered." As the latter means his wife, so does the former. And from the expression "his father's wife," it is inferred, whether his mother or not. But whence do we know as to his mother who is not his father's wife? Therefore it is written, "the nakedness of thy mother," etc. But this is only in the warning in which the Scripture has equalized the mother who is not his father's wife with her who is. But whence do we know that the punishment is also equal? From the analogy of the expressions: "the nakedness of thy father thou shalt not uncover," and it reads also: "He has uncovered the nakedness of his father." And so as in the warning it is equalized with the mother who is the wife of his father and with her who is not, the same holds good concerning the punishment. "She is thy mother" means, you can make her guilty only for the crime as mother, but not for the crime as father's wife. But the rabbis, who do not use the above analogy of expression, whence do they deduce the punishment of a mother who is not the wife of one's father? Said R. Shesha b. R. Idi: It reads: "*She* is thy mother," which means that the Scripture equalized the mother who is not the wife of his father with her who is.

"*Who had connection with his daughter-in-law.*" But let him be guilty also because of the wife of his son? Said Abayi: The verse begins with his daughter-in-law and ends with the wife of his son—to teach that "daughter-in-law" and "wife of his son" are one and the same.

MISHNA V.: One who had connection with a human male or with an animal, and also a human female who uncovers herself before a male animal, are punished with stoning. And should one say: If man has sinned, what is the fault of the animal? Because a misfortune has happened to a human being through it, therefore says the verse: "It shall be stoned." There is also another explanation; viz., should it happen that people saw the animal passing the street, they would say: On account of it so and so was stoned.

GEMARA: A human male—whence is deduced? That which the rabbis taught: "A man" means to exclude a minor; "with a male," of any age whatever or a minor. "As they lie *

* The term "as they lie," translated by Leeser, is not correct, as it reads "mishkhhbey," which is plural and means "lyings," from which the Gemara infers that there are two lyings regarding a woman.

with a woman" means to say that with a woman there are two kinds of lyings, one usual and one unusual; and one is guilty as to both. Said R. Ishmael: This verse came to teach that which was just mentioned, as if not for this teaching it would be pleonastic, for regarding a male there is only one kind of connection. "Both of them have committed an abomination, they shall be put to death"—by stoning, but perhaps by some other death. Therefore it is written: "Their blood shall be upon them." And the same expression is used concerning "a familiar spirit," etc. And as the punishment of the latter is known to be stoning, the same applies here. From this we have heard the punishment. Whence is the warning? [Ibid. xviii. 22]: "And with a man shalt thou not lie as with a woman; it is an abomination." But this is a warning only to him who has done so. But whence is the warning to them with whom the connection was made? As to this it reads [Deut. xxiii. 18]: "There shall not be a courtesan of the sons of Israel"; and also [I Kings, xiv. 24]: "And courtesans also were in the land . . . the Lord had driven out." So R. Ishmael. R. Aqiba, however, said: "It was not necessary to have another verse warning him with whom the connection was made, as this is inferred from the same verse, which may apply also to the latter by some change in pronunciation.

Concerning animals, whence is this deduced? The rabbis taught: From Lev. xx. 15. "A man" excludes a minor; "with an animal," it makes no difference whether it was a large or a small one; "shall be put to death" means stoning—but perhaps some other kind of death? It reads here (ibid.) "thahargu" (ye shall kill), and in Deut. xiii. 10, "thahargenu" (thou shalt kill). And as there the punishment is stoning, as it reads plainly in ibid. 11, the same is the case here. Here, however, we have learned only the punishment to the man. But whence do we know that the animal with which the crime was done is also to be killed in the same manner? It reads [Ex. xxii. 18]: "Whosoever lieth with a beast shall surely be put to death," which was not necessary for the man, as there is another verse cited above. Apply it, therefore, to the beast. From this we have learned the punishment for both. But whence is the warning? From the above-cited verse [Lev. xviii. 23]. But this is only a warning to the man, and whence the warning concerning the animal? From Deut. xxiii. 18. (Here are repeated the cited verses in the name of R. Ishmael,

and also in the name of R. Aqiba, that it is not necessary, as in the above verses there is a warning for both.*)

MISHNA VI.: A blasphemer is not guilty, unless he mentioned the proper name of God (Jehovah). Said R. Jehoshua b. Karha: Through the entire trial the witnesses are examined pseudonymously—*i.e.* (the blasphemer said): "Jose shall be beaten by Jose." (Rashi explains that the name Jose was selected because it contains four letters, as does the proper name of the Lord.) When the examination was ended, the culprit was not executed on the testimony under the pseudonym; but all are told to leave the room except the witnesses, and the oldest of them is instructed: "Tell what you heard exactly." And he does so. The judges then arise, and rend their garments, and they are not to be mended. The second witness then says: I heard exactly the same as he told. And so also says the third witness.

GEMARA: There is a Boraitha: One is not guilty unless he blesses (*i.e.*, curses) the Holy Name by the Holy Name (as illustrated in the Mishna): "Jose shall be beaten by Jose." And whence is this deduced? Said Samuel: From Lev. xxiv. 16, of which the term in Hebrew is "we-nauquib shem," which means, "when he has cursed with the name." And whence do we know that the term "nauquib" means cursing? From [Num. xxiv. 8]: "How shall I curse," etc. And the warning as to this is [Ex. xxii. 27]: "Thou shalt not revile Elohim." But does not "nauquib" mean "hole"? Why, then, not so say—*i.e.*, suppose one wrote the Holy Name on a piece of parchment and tore it, the term "we-yiquaub" [II Kings. xii. 10]? meaning he "bored a hole in its lid"—and the warning as to which should be from [Deut. xii. 3. 4]: "Ye shall destroy their name out of the same place. Ye shall not do so to the Lord," etc. It was said above if the Name should be cursed by the Name, which is not the case here. But perhaps the term "nauquib" is meant as plainly expressed, as the same is used in Num. i. 17. "which are expressed by name" (*i.e.*, it was forbidden to

* We deem it expedient not to translate about two pages of the text preceding the next Mishna, treating of miserable crimes with men and animals, and giving the discussion with questions and answers, it would be undesirable to express in the English language. However, it seems to us important to give the opinion of Rabh: "A minor who was over nine years and one day is guilty, and may be punished the same as one of age, if he commit a crime with man, or an animal of any kind and age." (And there is a Boraitha which agrees with him.) This is all that we think proper to take from the text.

express the name Jehovah in any case whatever, except in that of the high-priest in *his* worshipping on the Day of Atonement when the temple was in existence; and even then, when the people heard this expression, they used to fall upon their faces). And the warnings should be from [Deut. vi. 13]: "The Lord thy God shalt thou fear" (which means to pronounce His name). This does not hold good, firstly because, as said above, it must be by the Name; and secondly, a warning of a positive commandment cannot be counted as a warning. And if you wish, it may be said because it is so written plainly [Lev. xxiv. 11]: "The son of the Israelitish woman pronounced (*we-yiqaub*) the holy name and blasphemed." Hence this term is used to blaspheme. But perhaps one is not guilty unless he did both—expressed the name and blasphemed? This cannot be supposed, as farther on it reads [ibid. 14]: "Lead forth the blasphemer," and the expression "*nauquib*" is not mentioned. Hence it is one and the same.

The rabbis taught: It reads: "any man whatsoever," etc., meaning to include the heathen, who are warned of blasphemy the same as an Israelite. And they are to be executed by the sword, as wherever it is mentioned in the Scripture concerning death to the children of Noah, it means by the sword, and not otherwise. But is this inferred from the verse cited? Is it not stated farther on that such is inferred from a verse in Genesis? Said R. Itz'hak of Navha: This verse is needed to include the pseudonyms. And it is in accordance with R. Mair of the following Boraitha: Any man whatsoever that blasphemeth his God shall bear his sin. To what purpose is this written? It reads earlier [ibid. 16]: "But he that pronounced the name of the Lord (with blasphemy) shall be put to death"? Because from this one might say that he is not guilty, unless he has done so with the unique proper Name, but not with the pseudonyms. Therefore it reads in the cited verse (15), "his God"—no difference between proper and pseudonym. So is the decree of R. Mair. The sages, however, maintain: For the unique proper Name death is the punishment; and for the pseudonyms it is only a warning by a negative commandment, and the punishment is as for the transgression of a negative commandment. (Says the Gemara:) Itz'hak of Navha differs with R. Maisha, who said: One of the children of Noah, who blasphemed God by any of His pseudonyms whatsoever is guilty, and is put to death, even according to the rabbis.

The rabbis taught: Seven commandments were given to the children of Noah, and they are: Concerning judges, blasphemy, idolatry, adultery, bloodshed, robbery, and that they must not eat of the member of a body while the animal is still alive. R. Hananiah b. Gamaliel said: Also of the blood of the same. R. Hidka said: Also castration was forbidden to them. R. Simeon said: Also witchcraft. And R. Jose said: All that is said in the portion on witchcraft is forbidden to a descendant of Noah. As it reads [Deut. xviii. 10-12]: "There shall not be found among thee any one who causeth his son or his daughter to pass through the fire, one who useth divination, one who is an observer of times, or an enchanter, or a conjurer, or a charmer, or a consulter with familiar spirits, or a wizard, or who inquireth of the dead. For an abomination unto the Lord are all that do these things; and on account of these abominations the Lord thy God doth drive them out from before thee." And as there is no punishment without preceding warning, hence they were commanded not to do all this. R. Elazar said: Also Kilaim. I mean to say, the descendants of Noah are allowed to dress themselves with a mixture of wool and flax; and also sow different kinds of seeds together (which are forbidden to the Israelites); but they are forbidden to gender different kinds of animals and to graft two kinds of trees together.

Whence is all this deduced? Said R. Johanan: From Genesis ii. 16.* Were the descendants of Noah indeed commanded concerning judges? Is there not a Boraitha: *Ten commandments* were commanded to Israel in Marah; seven of them are those which were accepted by the descendants of Noah, and three were added to them: viz., judges, Sabbath, and to honor father and mother. Judges—as it is written [Ex. xv. 25]: "There he made for them a statute and an ordinance," etc. And concerning Sabbath and the honor of parents it reads [Deut. v. 12 and 16]: "As the Lord thy God hath *commanded thee*." And R. Jehudah said: "As he hath commanded thee in Marah." Said R. Aha b. Jacob: This means that Israel was commanded to establish courts of justice in every district and

* It would be of no use to quote the verse, as every word in it is used for an analogy of expression of the Hebrew terms. There, is besides, a difference of opinion among the Amoraim, which expression is to be used for an analogy, and what it means; and to translate it all, we would have to fill our page with Hebrew words and their explanations. After all, it would be of no importance, as the fact that to the children of Noah seven commandments were given is traditional.

city; and the children of Noah were commanded concerning judges in general only. But is there not a Boraitha: As Israel was commanded to establish judges in every city and district, so also were the children of Noah commanded? Said Rabha: The Tana of the Boraitha cited above is in accordance with the school of Manasheh, which excluded from the seven commandments judges and blasphemy, and included castration and kilaim. Thus was it taught in the school of Manasheh: Seven commandments were the descendants of Noah commanded: Concerning idolatry, adultery, bloodshed, robbery, a member of a living animal, castration, and kilaim. R. Jehudah, however, said: Adam the First was commanded as to idolatry only, as it reads [Gen. ii. 16]: "And the Lord commanded the man" *i.e.*, the Lord commanded him about the law of God (that he should not be exchanged for another). R. Jehudah b. Bathyra said: Also as to blasphemy. And there are some others who say, also concerning judges.

According to whom is that which was said by R. Jehudah in the name of Rabh: God said to Adam: I am God, thou shalt not blaspheme me. I am God, thou shalt not exchange me for an idol. I am God, the fear of me shall be always upon thee? According to the "some others" just mentioned. (The expression "the fear of me," etc., means to appoint judges who shall punish them who transgress my commandments.)

Said R. Joseph: It was said in the college: For transgression of the following three commandments a descendant of Noah is put to death: viz., adultery, bloodshed, and blasphemy. R. Shesheth opposed: It is correct concerning bloodshed, as it reads [Gen. ix. 6]: "Whoso sheddeth man's blood, by man shall his blood be shed." But whence do you deduce the two others? And should you say that it is inferred from bloodshed, then why not infer all the seven? And if you infer it from "any man whatsoever," then idolatry is also inferred from same? Therefore said he: In the college it was said: For four they are but not put to death? Said R. Na'hman b. Itz'hak: It means ant of Noah indeed put to death because of idolatry? Have we not learned in a Boraitha concerning idolatry, if for such a crime one is put to death by the court of Israel, the descendants of Noah are warned of it? Hence they are only warned, but not put to death? Said R. Na'hman b. Itz'hak: It means that they are warned if they should commit this they will be put to death. R. Huna and R. Jehudah and also all other dis-

ciples of Rabh say: For each case of the seven commandments a descendant of Noah is to be killed. As the Scripture prescribed death for one, it shall serve as an example for the others.

When R. Dimi came from Palestine, he said in the name of R. Elazar, quoting R. Hanina: A descendant of Noah who has separated a female slave to one of his male slaves, and thereafter had connection with her, is to be put to death for this crime. A similarity to this in the crime of bloodshed was not taught. Said Abayi: If such a similarity is to be found, it may be in that which we have learned in the following Boraitha: R. Jonathan b. Saul said: If one runs after his neighbor to kill him, and the one who flees could save himself by injuring one of the members of his pursuer, and he did not so, but killed him, it is a crime of bloodshed and he is put to death for it.* R. Jacob b. Aha found a writing in a Haggadic book written by the college of Rabh, thus: A descendant of Noah may be put to death by the decision of one judge, by the testimony of one witness, and although he was not warned previously. However, the testimony must be from a man, and not from a woman; and the testimony holds good even if given by one of his relatives. In the name of R. Ishmael it was said: He is put to death even for killing an embryo. Whence is this deduced? Said R. Jehudah: From [Gen. ix. 5]: "Your blood, however, on which your lives depend, will I require," meaning even by one judge. "At the hand of every beast" means even without warning; "at the hand of man" means even with one witness; "at the hand of every man" means of a man but not of a woman; "brother" means even when the witness was a relative. And the reason of R. Ishmael is [ibid. 6]: "Whoso sheddeth man's blood in man,† his blood shall be shed." What is meant by "a man in man," if not an embryo, which is in the entrails of his mother? And the first Tana, who holds that a descendant of Noah is not guilty for an embryo, is in accordance with the school of Manasheh, which maintains that every death which is mentioned regarding the descendants of Noah is choking; and he explains the above-cited verse "in man shall his blood be shed," that it means choking, from which death occurs inside of the body as illustrated above. R. Hammuna objected: Does, then, the com-

* We do not understand this similarity, although Rashi in his commentary tries to explain it at length. It is so complicated as to be untranslatable into English.

† The term in Hebrew is "be-adam," literally, "in the man"; Leeser, however, translates according to the sense.

mandment of bloodshed not apply to a woman? Is it not written [Gen. xviii. 19]: "For I know him, that he will command his sons and his household after him"? And by the "household" it means the woman, as the sons are already mentioned? He objected, and he himself answered: It reads farther on, "that they shall keep the way of the Lord, to do righteousness and justice." It means that he shall command his sons to appoint judges for justice and his household to do righteousness and charity.

Said R. Ibiah the Elder to R. Papa: Say, then, that a woman who is a descendant of Noah shall not be put to death if she has killed a man; as it reads "from the hand of a man," which means not from the hand of a woman? And he answered: So said R. Jehudah: It reads, "Whoso sheddeth the blood of a human," etc., which means any human whatsoever. (Said R. Ibiah again: "Say, then, that a female descendant of Noah should not be punished if she sinned, as it reads [ibid. ii. 24]: "Therefore doth a man leave his father and his mother"—a man, and not a woman. And he answered: So said R. Jehudah: It reads further, "and they become one flesh"; and with this the verse associates them to be equal in every respect.)

The rabbis taught: It should read "a man." Why is it written "any man whatsoever"? To include heathens in the warning of adultery, as well as Israelites. But was it not said above that in the seven commandments which were given to the descendants of Noah adultery is included? Said R. Johanan: It is needed for such a relationship which they do not recognize, but the Israelites do; e.g., a betrothed woman before marriage, whom they consider as single. And if it happened that a heathen should sin with a woman betrothed of an Israelite, he is to be tried in the courts of the Israelites. But if he sins with a married woman, he may be tried in his own courts—the punishment of which is by the sword, and not choking. But is there not a Boraitha: A heathen who has sinned with a betrothed woman is to be stoned; and if with a married, choked? Hence he is tried in the Israelitish courts, as in his own courts he would be slain by the sword. Said R. Na'hman b. Itz'hak: By the term married woman is meant that the ceremony of marriage was performed, but her husband had not as yet had any connection with her; and such a marriage their courts do not consider, and the bride is still deemed single. Therefore he is to be tried in the courts of Israel, and punished with their pre-

scribed death. And so taught R. Haninah: The law of the heathen considers the wife of a man only after their connection, but not after the ceremony of marriage.

There is a Boraitha in accordance with R. Johanan: Every relationship for which the punishment of the courts of Israel is death, a descendant of Noah is warned of it; but all other relationships, the punishment of which is not death, are permissible to them. So is the decree of R. Mair. The sages, however, say: There are many relationships which in our courts are not punished with death, nevertheless the descendants of Noah are warned of them. If it happens that one of the latter has committed a crime with a daughter of Israel, which is considered adultery in the courts of the Israelites, but not in the courts of the heathens, he is to be tried in the courts of Israel. But if such a crime is considered adultery also in the courts of the heathen, he may be tried in their own courts. However, we do not find a case which would be a crime for Israelites and not for heathens, except that of a betrothed woman (as said above). But why does the Boraitha not count the case of a married woman—by the ceremony of marriage only—which is a crime according to our law, and not according to their law? The Boraitha is in accordance with the school of Manasheh: The death of the descendants of Noah is also choking. Hence it makes no difference in which court he should be tried.*

Resh Lakish said: He who raises his hand to strike his neighbor, although he has not as yet struck him, is called wicked. As it is written [Ex. ii. 13]: "And he said to the wicked one, wherefore smitest thou thy fellow?" It does not read, "why hast thou smitten," but "why smitest thou." Hence he is called wicked even if he only raises his hand to strike. Zeairi in the name of R. Hanina said: He is named sinner. As it reads [I Sam. ii. 16]: "If not, I will take it by force." And immediately after it reads: "The sin of the young men was very great." R. Huna said: If one has the habit of raising his hand against man, his arm may be cut off. As it reads [Job, xxxviii. 15]: "And the high-raised arm should be broken."† (And R. Huna acted according to his theory, and

* The text farther on discusses about a proselyte, whose mother embraces Judaism when he was yet an embryo—which relationship is allowed to him and which not; also if a heathen is allowed to marry his daughter; if a slave may marry his sister or daughter, etc.—all of which, as we deem it not fit for translation, we omit.

† Leeser's translation does not correspond.

cut off the arm of a man whose habit was to strike men with it.) R. Elazar said: There is no remedy for such a man, but burial. As it is written [ibid. xxii. 8]: "But as for the man of a strong arm, for him is the land." He said again: Only one who has a strong arm may obtain land (as usually there is much trouble to keep away cattle and all other animals which harm the growth, and also to preserve it from thieves, etc.). Resh Lakish said again: It reads [Prov. xii. 11]: "He that tilleth * his ground will be satisfied with bread." It means, when one makes himself a slave to the earth, he may be satisfied with bread, but not otherwise.

The Boraitha states: R. Hananiah b. Gamaliel, etc. The rabbis taught: It reads [Gen. ix. 4]: "But flesh in which its life is, which is its blood, shall ye not eat." This means any member of the animal, while it is still alive. And Haninah b. Gamaliel said: Also the blood of same. And his reason is that the verse is to be read thus: Flesh in which its life is, ye shall not eat, and blood in which its life is, ye shall not eat. The rabbis, however, maintain that blood is here mentioned to teach that other animals, as reptiles, are allowed to a descendant of Noah. Similar to this, it reads [Deut. xii. 23]: "Only be firm, so as not to eat the blood; for the blood is its life," which the rabbis explain as meaning the blood of the veins, by which the soul departs.

For what purpose is it written concerning the descendants of Noah, and thereafter repeated in the laws which were given on Mount Sinai? It is as R. Jose b. Hanina said: Every commandment which was given to the descendants of Noah, and thereafter repeated in the laws given on Mount Sinai, applies to both Israel and the descendants of Noah. And that which was given to the descendants of Noah, and not repeated, applies to Israel only. However, we have only one case [Gen. xxxii. 33] which was commanded before the laws were given on Mount Sinai, which was not repeated, and applies only to Israel, according to R. Jehudah's theory (in Tracts Chulin, Chap. vii., which will be explained there).

The master said: A commandment which was repeated on Sinai is for both. Why not the contrary—because it was repeated on Sinai, it must be said it was given to Israel only? Al-

* The term in Hebrew is "obed"; literally, "worshipped," and also "works up"; and *ebed* means "a slave." Hence his analogy.

though idolatry was repeated on Sinai, as we find that the descendants of Noah were already punished for idolatry, therefore it applies to both. He says further that that which was given to the descendants of Noah and not repeated is for Israel only. Why not the contrary—because it was not repeated, it applies to the descendants of Noah and not to Israel? Because we do not find any case where it is forbidden to the descendants of Noah and allowed to the Israelites, a commandment which was given to the children of Noah and repeated on Sinai applies to both. Is there not circumcision? [Gen. xvii.]: “And God said unto Abraham: But thou, for thy part, shalt keep my covenant”; and it reads also [Lev. xii. 3]: “And on the eighth day shall the flesh of his foreskin be circumcised.” And nevertheless it applies to Israel only, and not to the descendants of Noah? The verse just cited was needed to permit the circumcision to be done on Sabbath; as the term “on the eighth day” means even on Sabbath. And if you wish, it may be said that circumcision was given to Abraham especially. As it reads [Gen. xvii.]: “But thou, for thy part, shalt keep my covenant: thou, and thy seed after thee, in their generations”—which means “thou and thy children,” but not some other man’s. But according to this, let the descendants of Ishmael be obliged to circumcise? It reads [ibid. xxi. 12]: “For in Isaac shall thy seed be called.” But if so, let this obligation be for the children of Esau also? It reads “in Isaac,” but not the whole of Isaac, which means to exclude the descendants of Esau. R. Oushia opposed: Let, then, the children of Kturah not be obliged to circumcision. And R. Jose b. Abin or R. Jose b. Hanina said: From [ibid. xvii. 14]: “He hath broken my covenant” is understood even the sons of Kturah.

R. Jehudah said in the name of Rabh: Adam the First was not permitted to eat meat. As it reads [ibid. i. 29. 30]: “To you it shall be for food, and to every beast of the field,” meaning, but not the beasts to you. However, after the descendants of Noah came, he permitted them. As it reads [ibid. ix. 3]: “Every moving thing that liveth shall be yours for food: even as the green herbs have I given you all things.” And lest one say that they may be eaten while still alive, therefore it reads: “But flesh in which its life is, which is its blood, shall ye not eat.” And lest one say that this forbids also reptiles, the term “but” excludes them. How is this to be understood? Said R. Huna: It reads “his blood,” which means of animals in

which the blood is separated from the flesh, and excludes reptiles, of which the blood is not separated from their flesh.

There was an objection to that which was said that Adam the First was not allowed to eat meat, from that which Jehudah b. Bathyra said (Vol. IX., p. 7): "Adam the First was sitting in the garden of Eden, and the angels served him with roasted meat," etc. Hence he was allowed? And the answer was that with meat which came from heaven it is different. And the question is, was there any meat which came from heaven? It was answered: Yea! As it happened to R. Simeon b. Chalafta, who, being on the road, met lions, which were stirred against him; and a miracle occurred, and two legs fell from heaven, one of which the lions consumed, and the other one remained. Simeon then took it, brought it into the college, and questioned if it was allowed to eat it. And he was answered: An unclean thing never came from heaven. And R. Zera questioned R. Abuhu: How is it if such should come from heaven in the form of an ass? And he was scolded for this question thus: Was it not decided long ago that no unclean thing descends from heaven?

"*R. Simeon said: Also witchcraft.*" What is his reason? It reads [Ex. xxii. 17]: "Thou shalt not suffer a witch to live"; and farther on: "Whosoever lieth with a beast shall surely be put to death"—which applies also to the descendants of Noah. And as this applies to them, the same is the case with the first verse. R. Elazar said: Kilaim! Whence is this deduced? Said Samuel: From [Lev. xix. 19]: "My statutes shall ye keep," which means the "statutes which I stated long ago" (long ago, to the descendants of Noah). "Thy cattle shalt thou not let gender with a diverse kind; thy field shalt thou not sow with mingled seeds." And as concerning cattle "gender" is prohibited, so concerning fields grafting is prohibited; and as the prohibition of the first applies to every place—in Palestine and outside of it—the same is the case with the fields. But if so, why not explain [ibid., ibid. 37]: "Ye shall therefore observe all my statutes, and all my ordinances," in the same way: "my statutes which I stated long ago"? Nay! "You shall therefore observe my statutes" means which I have now given to you. But in the above-cited verse, which begins, "my statutes ye shall observe," it must be said the statutes which are already stated.

"*Said R. Jehoshua b. Karha,*" etc. Said R. Aha b. Jacob:

Infer from this that one is not guilty unless he blesses (curses) the Name which contains four letters, but not that of two letters (c.g., a Jud and Heh—"Ja"; or Aleph and Lamedh, which is "ehl." But is this not self-evident? Does not the Mishna state, c.g., "Jose . . . by Jose," which contains four letters? Lest one say that this is only an example, but not in particular, he comes to teach us that it is not so. According to others, Aha b. Jacob said: Infer from this that a name which contains four letters is also considered. Is this not self-evident? The example is given, "Jose by Jose," which contains four. Lest one say that one is not guilty, unless he blesses (curses) the great Name (Rashi explains: Which contains forty-two letters—which are not known to us, and the example is not particular, he comes to teach us that it is not so).*

"*They arise.*" Whence is this deduced? Said R. Itz'hak b. Ami: From [Judges, iii. 20]: "And Ehud came unto him; and he was sitting in the summer upper chamber, which was for himself alone. And Ehud said: I have a word of God unto thee. And he arose out of his chair." Is there not to be drawn an *a fortiori* conclusion—Eglon, the king of Moab, who was a heathen, to whom the God of Israel was known only by a pseudonym, rose up from his chair when he heard the Name of God: An Israelite, hearing the great Name, so much the more must he arise?

"*Rend,*" etc. Whence is this deduced? From [II Kings, xviii. 37]: "Then came Elyakim the son of Chilkiyah, who was superintendent over the house, and Shebua the scribe, and Yoach the son of Assaph the recorder, to Hezekiah, with their clothes rent; and they told unto him the words of Rabshakeh."

"*Not to be mended.*" Whence is this deduced? Said R. Abuhu: From an analogy of expression—"rent." It reads here: "With their clothes rent"; and [ibid. ii. 12]: "And Elisha saw it, and he cried, My father, my father, the chariot of Israel, and their horsemen. And he saw him no more; and he took hold of his clothes and rent them in two pieces." Why the word "pieces"? Is it not self-evident that when he rent them in two, they became pieces? Hence this term means that they should remain pieces and never be mended.

* It is almost the first time that we have translated against our method, announced in the third of the explanatory remarks on back of title pages, the reason of which we hope the reader will understand.

The rabbis taught: There is no difference if one hears it from the blasphemer himself or from the witness who heard it from the blasphemer—he must rend his garments. However, the witnesses themselves are not obliged to rend their garments again, as they already did so when they heard the blasphemy. But supposing they have already rent? Do they not hear this now? Hence they should rend again? This cannot be supposed, as it reads [ibid., ibid., 19]: “And it came to pass, when King Hezekiah heard it, that he rent his clothes.” Hence Hezekiah rent, but they who told him did not rend again.

R. Jehudah said in the name of Samuel: If one hears a blasphemy from the mouth of a heathen, he is not obliged to rend his garments. And should one say: Why did they rend when they heard it from Rabshakeh?—he was not a heathen, but an apostate Jew. The same said again in the name of the same authority: Garments must be rent only upon the unique proper Name, but not upon a pseudonym. And he differs from R. Hyya in both his decisions, as R. Hyya said: If one hears a blasphemy in our times, he is not obliged to rend; for if one should say he is obliged, then all garments would be full of rents. Now, who are the blasphemers—Israelites? Are they so bold as to blaspheme God? Hence he means heathens. And are, then, the heathen aware of the unique proper Name? Hence he means a pseudonym. And nevertheless he says, “in our times,” from which we understand that in previous times it was obligatory to rend upon a pseudonym also. Infer from this that so it was.

“*The second witness says: I heard exactly the same,*” etc. Said Resh Lakish: Infer from this that in civil cases, as well as in criminal, if one of the witnesses says: “I have heard just the same,” and does not repeat what he has heard, it is lawful. And that which the court used to require from the witnesses, that each of them should explain how the case was, is only a higher standard which the rabbis have enacted. In the case of blasphemy, however, in which it is impossible that the second witness should repeat, they leaned on the biblical law. As, if it were biblically illegal, how could it be supposed that because it is forbidden to repeat, a man should be put to death?

“*And so also says the third witness.*” This anonymous Mishna is in accordance with R. Aqiba, who compares three witnesses to two.

MISHNA VII.: He is considered an idolater who worships

it with its proper * worship; and even if he only sacrifices, smokes incense, or pours wine. He is also so considered if he bows himself to it, or accepts it as a god, even without any other act. And also if he only says: Thou art my god. However, he who arms, kisses, wipes the dirt, sprinkles water, washes, anoints, dresses, or shoes it, transgresses a negative commandment [Ex. xx. 5]. He who vows or determines in its name transgresses also a negative commandment [ibid. xxiii. 13]. He who uncovers himself before Baal Peor, and commits a nuisance (is guilty, for) this is the mode of worshipping him; also, he who casts a stone on a *merculis* (*hermaeon*)—that is the way of worshipping it (and he is guilty).

GEMARA: Whence is this deduced? The rabbis taught: It is written [Ex. xxii. 19]: He that sacrificeth unto any god, save unto the Lord only, shall be utterly destroyed. If the word "any" were omitted from this verse, I would say it speaks of one who sacrifices animals outside of the sanctuary; but as the word is written, it is to explain that it means: who sacrifices to any idol. From this, however, we infer sacrificing only. But whence do we know that the same is the case with smoking incense or pouring wine? From the words "unto the Lord only," which would be superfluous if they do not mean: all the kinds of worshipping the Lord—if he has done it to an idol, he is guilty. Now, as sacrificing is included in the worshipping of the Eternal, and nevertheless specified, it is to be assumed that it comes to teach that one is guilty for that kind of worshipping which takes place inside of the sanctuary. Whence, then, do we know that bowing is also considered? From [Deut. xvii. 3]: "And he hath gone and served other gods and bowed † himself to them"; and [ibid., ibid. 5]: it reads: "Then shalt thou bring forth that man," etc. But from this we know the punishment—whence is the warning? [Ex. xxxiv. 14]: "For thou shalt bow thyself to no other god." And lest one say that arming, kissing, shoeing are also included to be crimes subject to capital punishment, as they are to be inferred from bowing, therefore sacrificing was specified, to show that nothing is to be inferred from bowing, and also to teach that as a distinction is made concerning the worshipping inside of the sanctuary, the same is the case with all other worshippings which are used inside—if with such one has worshipped an idol,

* This is explained in the Gemara by R. Jeremiah.

† Leeser has omitted this; we do not know the reason why.

he is liable to a capital punishment. However, bowing is out of this rule and stands alone.

The master said: If not for the word "any," I would say it speaks of sacrificing out of the sanctuary. But is not such a crime under the category of Korath? Should one say that it is when he was not warned, but if he was, capital punishment applies, he comes to teach us that it is not so.

Said Rabha b. R. Hanan to Abayi: Why not say that from bowing "all kinds of worshipping" is to be inferred, and the specification of sacrificing is needed for itself, to teach that an intention of worshipping an idol with any future act, although one does not intend it by the first act, is considered worship; *e.g.*, if one slaughters a cow with the intention of sprinkling its blood, or of burning its fat before the idol, although with the slaughtering he does not worship it, it is nevertheless considered, and it is prohibited to derive any benefit from the cow, according to Johanan? But according to Resh Lakish the cow is permissible for use, as he does not hold this theory. And the reason of R. Johanan is because he infers it from the worshipping inside, as to which a future intention, *e.g.*, to sprinkle the blood on the morrow—makes invalid the whole sacrifice. The same is the case with an outside act, as illustrated here.

Said R. Aha of Difti to Rabhina: According to Rabha b. R. Hanan, who said to Abayi: Why not say that from bowing all kinds of worshipping are to be inferred? What, then, would he exclude from the passage which reads [Deut. xii. 30]: "How did these nations serve their god?" And lest one say that one who uncovers himself for such idols as are worshipped with sacrifices is excluded, this may be inferred from bowing: as the act of bowing is an honor to the idol, so are all kinds of worship which are in order to honor. But uncovering, which is a disgrace, is not considered a worship? Say—to exclude the one who uncovers himself for Mercuris. And lest one say that as the kind of worship of Mercuris is a disgrace, the same shall be the case with the disgrace of uncovering, it comes to teach us that it is not so. But did not R. Elazar say: Whence do we know that if one sacrifices an animal to Mercuris he is guilty? From [Lev. xvii. 7]: "So that they shall offer no more their sacrifices unto evil spirits," which is not needed for itself, as this is already written elsewhere? Apply it, therefore, to bringing an offering to an idol of which the kind of worshipping is not sacrificing. Now, as from bowing is inferred all kinds of

worshipping which are of honor, so one is liable if he did it for any idol, whatsoever be the kind of its worship. Why, then, does R. Eliezer need the above-cited verse? He means to say: Even if he had sacrificed to Mercuris, not as an honor but for dishonor, he is nevertheless liable for the transgression of the negative commandment cited above.

It happened to Hammuna that he lost his oxen, and while searching for them Rabha met him, and propounded to him a contradiction from the two following Mishnayoth: In our Mishna it is stated: "He who *worships* idols," from which is to be inferred only worshipping, but not *saying*. And there is another Mishna, farther on, which states: He who says: "I will worship," or "I will go to worship," or "We will go to worship"—is already considered an idolater. And he answered: Our Mishna means that he said: I do not accept this idol as a god unless by worshipping. Said R. Joseph to him: You are saying this as if it were your own opinion. Do you ignore the Tanaim who differ on this point in the following Boraitha: If one says: "Come ye and worship me, for I am a god," R. Mair makes him guilty as a seducer, and R. Jehudah frees him. However, if there were some who had already worshipped him, all agree that he is guilty. Thus it reads [Ex. xx. 4]: "Thou shalt not make unto thyself," etc., which means also, "Thou shalt not make thyself for an image." But the point of their difference is that he was not as yet worshipped. R. Mair makes him guilty because, according to his opinion, talking is to be taken into consideration; and according to R. Jehudah it is not. Hence we see that Tanaim differ on this point? After deliberating, however, said R. Joseph: What I said was not correct; as we find in the following Boraitha that R. Jehudah also makes one guilty for talking: R. Jehudah said: One is not guilty unless he says: "I will worship," or "I will go and worship," or "We will go and worship." And the point of their difference in the Boraitha cited above is thus: If one who is a seducer for himself (i.e., "Worship me"), and there were some people who said, "Yea," according to R. Mair he is considered a seducer because there were some people who answered, "Yea"; and according to R. Jehudah this is not considered, as their answer, "Yea," is only a joke. They ridicule him, saying: Are you not a man like us? And the Mishnayoth, which contradict each other, are to be explained thus: Our Mishna, which states "who worshipped," treats if he who was seduced, listened and

worshipped him, he is guilty; because if an individual made up his mind to worship him, it is to be presumed that he will not retract. And the other Mishna treats of when many people were seduced and worshipped him, it is not to be considered, as it is to be supposed that they will reconsider, seeing there is nothing in him, and will retract. And R. Joseph said: Whence did I take my theory? From [Deut. xiii. 9]: "Then shalt thou not consent unto him, nor shalt thou hearken unto him." From which it is to be understood that if he did listen, and consented unto him, he is culpable. Abayi objected to him: Is there indeed a difference between an individual who was seduced and a majority? Is there not a Boraitha: It reads [ibid., ibid. 7]: "If thy brother, the son of thy mother, should entice thee," means that there is no difference between an individual and a majority, if they were seduced? And the verse which excluded an individual from a majority, is to make more rigorous his body—viz., to be stoned—and lenient concerning his property, which remains for his heirs; and excluded also a majority from an individual, to make more lenient their bodies—viz., slaying by the sword—and rigorous concerning their property, which must be burned. Hence we see that only on this point is there a difference between them, but on all other points they are equal. And therefore he explains the two contradictory Mishnayoth, that one speaks of when he has seduced himself—therefore he is not culpable unless he worshipped, as from his talk only, it is supposed that he will retract after deliberating. And that Mishna which makes him culpable for talking only, speaks of when he was seduced by others, as it is not to be supposed that he will retract. On the contrary, as they are many, it is highly probable that he will be inclined to them. And Abayi also infers his theory from the above-cited verse, "If he did not consent," etc., from which it is to be understood that if he did, he is culpable. Rabha, however, maintains that both Mishnayoth speak of when he was seduced by others, but one treats of when the seducers said to him: "So does the idol eat, so does it drink, so does it good, and so does it harm"; and the other one treats of when he was not so informed. And he adds: Whence do I deduce my theory? From [ibid., ibid. 8]: "Some of the gods of the nations which are round about you, that are nigh unto thee," etc. To what purpose is it written? Is there a difference if the idols were near to him or far from him? It must be explained that the verse means

thus: From the nature of the idols which are near to thee, thou mayst understand the nature of those which are far from thee. (*I.e.*, usually a seducer comes to tell one from such as are not known to him, and relates before him all the good of the idol, and so seduces him to worship. Hence he said to him: "So does it eat, so does it drink," etc.) R. Ashi maintains: The Mishna which makes one guilty for talking treats of an apostate, who is guilty for talking, as such would not retract after it is seen that such is his habit." Rabhina, however, said: Both Mishnayoth speak of an Israelite, not of an apostate, and they do not differ at all, as the first Mishna says, "who worshipped," and the second states not only "worship," but if he says, "I will," he is also culpable.

It was taught: If one worship an idol because he loves it, or because he fears it, according to Abayi he is culpable, and according to Rabha he is free. The former said so because, after all, he has worshipped it, and therefore he is guilty; and the latter maintains: He is guilty only when he accepts it as a god; but when this is no longer the case, he is free.

Said Abayi: I take my theory from our Mishna, which states, "If one worship," etc., "sacrifice," etc. Now, as the Mishna explains farther on all the kinds of worshipping, the term "worshipped," without specifying the kind, means for love or for fear. Rabha, however, maintains that the Mishna is to be explained as by R. Jeremiah. Said Abayi: I may infer my theory from the following Boraitha: It reads: "Thou shalt not bow thyself to them"—but thou mayst bow thyself to a man who is equal to thee. But lest one say, "Even if the man were worshipped like Haman?" therefore it reads: "Thou shalt not worship them." Now, Haman was worshipped for fear. We see, then, that such a worship is considered. Rabha, however, explains the Boraitha: Like Haman, who established himself as an idol, but not like him who was worshipped only for fear. And Abayi said again: I infer my theory from the following Boraitha: The anointed priest for war may bring an offering, if he acted unintentionally concerning idolatry. So is the decree of Rabbi. Now, let us see! What means, "he acted unintentionally"? Shall we assume that he thought, of a house of idolatry, that it was a synagogue, and bowed himself? Then why should he bring an offering—his heart was toward Heaven? We must then say that he saw an image and bowed himself. Now, if he accepted it as a god, then he has acted intention-

ally and should be put to death. But if he has not accepted it as a god, but bowed himself—*e.g.*, for the honor of the king who was with him? Then it cannot be considered a sin at all, even to the extent of bringing an offering. We must then say that “unintentionally” means for love or for fear. Rabha, however, maintains that his error was that he thought that such a thing was allowed.

R. Zakkai taught in the presence of R. Johanan: If one has sacrificed, smoked incense, poured wine, and bowed himself before an idol, because of one forgetfulness (that the law does not allow it), he is liable for one sin-offering only. And R. Johanan answered him: Go and teach your teaching outside of the college (*i.e.*, it is nonsense). Said R. Abba: As to the theory of R. Zakkai, R. Jose and R. Nathan differ in the following Boraitha: The negative commandment of kindling on Sabbath, which is already included in the negative commandment, “Thou shalt not do any labor,” is written for the purpose of teaching that he who kindles transgresses only a negative commandment, which is not under the category of Korath or capital punishment, as for all other labor on Sabbath. And R. Nathan differs from him (see Sabbath, p. 000). And there is the same difference here concerning bowing. According to R. Jose, bowing was specified for the purpose of showing that he who does so transgresses only a negative commandment, to which capital punishment does not apply. And R. Nathan differs from him with the same theory as concerning kindling.

When R. Samuel b. Jehudah came from Palestine, he said that R. Zakkai had taught before R. Johanan thus: Concerning Sabbath it is more rigorous than all other commandments in one respect, and all other commandments are more rigorous than concerning Sabbath in another respect—*viz.*, concerning Sabbath, if one has done two kinds of labor by one forgetfulness (*e.g.*, he forgot that it was Sabbath), he is liable for two sin-offerings; and in all other commandments—if, for instance, he worshipped with two kinds by one forgetfulness—he is liable to one sin-offering. And in another respect the other commandments are more rigorous than concerning Sabbath; as concerning Sabbath, if he had done any labor unintentionally—*i.e.*, he intended to do another thing and did this—he is not liable at all, while concerning other commandments, if such a thing occurs, he is liable for a sin-offering.

R. Ami said: If one has worshipped by all three worships—

viz., sacrificing, smoking, and pouring—in one forgetfulness, he is liable only for one sin-offering. Said Abayi: The reason of R. Ami's theory is: Because it is written, "Ye shall not worship them," hence the Torah has included all kinds of worship into one. Did Abayi indeed say so? Has he not said: There is written in the Scripture three times "bowing," concerning idolatry: once, that one is culpable if the worship of the idol was by bowing; second, that one is culpable even if the worship of the idol was not by bowing; and the third, to distinguish it from all other worships—that one is liable for it to a capital punishment? You say once, when the usage is to worship thus. Is, then, a verse needed as to this? Is it not written plainly [Deut. xii. 30]: "How did these nations serve their gods? even so will I do likewise"? Say then, once, for such an idol as is not accustomed to be worshipped by bowing, but only occasionally; and once, for such as before which bowing is not used at all—*e.g.*, Baal Peor; and once, to separate it for capital punishment? Hence we see that he is not in accordance with R. Ami? He said so to give a reason for R. Ami's theory, but he himself does not agree with him.

"*And also if he only says, 'Thou art my god.'*" R. Na'hman in the name of Rabba b. Abuhu, quoting Rabh, said: As soon as he has said, "Thou art my god," he is culpable. But what news is this? If he means capital punishment, did not the Mishna say so? He means to say that he is liable to bring a sin-offering, if this was said by an error, even according to the rabbis, who require an act. But does not a Boraitha state: One is not culpable unless by acting—*e.g.*, sacrificing, smoking, pouring, or bowing? To which Resh Lakish said: Who is the Tana who holds that bowing is also an act? R. Aqiba, who does not require a mental act—from which it is to be understood that the rabbis do? Rabh also means to say in accordance with R. Aqiba. But is this not self-evident? Does not R. Aqiba say that even an unintentional blasphemer is also liable for a sin-offering? Lest one say that R. Aqiba holds liable a blasphemer because the punishment of korath is mentioned in the Scripture concerning him, but concerning bowing, which is not mentioned, even R. Aqiba frees him from this obligation, he comes to teach us that they are compared. As it reads [Ex. xxxii. 8]: "They have bowed themselves to it, and have sacrificed unto it," etc.

R. Johanan said: If not for the Vav in the word "he-

elukha" (brought thee up) in the above-cited verse (which makes it plural and means that they also took part in the exodus from Egypt), all Israel would be liable to be destroyed. However, in this the following Tana'im differ: Anonymous teachers say: If not for the Vav in the word "he-elukha," etc. Said R. Simeon b. Johai to them: This is still worse, as there is a tradition: He who conjoins the name of Heaven with something else is to be destroyed; and therefore the Vav in "he-elukha," which makes the word plural, shows that they were fond of many gods.

"*He who arms, kisses,*" etc. When Rabbin came from Palestine, he said in the name of R. Elazar that one is not punished with stripes for all them, unless one vows or determines in its name. But let us see! Why is one not punished for all these? Because the negative commandment is not plainly written to this effect, but was included in the negative commandment, "Thou shalt not worship them." And there is a rule that for such a commandment no stripes apply. Why, then, should stripes apply to one who vows? This commandment is also not for mental labor, but for manual. And there is a rule that concerning a commandment in which mental labor is not involved, stripes do not apply. He is in accordance with R. Jehudah, who said that for such a negative commandment stripes do apply. As we have learned in the following Boraitha: It reads [Ex. xii. 10]: "And ye shall not let anything of it remain until morning, and that which remaineth of it until morning ye shall burn with fire." Hence the Scripture came to give a positive commandment (ye shall burn) after a negative commandment (ye shall not leave), to say that for the transgression of such a negative commandment stripes do not apply. So R. Jehudah. R. Jacob, however, says: The reason why stripes do not apply is not because of that which is said by R. Jehudah, but because in this commandment no mental labor is involved, and to such no stripes apply. Hence we see that, according to R. Jehudah, even to such stripes do apply.

"*He who vows in its name,*" etc. Whence is this deduced? From [Ex. xxiii. 13]: "And of the name of other gods ye shall make no mention"—which means, one must not say to his neighbor: Await me in such and such a place, where such and such an idol is to be found. "It shall not be heard out of thy mouth" means, one shall not vow or determine in its name, and shall also not cause others to do so. Another explanation to, "It shall not be heard out of thy mouth," is that it is a warn-

ing to a seducer and to a misleader. But concerning a seducer is it not written plainly [Deut. xiii. 12]: "And all Israel shall hear and be afraid"? Therefore it must be said that it is a warning to a misleader, and also that one shall not cause others to vow or determine in its name. And this is a support to Samuel's father, who said that one must not make partnership with an idolater, as it may be that his partner will owe an oath to him, and he will swear by the name of his idol. And the Torah says: "It shall not be heard out of thy mouth," which means: You shall not cause others to vow in its name.

It happened once that Ula lodged in Khalmbu, and when he came to Rabha, he asked him: "Where did the master lodge last night?" And he said: In Khalmbu. Said Rabha to him: Is it not written: "The name of other gods ye shall not mention"? Rejoined Ula: So said R. Johanan: Every idol which is mentioned in the Scripture, one may mention.

R. Jehudah in the name of Rabh said: It happened to a female heathen who was very sick and vowed that if she recovered she would worship all the idols which were to be found. And after her recovery she did so. When she reached Baal Peor she asked how it should be worshipped. And she was told that worshippers ate mangcorn, drank beer, and then uncovered themselves in its face. And she said: "I would rather suffer the same sickness again than perform such a worship." But yet the house of Israel have not done so, as it reads [Num. xxv. 5]: "That have been joined unto Baal Peor," which means like the cover to a pot. However [Deut. iv. 4]: "But ye that cleave unto the Lord," etc., as a twin of dates. A Boraitha states: "Joined to Peor," as a ring on the finger of a woman, "cleave to the Lord" means, literally.

The rabbis taught: It happened to Saphta b. Als, who hired his ass to a certain female heathen. And when she reached the place of Baal Peor, she said to him: "Await me here, I will enter only for a while and come out." And when she came out, he also said to her: "Await me here, I will also do the same." And to her question: "Are you not a Jew?" he answered: "What do you care?" He then entered, uncovered himself and put the dirt on the nose of the idol. And the ministers of Peor praised him for this, saying that there was no man who worshipped Peor as properly as he did. The sages, however, made him guilty for the proper worship of the idol, although his intention was to disgrace it. And the same is the case if he

throws a stone at Mercuris, although with the intention of stoning it, he is nevertheless guilty, for so is the kind of its worship.

R. Menassah went to the city of Turta, and was told that this place is of an idol. And he took up a lump and threw it at it (the idolatrous statue). He was then told that it was Mercuris, and he answered that the Mishna states "he who throws a stone at Mercuris," *i.e.*, to worship. And when he came to the college he was told that the Mishna means, even if his intention was to stone it. He then said: I will go and take it up. However, he was told that it is the same transgression, for by taking one stone he makes room for another.

MISHNA VIII.: If one gives one of his children to Molech, he is not guilty unless he had transferred him to the servants of Molech and let him pass through the fire. If, however, he had transferred and not passed through the fire, or *vice versa*, he is not guilty.

GEMARA: The Mishna speaks of idols, and mentions Molech. Said R. Abin: Our Mishna is in accordance with him who says that Molech is not an idol at all. As we have learned in the following Boraitha: There is no difference whether one has given of his children to other idols or to Molech—he is culpable. R. Eliezer b. R. Simeon, however, maintains: Only if he has done it to Molech he is guilty, but not if to another idol. Said Abayi: R. Elazar b. Simeon and Hanina b. Antiguis have said the same—R. Elazar b. Simeon, in the Boraitha cited; and Hanina, who said in the following Boraitha: Why does the Torah use the term Molech? * To say of every one whom they have accepted as a king over them—be it even a piece of wood—one is guilty if he had transferred one of his children for it. Hence we see that, according to him, one is guilty only concerning Molech, but not concerning another idol. Rabha, however, maintains that Simeon and Hanina differ concerning a temporary Molech, as according to R. Simeon one is not guilty on account of such.

R. Janai said: One is not guilty unless he transfers a child to the servants of the idol, as it reads [Lev. xviii. 21]: "And from thy children thou shalt not give to pass through the fire to Molech." And so also we have learned in the following Boraitha: Lest one say that when he passed his child and has not transferred, he should be guilty, therefore it reads, "Thou shalt not give." If he has transferred and not passed through

* The term for king in Hebrew is *melech*.

the fire, he is also not guilty, because it reads, "to pass through the fire." And if one has done both, but not for Molech, one might say he is guilty? Therefore it reads, "to Molech." If one has transferred and passed to Molech, but not through fire, he is also not guilty, because it reads, "through fire." And it is written also [Deut. xviii. 10]: "There shall not be found among thee any one who causeth his son or his daughter to pass through the fire." And we infer one from the other. As there it is mentioned plainly "fire," so here also it is meant fire; and as here is meant Molech, so also there is meant Molech. Said R. Aha b. Rabha: If one has transferred all his children to Molech, he is not guilty, as the verse reads, "and from thy children"—but not all. R. Ashi questioned: How is it if one has passed through the fire a son blind or asleep, or one of his grandchildren? The last question may be answered from the following: It reads [Lev. xx. 3]: "Because of his seed he has given unto Molech." To what purpose was it written? Because in the above-cited verse in Deuteronomy it reads "son" and "daughter," and one might say, but not of grandchildren. Therefore it is written [ibid., ibid. 4]: "When he giveth of his seed," in which grandchildren are included.

Let us see! The Tana begins with verse three [3] and ends with verse four [4]. He did so because of another teaching. One might say that one is guilty only for legitimate children, but not for illegitimate; therefore it reads in verse four, from his "seeds," which includes all.

Said R. Jehudah: One is not guilty unless he let him pass in the usual manner. What was that? Said Abayi: A row of bricks were placed for passing, and on both sides fire was kindled. Rabha, however, maintains that it was by jumping, as children used to jump on Purim. (Rashi explains that they used to have a pit in which fire was kindled, and the people used to jump over it.)

There is a Boraitha in accordance with Rabha: One is not culpable unless he has passed in the usual manner of worship. However, if he passed it by, not jumping, he is not guilty. He is also culpable only when he passed his descendants; but not if his brother, sisters, father, mother, or even himself. R. Eliezer b. R. Simeon, however, makes guilty him who passed himself. There is no difference whether he has passed to Molech or to any other idol. R. Eliezer b. R. Simeon, however, maintains: To Molech, but not to others.

Said Ula: The reason why R. Elazar makes guilty him who passes himself is because it reads: "bkho"—literally, "in thee," which means "thyself." But do not the rabbis also give attention to the word "bkho"? Is there not a Mishna in Middle Gate (p. 000): And R. Jehudah said: The reason of it is because it is written "bkho"? There is also another reason—because the verse begins with "although, indeed."

R. Jose b. Hanina said: Three times korath is mentioned concerning idolatry: once for worshipping it as it is done usually; once as not done usually; and once for Molech, although it was not considered an idol. And to him that holds that Molech was also an idol, why is a separate korath needed for it? Is it not included in idolatry? To him who passes his son not in its usual manner (*i.e.*, although he is not put to death by the court, the punishment of korath rests upon him). And to him who holds that he who worships idols—*c.g.*, he sings before one—is also considered blasphemous,—to what purpose is korath mentioned concerning blasphemy? To that which we have learned in the following Boraitha: It reads [Num. xv. 31]: "hekorath tekorath"—"hekorath," which means cut off from this world; "tekorath," from the world to come. So R. Aqiba. Said R. Ishmael to him: Is it not written in the preceding verse, "Shall be cut off"? Are there then three worlds? Therefore the expression [in 30] means from this world, and the term "hekorath" means from the world to come; and the expression "tekorath" is not to be considered, as the Torah speaks with the usual language of human beings.

MISHNA IX.: Baal ob (mentioned in the Scripture) is the python that makes the dead speak from his armpit, and Yidouï means one that makes the dead speak from his mouth. These two are to be stoned; and he who queries from them is warned [Lev. xix. 31].

GEMARA: Why does our Mishna count both Baal ob and Yidouï, and in Tract Kerithoth the Tana mentioned only Baal ob and omitted Yidouïm, etc.? (The discussion here is a repetition from Tract Kherithoth, which is the proper place, where it will be translated.)

The rabbis taught: Baal ob is one who ventriloquizes, and a Yidouï is he who puts a certain bone in his mouth, which speaks from itself.

The rabbis taught: There are two kinds of "ob": one who brings up the dead, and one who questions a dead head. He

who brings up the dead—it appears before him not in the usual manner, but with its feet on top; and on the Sabbath it does not come up at all. But he who does this with the head of one dead answers as usual, and answers also on Sabbath. Also about this, R. Aqiba was questioned by Turnusrupus: Why is this day (of Sabbath) distinguished from all other days? To which Aqiba answered: Why is this man (Turnusrupus) distinguished from all other men? And he answered: Because it is the will of my master (the king). Rejoined R. Aqiba: Sabbath is also distinguished because it is the will of the Lord of the Universe. Said Turnusrupus: You misunderstand me. My question is: Whence do you know that this day is Sabbath? And he answered: From the river of Sabbath (which rests on this day); and it may also be proved from the fact that he who occupies himself with bringing up the dead cannot do his work on Sabbath; and also the grave of your father may prove that the smoke which comes out of it on all week days does not come out of it on all week days does not come out on Sabbath. Exclaimed Turnusrupus: You have disgraced, ashamed, and insulted me.

Is not he who queries an “ob” the same as one who inquires of the dead? Nay! The latter is as we have learned in the following Boraitha: By “inquire of the dead” is meant he who does not take food all day, and while he suffers hunger he goes to a cemetery, and remains there overnight for the purpose that the unclean spirit should rest upon him. And when R. Aqiba used to read this passage, he would weep, saying: Is not an *a fortiori* conclusion to be drawn from this passage? If one who makes himself suffer from hunger, for the purpose that the unclean spirit should rest upon him, usually succeeds, and the spirit in question rests upon him, so much the more, if one makes himself suffer hunger for the purpose that the pure spirit should rest upon him, should he succeed in reaching his desire; but what can we do if our sins cause that our desire shall not be reached, as it reads [Is. lix. 2]: “But your iniquities have ever made a separation between you and your God”? Said Rabha: If the upright would take care to be clean from any sin whatsoever, they would be able to create a world (and he infers it from the verse just cited). Rabha created a man and sent him up to R. Zera. The latter spoke to him, and he did not answer. Exclaimed R. Zera: I see that thou wast created by one of our colleagues. It is beter that thou shouldst be returned to

the earth from which thou wast taken. R. Hanina and R. Oshia were accustomed to sit every eve of Sabbath studying the book of creation, and create a calf like that of the third offspring of a living cow, and they used to consume it on Sabbath.

The rabbis taught: An observer of times is, according to R. Simeon, he who passes the outcome of a certain male over his eye (for the purpose of witchcraft); according to the sages, it is he who dazzles the eyes. R. Aqiba, however, said: The one who reckons times and hours, saying: This day is good to go on the road, such a day is good to buy things, on the eves of the Sabbath years the wheat is fine, such and such a time is good for picking peas as they will not become verminous.

The rabbis taught: An enchanter is he who says: "My bread has fallen from my mouth to-day, and it is a bad sign"; or, "My cane has fallen from my hands"; or, "My son called me up from my back"; or, "A robin is calling me"; or, "A ram has crossed my way"; or, "A snake is on my right, a fox is on my left, and all this is a bad sign." Or, if one says to a collector: Do not begin with me, as this will be a bad sign for me. And the same is it if he says: "To-day is the first day of the month," or, "It is the Sabbath eve, and if I should pay at this time I will have a bad week" or "a bad month." And the same is the case with them who enchant with cats, birds, and fish (*i.e.*, I will not begin this thing because a cat has crossed my way, etc.). So is the teaching of the rabbis.

MISHNA X.: He who violates the Sabbath with such a labor as is liable to korath if done intentionally, and to a sin offering if unintentionally.

GEMARA: From this we see that there are violations of Sabbath to which neither korath nor a sin-offering apply. What are they? The limit of the cities (Te'humim), in accordance with R. Aqiba; and kindling, according to R. Jose.

MISHNA XI.: He who curses his father or mother is not punished with a capital punishment, unless he curse them by the proper Name of God. If he has done so with a pseudonym, according to R. Mair he is guilty, and according to the sages he is not.

GEMARA: Who are the sages? R. Mnahem b. Jose of the following Boraitha, who said thus: It reads [Lev. xxiv. 16]: "When he pronounceth the holy name," etc. Why is here repeated "the holy name"? It should read: "If he blaspheme,"

etc. To teach that in the case of cursing father and mother one is not guilty unless he do so with the Holy Name.

The rabbis taught: It reads [ibid., xx. 9]: "Every one," instead of "one." This came to include a daughter, or an hermaphrodite, or an andogyn. "That curseth his father and his mother." But whence do we know that the same is the case when he curses his father only, or his mother only? Therefore it reads farther on, "his father and his mother has he cursed." Hence the word "cursed" corresponds with the word "mother"; and in the beginning of the verse the word "cursed" corresponds with "father," which is to be explained as that he is equally guilty if he has cursed his father or his mother. So is the decree of R. Jashia. R. Jonathan, however, said: The beginning of the verse can be explained that it means both together, and also one *or* the other; and in such a case the applicability is to each of them, unless the verse itself explains that both together are meant. "Shall be put to death"—by stoning! But perhaps with some other kind of death mentioned in the Scripture? It reads here, "His blood shall be upon him," and elsewhere it is written, "Their blood shall be upon them." As there it means stoning, the same is it here. But here we have heard of the punishment. Where is the warning? [Ex. xxii. 27]: "The judges thou shalt not revile, and a ruler among thy people thou shalt not curse." "If one's father were one of the two, he is included; but if he was neither a judge nor a Nasi, whence do we know that the same is the case? This can be inferred from the construction of the leading rule in both cases (*i.e.*, one who is to be respected must not be cursed, although the nature of respecting them is not equal), as concerning a judge we are commanded to follow his decision, which is not the case with a Nasi; and concerning the latter we are commanded not to rebel against him, which is not the case with a judge. However, in one case they are equal, in that they are of "thy people," and thou must not curse them. The same is the case with the father, who is also of "thy people" and must be respected by thee. Hence you are warned not to curse him. And lest one say that, after all, we can infer nothing from the case in which they are equal, as their dignity is the reason of their equality, which is not the case with a common father, concerning this it reads [Lev. xix. 14]: "Thou shalt not curse the deaf"—from which we see that the verse speaks of the unfortunates of "thy people." And lest one say that this is also

different, as the misfortune is the reason, the above case of judge and Nasi proves that this is not so. And again, their dignity is the reason? The case of the deaf proves that it is not so. Hence, although the reason of the one is not similar to that of the other, in one thing, however, they are equal, in that they are of "thy people" and must not be cursed. The same is the case with his father. And still, lest one say that, after all, the three above mentioned are distinguished, which is not the case with the father, it may be said that if the reason is because of distinction, it would not be necessary for the Scripture to write all the three, as a judge and a death or a Nasi and a death would suffice. Why, then, all the three? As it is not needed for itself, apply it to a common father. And all this is correct to him who explains the word "Elohim" in the above-cited verse [Ex. xxii.] with "judges"; but to him who explains the word "Elohim" as meaning God, what can be said? For there is a Boraitha: Elohim in this verse is common, and means "judges." So R. Ishmael. R. Aqiba, however, maintains that Elohim is "holy." And there is another Boraitha: R. Eliezer b. Jacob said that this verse is a warning against blasphemy. He who holds that the word Elohim here is common, must say that the holiness is inferred from this passage (by drawing an *a fortiori* conclusion—if one is warned not to curse a human judge, so much the more is he warned not to curse the Holiness), as we do not find any other warning besides; and he who holds that the word Elohim is "holy," the case of a commoner may also be inferred—from the double Lamed in the word "tekhal" (curse), which could be expressed "tekhal" with one Lamed.

MISHNA XI.: He who sins with a betrothed damsel is not guilty to be stoned unless she was a maiden betrothed and still in her father's house. Should it happen that two had sinned with her, the first is to be stoned and the second choked.

GEMARA: The rabbis taught: It reads [Deut. xxii. 23]: "if a damsel"—not a *vigars*; "a maiden"—not one who had already known man; "betrothed"—not married. And [ibid., ibid. 21] it reads, "in her father's house," excluding if the father had already transferred her to the messengers of her husband.

Said R. Jehudah in the name of Rabh: This is in accordance with R. Mair. The sages, however, say: A betrothed damsel,

even if she is still a minor. Said R. Aha of Diphthi to Rabhina: Whence do you know that the Mishna is in accordance with R. Mair and excludes a minor—perhaps it is in accordance with the rabbis excluding a *vigaros* only? And he answered: If so, the Mishna should state that he is not guilty but as concerning precession means to exclude a minor also; and about this no more discussion.

R. Jacob b. Adda questioned Rabh: In accordance with R. Mair, if it happened one had sinned with a betrothed minor, does he exclude him from any punishment, or from stoning only? And he answered: Common sense dictates from stoning only. But is it not written [ibid., ibid. 22]: "Shall both of them die," which is explained elsewhere, that it means, provided both were alike concerning age? And Rabh kept silent. Said Samuel: I do not understand why Rabh was silent, and did not refer him to ibid., ibid. 26, which reads: "He shall die alone"?

In this point Tanaim differ. "Both shall die" means, provided both were alike concerning age. So R. Jashia. R. Jonathan, however, said: From the verse [25] is inferred that he alone must be put to death. But what does R. Jashia infer from the verse, "He alone," etc.? That which we have learned from the following Boraitha: If ten men knew her while she was still a virgin, all of them are to be stoned. Rabbi, however, maintains that only the first one is to be stoned, and all the others choked, as thus it reads: "And the man that lay with her shall die alone." What does it mean? Said R. Huna b. R. Jehoshua: Rabbi holds with R. Ishmael that a betrothed damsel is to be burned, but not one married. And the verse which reads about one betrothed is to be explained thus: Only the beginner is to be burned, but all others are to be choked. Said R. Bibi b. Abayi: Our master, R. Joseph, does not say so. But that Rabbi holds with R. Mair, who said that if the daughter of a priest was married to one who was prohibited from marrying her, and she has sinned, her death is choking. And Rabbi meant to say thus: If the beginning of her profanation was sin, then she is to be burned; but if she was already profaned by an illegal marriage, she is to be choked. And his expression, "And so also it reads: 'He shall die alone,'" is not to be taken particularly, but as a remark.

MISHNA XII.: A seducer means one who is himself a commoner and seduces a commoner—*c. g.*, he says: There is an

idol in such and such a place which so and so eats, so and so drinks, and so and so does good, and so does harm.

Concerning all who are liable to capital punishment biblically, it is not allowed to hide witnesses except in this case: If, *c.g.*, he said the above to two persons, they are his witnesses—they bring him up to the court, and they themselves stone him. If, however, he said it only to one, he may say: I have some colleagues who will also follow your advice, if you will say the same to them. But if he is shrewd, and does not want to talk in the presence of two persons, they may hide witnesses behind a fence, and he may say to him: Repeat to me what you said at first. And if he repeats, he may say to him: How can we leave our Heavenly Father and go to worship idols of stone and wood? If he retracts—well and good. If, however, he answers: This will be good for us and also is our duty, the witnesses who are hidden behind the fence may bring him to court and stone him.

A seducer is considered he who says: I will worship; I will go and worship; Let us go and worship; I will sacrifice to such and such an idol; or, Let us go and sacrifice; I will smoke incense before it; I will go and smoke; Let us go and smoke; I will pour wine before it; I will go and pour; Let us go and pour; I will bow myself; I will go and bow; Let us go and bow.

GEMARA: The Mishna states: A seducer means a commoner. But how would it be if he should say: I am a prophet, and tell you to do so in the name of the Lord? Choking would apply. And also "he seduces a commoner" (individual). But how if he should seduce many? Then also choking would apply and not stoning. We see, then, that our Mishna is in accordance with R. Simeon of the following Boraitha: To a prophet who had misled, stoning applies. R. Simeon, however, said: Choking. To the misleader of a misled town, stoning applies; according to R. Simeon, choking. How, then, will be understood the succeeding Mishna, which states: A misleader is named he who says, "Let us go and worship idols"? To which R. Jehudah in the name of Rabh said: It speaks of the misleader of a misled town, who is to be stoned, which is in accordance with the rabbis. Hence our Mishna is in accordance with R. Simeon, and the succeeding Mishna in accordance with the rabbis. Said Rabhina: Both are in accordance with the rabbis; and by the expression, "he seduced a commoner," he does not mean to exclude a majority. But it was said in

the Mishna, "not only"—*i.e.*, not only is he to be stoned who seduces a majority, but even a single commoner. And R. Papa said: Even the beginning of the Mishna, "the seducer is a commoner," does not mean to exclude a prophet, as it was supposed, but it means to say: He is a commoner idiot, to whom hiding witnesses is allowed, which is not the case with all other criminals. And how used they to do with such a person? They used to light a candle in the inner chamber, engaging him with talk, and the witnesses were placed in the outer chamber so that they should see him and hear his voice, while he could not see them; and there the person whom he attempted to seduce tried to make him repeat, as stated above in the Mishna.

MISHNA XII.: By a misleader is meant one who says: Let us go and worship idols. A conjurer is liable to be stoned only when he did an act, but not if he dazzled the eyes. R. Aqiba said in the name of R. Jehoshua: As, for instance, if there are two who gather cucumbers from a field by enchantment—one of them is liable to a capital punishment and one of them is entirely free. If one has really gathered all of them to one place by witchcraft, he is to be stoned; and the other, who did so only by dazzling the eyes, but in reality the cucumbers remained in their place, is entirely free.

GEMARA: R. Jehudah in the name of Rabh said: The Mishna speaks of the misleader of a misled town. "*A conjurer*," etc. The rabbis taught: It reads: "A witch." There was no difference whether male or female—why, then, the term "witch"? Because in most cases women used to be engaged in witchcraft. What kind of death applies to them? R. Jose the Galilean said: It reads [Ex. xxii. 17]: "Thou shalt not suffer a witch to live"; and it reads [Deut. xx. 16]: "Shalt thou not let live a single soul." As there it is meant by the sword, the same is the case here. R. Aqiba, however, said: It is to be inferred from [Ex. xix. 13]: "It shall not live." As there stoning is meant, the same is the case here. Said R. Jose: My analogy is from "techaiah"—"let not live" (a female), while your analogy is from "yechaiah"—"shall not live" (a male). And he answered: My analogy is to infer Israel from Israel, to whom many kinds of deaths are prescribed, while according to your analogy, Israel from the descendants of Noah should be inferred, and there is only one death prescribed for descendants of Noah. Ben Azai, how-

ever, said: Ex. xxii. 17 is to be inferred from the next verse [18]: "Whosoever lieth with a beast," etc. As to this stoning applies, the same is the case here. Said R. Jehudah to him: Because this verse is near to the other, therefore the witch should be stoned? According to my opinion there is another reason. Ob and Yidouï ought to be included in the case of conjurers—why, then, does the Scripture separate them? Only for the purpose of comparing other conjurers to them. As to them stoning applies, so does it to all conjurers.

According to R. Jehudah: Let Ob and Yidouï be considered as two verses which command one and the same. And there is a rule that from such nothing is to be inferred. Said R. Zecharias: Infer from this that R. Jehudah does not hold this theory and maintains that from such it may be inferred. It reads [Deut. iv. 35]: "There is none else besides him." Said R. Hanina: Even witchcraft has no effect against a heavenly decree. There was a woman who tried to take earth from beneath the foot of R. Hanina. And he said to her: If you think you will succeed in affecting me with your witchcraft, go on and do so, as I am not afraid. It reads: "There is none else besides Him." Is that so? Did not R. Johanan say: It may happen that witchcraft may affect even against heavenly decrees? With R. Hanina it was different, as his strength was great, being righteous all his life. Aïbu b. Nagri in the name of R. Hyya b. Abba said: In Ex. vii. 11 it reads, "blahatehem," and in *ibid.* viii. 3 it is written, "blatehem." The latter means by the act of demons, and the former by the act of sorcery. And so also is it expressed in Gen. iii. 24, "lahat," or the sword which revolveth (revolveth by itself, which looked like witchcraft). Said Abayi: A conjurer who is particular to use a utensil, it is by a demon, and he who is not particular, it is by witchcraft.

He said again: The Halakhas of witchcraft are similar to the Halakhas of Sabbath. There are some to which stoning applies; there are some which are not allowed to start with, but if, nevertheless, one has done them, he is free; and some are allowed even to start with. To him who did an act by witchcraft, stoning applies. To dazzle the eyes is not allowed to start with, but if one did, he is free. And it is allowed to start with, as said above. R. Hanina and R. Oshia were accustomed to create a calf, etc.

Said R. Ashi: I have seen the father of a certain man Karna

scatter strips of silk from his nose. It reads [Ex. viii. 15]: "Then said the magicians of Pharaoh, This is the finger of God." Said R. Elazar: Infer from this that a demon is not able to produce a creation the size of which is less than a barley. Said R. Papa: They are not able to create even the size of a camel; but if they needed it, they got it from far places, which they could not do with smaller creations.

Said Rabh to R. Hyya: I have seen a rider of a camel who took his sword, cut off the head of the camel, and thereafter rung a bell, and the camel stood up. Said R. Hyya to him: Did you see after it stood up, that the place was dirty from blood and dust? There was nothing. Hence it was only a dazzling of the eyes.

It happened that Zera was in Alexandria of Egypt, and bought an ass. Afterward, when he came (to a river) to let the ass drink, it disappeared (the charm was broken), and there stood a landing board. And he was told: If you were not Zera, your money would not be returned, as there is no one who buys something here and does not try it on water. Janai happened to stop at a certain inn and asked for water. And he was supplied with *sthitha* (water mixed with flour), and he noticed that the woman who brought it mumbled. He poured out a little and a serpent came out of it. And then he said to her: I drank from your water, now you may also drink from mine. She did so and became an ass. He then rode upon her to the market. And her associate, who recognized the witchcraft absolved her, and then every one saw that he was riding on a woman.

It reads [ibid., ibid. 2]: "And the frogs came up." Said R. Elazar: It was only one frog which multiplied over all Egypt with its offspring. In this point Tanaim differ. R. Aqiba said the same as Elazar. Said Elazar b. Azariah to him: Aqiba, what have you to do with Haggadah? Leave it, and show forth thy study in the difficulties of Negaim and Ohaloth. It was only one frog to whose croaking all other frogs were gathered.

"*R. Aqiba said,*" etc. Did R. Aqiba indeed learn this from R. Jehoshua? Is there not a Boraitha: When R. Eliezer became sick, R. Aqiba and his colleagues came to make him a sick-call. He was under a canopy, and they were placed in his palace. That day was an eve of Sabbath, and Hurcanos, his son, entered to undress his phylacteries.* His father re-

* See our "Phylacterien Ritus," p. 49, footnotes.

buked him, and he went out as if he had been under the ban, and said to his colleagues: It seems to me that the mind of my father is not clear. And R. Eliezer, who heard this, said to them: And I think that the minds of both his mother and himself are unsound, as they occupy themselves with undressing phylacteries on account of which the Sabbath would not be violated, even if they were to remain upon him the whole Sabbath, while so long as they have not as yet prepared other things for Sabbath, which would be a violation subject to a capital punishment if done on Sabbath.

When the above-mentioned sages saw that his mind was clear, they approached him a distance of four ells, and became seated. He then questioned them: To what purpose is your call? To which they answered: We came to learn Torah from you. And to his question: Why have you not come until now? They answered: We had no time. He then exclaimed: I wonder if these people will die a natural death! Said Aqiba to him: And what will be my lot? And he said: Yours will be still harder than theirs. He then took his two arms, put them on his heart, and said: Woe to ye! my two arms, which are as two parchments of the Holy Scrolls, of which nothing can be read when they are rolled together (he meant that when he should die, all his wisdom would go with him, as there were none to whom to teach it). I have studied much and taught much. I have studied much, and have not diminished from the wisdom of my masters even to the extent of what a dog laps from the sea. I taught much, and my disciples have not diminished from my wisdom—even as the painting pencil which is inserted in a tube. And not this only, but I have learned about three hundred Halakhas as to planting cucumbers, and there was no man who could question me something concerning them except Aqiba b. Joseph. As it once happened, I was on the road with him, and he said to me: Rabbi, teach me something about planting cucumbers. And I said something, and the whole field was filled with cucumbers. And he said to me: Rabbi, with this you taught me the planting of them; now teach me the removing of them. And I said something and all were gathered to one place. Hence we see that he had learned this of R. Eliezer, and not of R. Jehoshua? He learned it from R. Eliezer, but did not understand thoroughly. But thereafter, however, he learned this from R. Jehoshua thoroughly, and it remained in his mind. But how could he do so? Have

we not learned in a Mishna that he who does an act with witchcraft deserves a capital punishment? To learn it is different. As the Master said: It reads [Deut. xviii. 9]: "Thou shalt not learn to do"—which means: Thou must not learn to do, but thou mayst learn it to understand it for the purpose of deciding cases.

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING A STUBBORN AND REBELLIOUS SON. AT WHAT AGE AND WHAT HAS HE TO DO TO BE CHARGED AS SUCH? HOW IS IT IF *e.g.*, HIS FATHER CONDEMNS HIM, BUT NOT HIS MOTHER, OR *vice versa*. IF ONE OF HIS PARENTS WERE LAME OR BLIND, ETC. IF HE RUNS AWAY BEFORE THE DECISION WAS RENDERED. CONCERNING BURGLARY AND IF A BURGLAR DESERVES CAPITAL PUNISHMENT, MUST PAY THE DAMAGE CAUSED BY BREAKING IN.

MISHNA I.: A stubborn and rebellious son—at what age may he be considered such? From the time he brings forth two hairs till they encompass the face: it does not mean the chin, but the bottom (pubes); but the sages used to speak with delicacy.

It reads [Deut. xxi. 18]: "If a man have a stubborn and rebellious son," etc. A son, and not a daughter; a son, but not a mature man. However, a minor is free from such a charge, as the commandment's obligation does not as yet rest upon him.

GEMARA: Whence do we know that a minor is free? Whence do we know! Does not the Mishna give the reason, "because the commandment's obligation does not as yet rest upon him." And secondly, where do we find that the Scripture has made a minor liable, so that in this case it is necessary to free such? We mean to say thus: Is, then, the punishment of a stubborn son because of his sins? He is punished because of his future (as will be explained farther on). Then it would be supposed that the same is the case even when he is still a minor. And again, the Mishna itself states, "a son, but not a mature man." And if it did not explain thereafter that a minor is free, we might say that a minor is also included. Said R. Jehudah in the name of Rabh: It reads: "If a man has a son," which means a son who has grown up almost to maturity.

"*Till they surround,*" etc. R. Hisda said: A minor who has

born a son—the latter does not become a rebellious son: which means, when a man has a son, but not a son who has a son. But was not what R. Jehudah said in the name of Rabh inferred from the same verse? It should read, “If there shall be a son to a man.”

And from what is written, “when a man has a son,” we infer also what R. Hisda said. However, he differs with Rabha, who said elsewhere that a minor cannot beget children. As it reads [Num. v. 8]: “But if a man have no kinsman.” And to the question: Is it possible that a man in Israel should have no kinsman? it was said that the verse speaks about the robbery of a proselyte (who has no kinsman in Israel). But why does the Scripture mention a man? It should read, “if he has no kinsman,” to teach that if the proselyte was already a man you have to inquire; for perhaps he has begotten children, and thus has kinsmen. But if he was a minor, you have not to inquire, as a minor cannot beget children. Abayi objected to him from [Lev. xix. 20]: “And if a man lie,” etc.—as to which a Boraitha states, “A man!” But whence do we know that the same is the case with a minor after the age of nine years and one day, who is already fit to have connection with a woman? Therefore it is written, “*and* if a man,” to add the minor just mentioned. (Hence we see that such is already fit to beget children.) Rejoined Rabha: He is fit to have connection, but not to beget children, which is equalized to grain which has not as yet grown up to a third of its usual growth; and if such were sown, it would not reproduce. Is this so? Did not the disciples of R. Ishmael teach: It is written, “a son”; but not when he is a father. Now let us see how was the case. Shall we assume that his wife was pregnant just after he grew two hairs, and that he begot the child before the above-mentioned encompassing was completed. Has she, then, so much time? Did not R. Khruspdai say that the prescribed time for a rebellious son is only three months? You must then say she was pregnant before he grew two hairs, and begot a child before the encompassing was complete. Hence we see that a minor begets children? Nay! she was pregnant after he grew two hairs, and begot after the encompassing. And the difficulty about what was said by Khruspdai was explained by R. Dimi after his return from Palestine thus: In the West it was said, “a son,” but not one who is fit to be called a father, as he has already a pregnant wife.

The text says: Khruspdai in the name of R. Sabatta said: The time for a rebellious son is only three months. We, however, have learned in a Mishna that the prescribed time is from when he grows two hairs until the encompassing is complete. However, if the completion was before three months, the time has already elapsed; and the same is the case when the encompassing was not completed after the three months had elapsed.

R. Jacob of the city of Nhar Pauqud was sitting before Rabbina, and said in the name of R. Huna b. Jehoshua: From Khruspdai's theory we may infer that a woman who bears in the seventh month cannot be recognized as pregnant after the first third of her pregnancy. For if it were so, why was it said in the West that he is fit to become a father after three months—would not two and a third suffice, as then the pregnancy is already recognizable? Answered Rabbina: This cannot be taken as evident, as the majority do not bear children in the seventh month, but in the ninth. All this was declared to R. Huna b. Jehoshua, and the latter exclaimed: Do we, then, consider a majority in criminal cases? The Torah says: "The congregation shall judge, the congregation shall save"; and you say that we shall go after a majority. His answer was brought back to Rabbina, to which the latter replied: Is it indeed so—that we do not consider a majority in criminal cases? Have we not learned in a Mishna that if one witness says it was in the second of the month and the other says that it was on the third, their testimony is valid, since to one the intercalation of the month was known, but not to the other. Now, if a majority which does not know of the intercalation should not be considered, why should their testimony be valid? Say they are aware of it, but they contradict each other! Hence we must say that the majority is considered.

R. Abiah b. Rabba b. Nahmani in the name of R. Hisda, according to others the latter in the name of Zeeli, said: All agree that a minor of nine years and one day is fit to have connection with a woman, and in a case of adultery it is considered; and they agree also that at less than eight years of age one is not fit, and it is not considered. And the point of their difference is from the age of eight up.

The school of Shammai holds: We may infer from the first generation. And the school of Hillel holds: We may not.

And whence do we know that the first generation produced children at the age of eight? From [Gen. xi. 27]: "Now these

are the generations of Therach: Therach begat Abram, Nachor, and Charan." Abram was one year older than Nachor, and Nachor was one year older than Charan. And it reads [*ibid.*, *ibid.* 29]: "And Abram and Nachor took themselves wives: the name of Abram's wife was Sarai; and the name of Nachor's wife was Milcah, the daughter of Charan, the father of Milcah, and the father of Yiscah." And R. Itz'hak said: There is a tradition that Yiscah is identical with Sarai. Now, how much was Abram older than Sarai? Ten years. And how much was he older than her father? Two years. Hence, when Charan bore Sarai he was eight years. But perhaps Abram was the younger, and the enumeration in Scripture is not particular, being according to their wisdom. And that the Scripture used to enumerate according to wisdom, and not age, may be seen from [*ibid.* vi. 10]: "And Noah begat three sons—Shem, Ham, and Japheth." And from the latter passage it is inferred that Shem was the youngest, and nevertheless he is named first, because of his wisdom. Said R. Kahana: I told this to R. Zebith of Nahardea, and he answered: Ye learned this from the cited passage. We, however, infer this from [*ibid.* x. 21]: "But unto Shem also, the father of all the children of Eliezer, the brother of Japheth the elder." Hence we see that Japheth was the oldest of all the brothers.

Now the question, "Whence do we know that the first generations produced children at eight years?" still remains unanswered. This is to be inferred from the following. It reads [*Ex.* xxxv. 30]: "And Moses said unto the children of Israel. See, the Lord hath called by name Bezaleel the son of Uri, the son of Chur, of the tribe of Judah"; and in I. Chron. ii. 19, 20, it reads: "And when Azubah (the wife of Caleb) died, Caleb took unto himself Ephrath, who bore unto him Chur. And Chur begat Uri, and Uri begat Bezaleel." And when Bezaleel was engaged in building the Tabernacle, he was at least thirteen years old. As it reads [*Ex.* xxxvi. 4]: "Every man from his own work which they were doing"; and one is not called a man before the age of thirteen. And there is a Boraitha: The first year Moses prepared all that was necessary for the Tabernacle, and in the second year he erected it and sent the spies. And it reads [*Joshua*, xiv. 7]: "Forty years old was I when Moses the servant of the Lord sent me"; and [*ibid.*, *ibid.* 10]: "Behold, I am this day eighty and five years old." Now, take off fourteen, the age of Bezaleel from the forty of Joshua when

he was sent as a spy, and there remain twenty-six; take off two years for the three pregnancies with Uri, Chur, and Bezaleel, and there remain twenty-four. Hence each of them produced at the age of eight.

"*A son, and not a daughter,*" etc. There is a Boraitha: R. Simeon said: According to common sense, a daughter should be more open to the charges of stubbornness and rebelliousness, as it is to be supposed that her future will be to stand in the way and entice men to sin. But so is the decree of the Scripture—"a son, and not a daughter."

MISHNA II.: When does such become guilty? When he consumes *ατρι τημόριον* of meat and drinks half a lug of Italian wine. R. Jose, however, maintains: Meat not less than a manna, and wine not less than a whole lug. If, however, he ate at a banquet of a meritorious society, or at the intercalation of a month, or at second tithe in Jerusalem; or he ate carcasses, illegal meat, or reptiles, and second tithe and consecrated things which were not redeemed, or mixed grain of first tithe from which the heave-offering was not separated. There is a rule: If he ate a thing which is meritorious, or, on the contrary, a thing which is a transgression—if he consumes any kind of food but not meat, any kind of beverages but not wine—he cannot be condemned as a stubborn and rebellious son, unless he eats meat and drinks wine. As it reads [Deut. xxi. 20]: "He is a glutton and a drunkard." And although there is no direct support in the Scripture that gluttony means meat, and drunkenness, means wine, a hint of this is to be found in [Prov. xxiii. 20]: "Be not among those that drink wine, among those that overindulge in eating meat." *

GEMARA: R. Zerah said: The term "tertitory" mentioned in the Mishna—I don't know how much it weighs. But from the fact of R. Jose having doubled the measure of wine from half a lug to a lug, I understand that he means also to double the weight of meat. Hence a "tertitory" must be half a manna.

R. Hanan b. Muldha in the name of R. Huna said: He is not guilty unless he consumes the meat and the wine raw. Is that so? Did not both Rabha and R. Joseph say that he who consumes meat and wine raw is not to be condemned as a stub-

* The term in Hebrew is "zaulel v' saube," which Leeser translates "a glutton," etc. In Proverbs, however, he translates the same term with "overindulging," which also means gluttony.

born and rebellious son? Said Rabhina: By raw wine is meant refined and not refined, and by meat is meant cooked and uncooked, as usually consumed by thieves.

Both Rabha and R. Joseph said: If he consumed salted meat and drank wine from the press, he cannot be condemned as a stubborn and rebellious son. What is to be considered salted meat? When it has lain in salt for three days. And what is called wine from the press? When it is still fermenting.

R. Itz'hak said: It reads [Prov. xxiii. 31]: "Do not look on the wine when it looketh red"—meaning that you shall not look for wine which makes red the faces of the wicked in this world, and makes them pale in the world to come. Rabha said: You shall not look for wine which causes bloodshed.*

When R. Dimi came from Palestine, he said: About the verse [ibid., ibid. 29, 30]: "Who hath woe? who hath sorrow? who hath quarrels? who hath complaints? who hath wounds without cause? who hath redness of eyes? They that tarry late over the wine; they that come to seek for mixed drink." It was said in the West that he who tries to explain them from their beginning to their end is correct, and he who tries to explain them from their end to their beginning is also correct.†

Eubar the Galilean lectured: Thirteen vavs are enumerated in the Scripture concerning wine, as in Genesis ix., from 20 to 25, there are thirteen vavs: "And Noah, who was a husbandman, began his work, and he planted a vineyard. And he drank of the wine, and became drunken; and he uncovered himself within his tent. And Ham, the father of Canaan, saw the nakedness of his father, and told it to his two brothers without. And Shem and Japheth took a garment, and laid it upon the shoulders of both of them, and went backwards, and covered the nakedness of their father; and their faces were turned backwards, and they saw not their father's nakedness. And

* The term in Hebrew for "becoming red" is "yithadom," and for "blood" the term is "dom"; and Rabha divides "yithadom" into two—yitha, dom—literally, "will bring blood."

† Rashi explains the passage thus: From the beginning to the end means, "To whom is woe?" etc. To them that tarry late over the wine. And from the end to the beginning means, "For whom is it right to tarry late over wine?" For those who are crying woe—*e.g.*, mourners, and those who have quarrels, and wounds without cause, and those who have redness of eyes because they are stout or are idle—these may drown their troubles in the wine.

Noah awoke from his wine, and discovered what his younger son had done unto him." *

R. Hisda in the name of Uqba, according to others Mar Uqba in the name of R. Sakkai, said: The Holy One, blessed be He, said to Noah: "Noah, why didst thou not learn from Adam the First that all the troubles he had were caused by wine"? And this is in accordance with R. Mair who maintains that the tree of whose fruit Adam the First partook was a vine. As we have learned in the following Boraitha: R. Mair said that the tree of whose fruit Adam the First partook was a vine, as there is no other thing which causes so much lamentation as wine does. And R. Jehudah said: It was wheat, as a child is not able to call mother or father before it has experienced the taste of wheat. R. Nehemiah said: It was a fig-tree, as their remedy came from the same thing by which they had transgressed. For it reads [Gen. iii. 7]: "And they sewed fig leaves together."

It reads [Prov. xxxi. 1]: "The words of king Lemuel, the prophecy with which his mother instructed him." Said R. Johanan in the name of R. Simeon b. Jochai: Infer from this that his mother tied him to a pillar, saying: "What (hast thou done), O my son? and what, O son of my body? and what, O son of my vows?" "O my son"—all are aware that thy father has feared Heaven, and now that people see thee going in a wrong way, they will say: "It was caused by his mother." "The son of my body" means: All the wives of thy father never saw the king again after their pregnancy, which was not the case with me, as I have troubled myself to see him again after pregnancy, for the purpose that my child should be of good health. "The son of my vows"—all the wives of thy father used to vow to the sanctuary for the purpose that their child should be fit for the throne, and I have vowed that my son should be full of wisdom, and fit for prophecy. "Not for kings, O Lemuel, not for kings (is it fitting) to drink wine, nor for princes (rausnim) strong drink!" She said to him: "What hast thou to do with kings who drink wine, become intoxicated, and say: 'For what purpose do we need God' ("Lomo-el"—literally, "why God")? "And to rausnim strong drink." Is it right that he to whom all the mysteries of the world are revealed should drink wine to intoxication

* There are sixteen "ands" in these passages, three of which, being for connection only, are excluded.

—according to others: He to whose door all the princes of the world are hastening, shall he drink wine to intoxication? Said R. Itz'hak: And whence do we know that Solomon repented and confessed to his mother? From [ibid. xxx. 2]: "Surely I am more brutish than any man, and have not the understanding of a common man." "Than any man" means Noah. As it reads [Gen. ix. 20]: "And Noah, who was a husbandman, began his work, and he planted a vineyard." "Of a common man" means Adam the First (the term for this in Hebrew being "adam").

"*Of a meritorious society*," etc. Said R. Abuhu: He is not guilty unless he consumed the above-mentioned meat and wine with a society of reckless persons (as then there is no hope that he will depart from his way after he is bound to such a company). But does not our Mishna state "a meritorious society"—he does not become a stubborn and rebellious son? From which it is to be understood that if it was not a meritorious one, he is culpable even if not all of the society were reckless men? The Mishna comes to teach us that if it happened that to the meritorious banquet were invited men all reckless, he is nevertheless not culpable, as he was engaged in a meritorious banquet and eating and drinking to excess will not become his habit.

"*At the intercalation of the month*," etc. Was there then used meat and wine at the meal of intercalation? Does not a Boraitha state only bread and peas? The Mishna comes to teach us that although they were used only to bread and peas, and one in spite of this took for this meal meat and wine, he is not culpable, as the meal was of a meritorious nature and it will not become a habit.

The rabbis taught: To the intercalation meal no less than ten persons were invited, and nothing else was used but bread and peas; and it was prepared only on the thirtieth day, and not in the daytime but at evening. But is there not a Boraitha, "not at evening but in the day"? As R. Hyya b. Abbah said to his sons: Try to go to this meal when it is yet day, before sunset; and also to leave before sunrise, that people shall know that you were engaged in a meal of intercalation.

"*Second tithe*," etc. Because he consumed it in the usual way, it will not become a habit.

"*Carcasses*," etc. Said Rabha: If he has consumed meat of fowls, he is not to be charged as a stubborn son. But does

not our Mishna state "carcasses, illegal meat," etc., from which it is to be understood that if it was legal he is to be charged? Our Mishna means that even if he has eaten this to complete the prescribed quantity—*e.g.*, he has eaten a "tertimory" less an eighth, and this eighth he ate from illegal meat—he is also not culpable, for the reason stated farther on.

"*A thing which is meritorious*," etc.—means a meal of condolence.

"*A transgression*"—means when he ate on a fast day of the congregation. And what is the reason? It reads [Deut. xxi. 20]: "He will not hearken to our voice." "Our voice"—but not of him who does not hearken to the voice of the Omnipotent.

"*But not meat*," etc.—means to add even pressed figs of the city of Kaēla, which cause intoxication.

"*But not wine*"—means even honey and milk, as we have learned in the following Boraitha: If one consumed pressed figs of Kaēla and drank honey and milk and entered the sanctuary, he is culpable as to [Lev. x. 9] "wine and strong drink," etc.

"*He eats meat and drinks wine*," etc. The rabbis taught: If he consumes any kind of food, but not meat, any kind of beverages but not wine, he cannot be condemned as a stubborn and rebellious son unless he eats meat and drinks wine. bles, it will not become a habit. In the second case, although there is no direct support in the Scripture that gluttony means meat and wine, a hint to this is to be found in—"Be not among those that drink wine, among those that overindulge in eating meat." And it is also written [ibid., ibid. 21]: "For the drunkard and the glutton will come to poverty; and drowsiness clotheth a man in rags." Said R. Zerah: He who sleeps in a house of learning, his wisdom is rent to pieces. As it reads: "And drowsiness clotheth a man in rags."

MISHNA III.: If he has stolen from his father and consumed on *his* premises, or he has stolen from strangers and has consumed on the premises of still other strangers, or he has stolen from strangers and consumed on the premises of his father, he is not charged as a stubborn and rebellious son unless he stole from his father and consumed on the premises of strangers. R. Jose b. Jehudah maintains: Unless he stole from his *mother* and father.

GEMARA: In the first case, when he stole from his father

and consumed on the premises of the father, because he trembles, it will not become a habit. In the second case, although he does not tremble after stealing, as it cannot be frequently done, it will not become a habit. From strangers, and consumed on the premises of his father, there are both, because this can be done only occasionally and when consuming he trembles for his father. Unless he stole from his father and consumed on the premises of strangers—which includes both, because it can be done frequently and without any trembling.

“*From his mother,*” etc. Where did his mother get this, so that it should belong to her only? Is there not a rule that all a woman buys belongs to her husband? Said R. Jose b. Hanina: He took it from the meal which was prepared for his father and mother. But did not R. Hana b. Mouldha in the name of R. Huna say that he is not culpable unless he buys meat and wine cheap and consumes them? Say that he has stolen the money which was prepared to buy a meal for his father and mother; and if you wish, it might be said that some one else gave it to his mother, with the condition that her husband should have no share in it.

MISHNA IV.: If the father is willing to transfer the case of the son in question to the court and the mother is not willing, or *vice versa*, he cannot be accused as a stubborn and rebellious son, unless both are willing to do so. Furthermore, R. Jehudah says: If his mother was not fit to be the wife of his father, their son cannot be charged as a stubborn and rebellious son.

GEMARA: What does the Mishna mean by the words “was not fit”? Shall we assume that his father married a woman who was under the liability of the korat, or capital punishment by the court? Why? After all, the father is *his* father and the mother is *his* mother. Hence it must mean that she was like to his father. And so also we have learned plainly in the following Boraitha: R. Jehudah said: If his mother was not alike to his father in her voice, in her appearance and her height, he cannot be charged as the son in question. And what is the reason? Because it reads: “He does not hearken to her voice.” As we see that their voices must be alike, the same is the case with the appearance and height. According to whom is the following Boraitha? The case of a stubborn and rebellious son never existed and will never occur, and it was written only for the purpose of studying and the reward for it. It is in accordance with R. Jehudah (who requires such things as can never occur). And

if you wish, it is in accordance with R. Simeon, who said in the following Boraitha thus: Does the law indeed dictate that because this boy consumed a "tertium" of meat and drank half a lug of Italian wine his father and mother shall deliver him to be stoned? Hence such a thing neither occurred nor ever will be, and it is written only for studying. R. Jonathan, however, said: I myself have seen such, and have sat on his grave.

According to whom is the Boraitha that a case of a misled town never occurred and will never be—and was written only for studying? In accordance with R. Eliezer, who said in the following Boraitha thus: A misled town in which there is to be found even one mezuzah (a piece of parchment on which a portion of the Holy Writ is written to be placed on the doorpost) cannot be condemned as misled town, because it reads [Deut. xiii. 17]: "And all its spoils shalt thou gather into the midst of the marketplace thereof, and thou shalt burn them with fire." And as there is a mezuzah this cannot be done, as it reads [ibid. xii. 4]: "Ye shall not do so unto the Lord your God." R. Jonathan, however, said: I have seen such and I myself have sat on its heap.

According to whom is the following Boraitha?: A house of leprosy never occurred and will never be, and it is written only for studying, etc. In accordance with R. Elazar b. Simeon, who says in the following Mishna: A house of leprosy cannot be condemned unless the leprosy was of the size of two beans upon two stones at the two walls in the corner—the length of two beans and the width of one.

There is a Boraitha: R. Eliezer b. Zadok said: There was a place within the limit of the city of Azah which was named the "ruin of leprosy." And R. Simeon, head of the village Akhu, said: It happened once that I went to Galilee and saw a place which they used to mark, saying, It was because stones of leprosy were placed there.

MISHNA V.: If one hand of his father or mother is missing, or they limp, or are dumb, blind, or mute, he cannot be condemned as a stubborn son. As it reads [Deut. xxi. 19]: "Then shall his father and his mother lay hold on him"—which cannot be done with one hand. "And bring him out." This cannot be when they limp. "And they shall say"—not when they are mutes. "This our son"—not when they are blind. "He will not hearken"—not when they are dumb.

They must first warn him in the presence of two witnesses and then bring him to the court of three judges, who punish

him with stripes. And only then when he offends again must he be tried before twenty-three judges, but must not be stoned unless the first three judges are among the twenty-three. As it reads: "This our son"—which means, this is our son who was beaten according to *your* decision.

GEMARA: Infer from our Mishna that wherever the Scripture commands something, it must be taken literally? (See above, Chapter VI., p. 000.) With this passage it is different, as it is entirely superfluous. (It should read: "Ye shall deliver him at the gate of that city, to be stoned.") But where is it written that he must first be beaten? Said R. Abuhu: From an analogy of the expressions [Deut. xxi. 18]: "And they chastise him," which same is to be found in *ibid* xxii. 18. And also from the expression "son," which same is to be found in *ibid*. xxv. 2, which speaks of stripes. "*This our son.*" But is not this verse needed for this not when they are blind? It should read: "He our son." Why "this"? To infer both statements.

MISHNA VI.: If he runs away before the decision of condemnation is rendered and the encompassing (mentioned in the first Mishna) occurred afterwards, he is free. But if he runs away after the decision was rendered, the encompassing which occurs afterwards does not free him.

GEMARA: R. Hanina said: A descendant of Noah who blasphemed, and thereafter he embraced Judaism, is free from capital punishment, because the law concerning him was changed (for when he was yet a heathen one witness and one judge sufficed, while as an Israelite two witnesses and three judges are needed). And also capital punishment was changed—as to a heathen the sword applies, and to an Israelite stoning; and as he cannot be punished with stoning (for at the commission of the crime he was yet a heathen), he is entirely free.

Shall we assume that our Mishna, which states that if he runs away before the decision is rendered and the encompassing in question occurred afterwards, he is free, is also because, there being a change, the punishment is also changed? Nay, here it is different; because, if he were to commit the crime at the time after the encompassing, capital punishment would not apply at all. Should we say that the second case stated: If he runs away after the decision was rendered, the encompassing in question does not free him—forms an objection to R. Hanina? Do you wish that after the decision was rendered the change

should affect the decision? After the decision is rendered he is considered as dead, which changes cannot affect.

Come and hear another objection: A descendant of Noah who killed his neighbor or committed a crime with his neighbor's wife, and afterwards he embraced Judaism, he is free from capital punishment. But if he did the same with an Israelite while he is yet a heathen, he is guilty even if, after the crime, he becomes a Jew. And why? Say, because it was a change, the capital punishment should also be changed? It requires a change in both—in the trial and in the kind of punishment. Here, however, the change is only in the trial (as said above), but not in the punishment, as either to a heathen or an Israelite the sword applies.

MISHNA VII.: A stubborn and rebellious son is tried because of his future. The Scripture prefers that he should die innocent, and not be put to death because of his sins. For the death of the wicked is both a benefit to them and a benefit to the world, while to the upright it is a misfortune for them and for the world. Drinking and sleeping are a benefit to the wicked and to the world, while they are so doing (do they not do harm to the world), and the reverse is it with the upright (because when they are drinking or sleeping they cannot do any good). Separation of the wicked is also a benefit for themselves and for the world; the reverse, however, is the case with the upright. The assembling of the wicked is a misfortune for them as well as for the world, while as to the upright it is a benefit for themselves and for the world. The idleness of the wicked is a misfortune for them and for the world (because in the time of their idleness they will conspire to do harm, but the repose of the upright is a benefit for them as well as for the world).

GEMARA: There is a Boraitha: R. Jose the Galilean said: Is it possible that because this boy ate a "tertitory" of meat and drank half a lug of Italian wine he shall be stoned? But the Torah foreshadows the final thought of the son in question, as in the future he will squander his father's property, and pursuing his habit, which he will find difficult, he will proceed to rob people in the street. Therefore the Torah said: "He shall rather die while he is still innocent than be put to death because of his sins, as the death of the wicked is a benefit," etc., as stated above in the Mishna.

MISHNA VIII.: In the case of "breaking in" [Ex. xii. 1],

for which there is no liability if one is killed by a detector, one is also punished because of his future crimes (*i.e.*, because of his intention to kill his opponent, although no crime involving capital punishment was as yet committed). And therefore, if he broke a barrel while breaking in, if according to the laws he must not be killed when caught (*e.g.*, a father who breaks into the premises of his son, who could not have intended to kill his son if he made opposition, and therefore if his son kills him he is liable to capital punishment, he must pay for damaging the barrel. But with respect to other persons who, if killed by the detector, would not be punished, he is free.

GEMARA : Said Rabha : The reason why the Scripture freed the detector if he killed the burglar, is because it is certain that a man cannot control himself when he sees his property taken. And as the burglar must have had the intention to kill anyone, in such a case, who should oppose him, the Scripture dictates that if one comes to kill you, hasten to kill him first.

Rabh said : A burglar who broke in and succeeded in taking some utensils and escaped, he is free from paying for the utensils. Why so ? Because he acquired title to them by his blood. Said Rabha : It seems to me that Rabh's decision was in case he broke the utensils ; and as they are no longer in existence, he is free from paying their value. But if he took them and they still exist, he must return them. [Says the Gemara : By God ! Rabh's decision was even if they were still in existence, and his reason is that if they were taken by a burglar of that class, the opponent being guilty of shedding his blood, for which the Mishna makes him liable, would he not be responsible if the utensils were broken or taken away by force by someone else ? He would be, because they were already under his control. The same is the case with an ordinary burglar, as by his blood he has acquired title to them, and therefore he is not obliged to return them.] However [continued Rabha], it is not so, as the Scripture considers the things stolen by the burglar to be under his control only concerning a contingency—*i.e.*, if they were taken away from him. But the Scripture never meant him to acquire title to them when they were still in his possession, for he is considered as a borrower.

It happened that rams were stolen from Rabha by burglary, and thereafter they were returned to him ; but he was not willing to accept them because the above decision came from the mouth of Rabh.

The rabbis taught : It reads [Ex. xxii. 2] : " If the sun be

risen upon him, there shall be blood shed for him." What is meant by the sun being risen upon him? Does the sun rise upon him only? It means therefore if it is as clear to you as the sun that it is impossible to be at peace with him, then you may kill him, but not otherwise. There is another Boraitha: If it is as clear to you as the sun that it is possible for you to be at peace with him, then you should not kill him; but if not, you may. Hence the Boraithas contradict each other? It presents no difficulty: one speaks in case a father breaks into his son's house, whose usual intention is not to kill his son, and the other case speaks of the reverse—namely, when the son breaks into the house of his father.

Rabh said: Anyone whatsoever who should break into my house, I would kill him, except R. Hanina b. Shila. If it should happen that he should break in, I would not kill him, as I am sure that he would have mercy upon me as a father for his son.

The rabbis taught: The expression "blood shed" mentioned in *ibid.*, *ibid.* 1 and 2 means that it makes no difference whether such a case happened on week days or on a Sabbath. Let us see! The teaching that a burglar may be killed even on Sabbath is correct, lest one say as there is a rule that the execution by the court does not violate the Sabbath the same applies here. But why the teaching that the burglar must not be killed, the same being the case if the burglary occurred on Sabbath? Even on week days he is not to be killed?

Said R. Shesheth: The teaching was needed in case it happened that while breaking in on Sabbath a heap of earth covered him. If he is of that class who are to be killed, then the heap must not be removed on Sabbath; if of the other class, it must be done to save the man, if still alive.

The rabbis taught: It reads "to be smitten so"—by any man whatsoever; "he die"—through any kind of death possible. This teaching was necessary. Lest one say, only if he were killed by the owner, who could not control himself; but if he were killed by some other detector, he is liable, it comes to teach us that the burglar is considered a life-seeker, who may be killed by anyone.

The rabbis taught: The text speaks only of breaking in—whence can it be proven that the thief found on one's roof, in one's yard, or in any building whatsoever may be killed? Therefore it reads, "If a thief be found," which means in any place whatsoever. But if so, why is the term "breaking in" mentioned?

To say that his breaking in serves the place of warning (for he knew what he might expect).

Said R. Huna: Even a minor who seeks one's life may be killed for self-protection. He holds that one who seeks one's life does not need any warning, be he of age or a minor.

R. Hisda objected to him from a Mishna (Ohaloth, VII., 7): If the head of a child were already without the womb, it must not be killed to save the life of its mother in case of danger, as one's life must not be given for that of another. And why not consider the child as the seeker of the life of its mother, so that it shall be killed? There it is different, as the child cannot intend to seek the life of its mother, and the danger in question is decreed by Heaven.

MISHNA IX.: The following may be killed for self-protection: He who pursues one to kill him, and he who pursues a betrothed damsel, or pursues a male person to lie with him; but he who pursues an animal for this purpose, or he who intends to commit idolatry or to violate the Sabbath, must not be killed before the crime is committed.

GEMARA: The rabbis taught: Whence do we know that one may kill for self-protection? From [Lev. xix. 16]: "Thou shalt not stand idly by the blood of thy neighbor." But how can you so infer from this passage? Is it not needed to that of the following Boraitha: Whence do we know that if one sees his neighbor drowning in a river, or a wild beast or robbers seize him, he is obliged to save him? From the verse just cited? Yea, so it is. And that one may be killed in self-protection, is to be inferred by an *a fortiori* conclusion which is to be drawn from "a betrothed damsel." If in this case, in which one only intended assault, the Torah says he may be killed in self-protection, how much the more a seeker of life. But do we then punish from an *a fortiori* conclusion? The school of Rabbi taught that this is not only an *a fortiori* conclusion, but also an analogy. As it reads [Deut. xxii. 26]: "As a man riseth against his neighbor and striketh him dead, even so is this matter." And what have we to learn from the case of a murder? This passage is intended to throw light (on the case of a violated betrothed) and is at the same time receiving light.* He compares a murder to a betrothed damsel. As in case of a damsel one may be killed in self-protection, the same is it in the case of a murder.

* A proverbial phrase: "This one comes as a teacher and turns out a learner" (Jastrow).

And whence do we know that so is the case concerning a betrothed damsel? From what was taught in the school of R. Ismael. It reads [ibid. xxi. 27]: "There would have been none to aid her"—which means, if there were one he must help her under all circumstances, even to killing her pursuer.

The rabbis taught in addition to what is stated in the Mishna concerning self-protection: However, in the pursuing by a high-priest of a widow, or by a common priest of a divorced woman, or of one with whom the ceremony of Halitah was performed, or even in the pursuing of a betrothed damsel who had already had connection with some one, killing in self-protection is not allowed. And R. Jehudah said: Also, if the damsel herself said to the pursuers of her assaulter: Let him go—although it is to be supposed that she said so, only because of fear lest the pursuers should kill her—he must not be killed before the crime was committed. Whence is all this deduced? From [ibid., ibid. 26]: "But unto the damsel shalt thou not do anything: there is in the damsel no sin worthy of death." It is written "naar" (youth), and it reads "naaro"—from which we infer, both him who is pursuing a male for the purpose of sin and a betrothed damsel. And from the term "sin" we infer crimes of a kind to which the punishment of korath applies; and from "worthy of death," we infer those who are to be executed by the court.

The Boraitha states: R. Jehudah said: Also if the damsel herself said, etc. What is the point of their difference? Said Rabha: They differ in case the damsel cares for her honor, but without sacrificing her life for it. According to the rabbis the Scripture cares for the violation of her honor, and as she also cares for it, though without life-sacrifice, she must be saved even by killing her pursuers. And according to R. Jehudah, the Scripture commands to kill him, only in case the damsel herself is willing to sacrifice her life for her honor, but not otherwise.

Said R. Papa to Abayi: Let us see! In case a high-priest is pursuing a widow, is not this also a violation of her honor? Why, then, is he not to be killed? Is not the Scripture particular about the honor of a woman? And Abayi answered: For the honor of a damsel, who is ruined forever, the Scripture is particular to save her even to the killing of the pursuer, which is not the case with a widow.

It says farther on, "sin"—meaning those who are liable to be punished with death. There is a contradiction from the following: Among the assailants of damsels who must pay a fine

besides the bodily punishment, is counted also one who assaults his sister (the punishment for which is *korath*). Now, if he is to be killed while pursuing, he must be counted in the class subject to capital punishment. And there is a rule that he who commits a crime subject to capital punishment is absolved from paying a fine. Said Abayi: The Boraitha which states that he must pay a fine treats of a case in which she could be saved by injuring one of the members of her pursuer's body, and it is in accordance with R. Jonathan b. Shaul who said in the following Boraitha thus: A secker of life whom the pursued killed, although he was able to protect himself by injuring a member of the pursuer's body—it is to be tried as a case of capital punishment. And what is the reason of Jonathan? It reads [Ex. xxi. 22, 23]: "If men strive . . . and if any mischief follow, then shalt thou give life for life." And R. Elazar said: The cited verses treat about him who intended to kill his opponent. And nevertheless it reads: "And yet no further mischief follow, he shall be surely punished." Now, if you say that the law dictates that the pursuer must not be killed in case his crime could be prevented by injuring one of the members of his body, it is correct that he is to be fined. But should you say that even in the latter case there is no liability if the pursuer was killed—his offence being in the class subject to capital punishment—why, then, is he to be fined? And should you say that he is fined because his intention was to kill another, and the fine belongs to another person, we understand from Rabha's decision * (First Gate, pp. 269 and 270) that it is not so.

"*He who pursues an animal*," etc. There is a Boraitha: R. Simeon b. Jochai said: The one who intends to worship idols may be killed (if there is an impossibility of preventing his crime otherwise). And this is to be drawn by an *a fortiori* conclusion thus: When the dishonoring of a commoner is to be saved even by killing the pursuer, so much the more because of a heavenly dishonor. But is one to be punished because of an *a fortiori* conclusion? R. Simeon holds that so it is. There is another Boraitha: R. Eliezar b. Simeon said: The same is the case with one who intends to violate the Sabbath. He holds with his father, that one may be punished from a decision drawn from an

* See p. 269, third line from the bottom, which begins: "This decision of Rabha," to Mishna 7, which is here repeated literally, with the difference that there it is Rabba and here it is Rabha. Concerning the difference in the names, see Thospat Khethuboth, 306, paragraph beginning with the name "R. Ashi."

a fortiori conclusion. And he infers the violation of Sabbath from the case of idolatry by the analogy of the expression "violation," which is termed in Hebrew "chillul," and is to be found in both cases. Said R. Johanan in the name of R. Simeon b. Jehozadok, in the Ethic of Beth Nithza: "In the city of Suda it was voted and resolved that if one were compelled, under threat of being killed, to commit any one of all the crimes which are mentioned in the Torah, he might commit it and not be killed, except idolatry, adultery, and bloodshed." But is not the case the same with idolatry as the following Boraitha states: R. Ismael said: Whence do we know that, if one were told under threat of being killed, to worship an idol, he should rather worship than be killed? From [Lev. xviii. 5]: "He shall live in them"; *i.e.*, but not die in them. But lest one say that the same is the case when he is told to do so publicly, therefore it reads [ibid. xxii. 32]: "And ye shall not profane my holy name; so that I may be sanctified." Hence we see that privately he may rather worship than die? They (R. Johanan and R. Simeon b. Jehozadok) hold with R. Eliezer who said in the following Boraitha thus: It reads [Deut. vi. 5]: "And thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy might." Why, then, with all thy soul and with all thy might—is not one of them sufficient? Because people are of different natures. There are among them some who prize their body more than their money—for them it is written, "with all thy soul." And there are some others who prize their money more than their body, and for them it is written, "with all thy might? And from this we infer that even if one were told to commit idolatry privately, he must not do so, even under threat of being killed. This is concerning idolatry. But whence do we know that the same is the case with adultery and bloodshed. From the following Boraitha: Rabbi said: It reads [ibid. xxii. 26]: "For as when a man riseth against his neighbor" (See above, p. 000). He compares a murder to the case of a betrothed damsel. As concerning a betrothed damsel one may be killed to save her, the same is it in the case of a murder. And as concerning a murder one is obliged to sacrifice his own life rather than kill another by command, the same is the case with a betrothed damsel—she is held to be killed rather than be ravished. And whence do we know that in a murder case one is obliged to sacrifice his own life, etc. This is common sense. Thus it happened to one who came before Rabha. (See Pcsachim, p. 37, line 11.)

When R. Dimi came from Palestine, he said in the name of R. Johanan : All this was said when there was no civil decree by the government to violate religious duties ; but if there was, one must sacrifice himself even for a most lenient commandment. And when Rabbin came, he said in the name of the same authority : Even when an evil decree did not exist, he might do so privately ; but publicly, one must sacrifice his life, even for a most lenient commandment. What is meant by a most lenient commandment ? Said Rabba b. R. Itz'hak in the name of Rabb : (In days of religious persecution you must resist, even to changing the shoe-strap. And what is to be considered publicly ? Said R. Jacob in the name of R. Johanan : If this is to be done in the presence of no less than ten Israelites. R. Jeremiah questioned : How is it if there were nine Israelites and one heathen ? Come and hear what R. Janai the brother of R. Hyya b. Aba taught : It reads [Lev. xxii. 32] : " In the midst of the children of Israel," and [Num. xvi. 21] : " From the midst of this congregation " ; and from the analogy of the expression " midst," we infer that, as in the case of Korach there were no less than ten, and all Israelites, the same is the case with the sanctification in question. But was not Esther compelled to sin with Ahassuerus, in the presence of more than ten Israelites ? Said Rabha : In case they do it for their own benefit it is different ; as, if this were not the case, how could we lend copper vessels to the Persians for the purpose that they should fill them in their houses of worship with live coals at the time of their holidays ? But as this is for their own benefit, it is not considered a transgression ; and Rabha is in accordance with his theory elsewhere, that if a heathen commands an Israelite to cut hay on Sabbath for his cattle, with threat of killing him, he shall rather cut the hay than be killed. But if he tells him, " Cut it and put it in the river," from which we see that he wants only to overcome his religious scruples, it is better for him to resist and be killed than to comply with his command.

R. Ami was questioned : Is a descendant of Noah commanded to sanctify the Holy Name, or not ? And Abayi answered : Come and hear ! " There were seven commandments which were given to the descendants of Noah," etc. Now, if they were commanded to sanctify the Holy Name, there would be eight. Said Rabha to him : From this we can infer nothing, as by the seven commandments is meant all that pertains to them (and sanctifying the Holy Name pertains to the negative commandment of idolatry). However, how should this question be decided ? Said

Adda b. Ahaba: It was said in the college: It reads [II. Kings v. 18 and 19]: "For this thing may the Lord pardon thy servant, that when my lord goeth into the house of Rimmon to prostrate himself there, and he leaneth on my hand, and I prostrate myself also in the house of Rimmon, . . . and he said unto him, Go in peace." Now, if a descendant of Noah were commanded concerning sanctification, Elisha would not say to him, "Go in peace," but would keep silent. This also is not a support, as Nahman's request was considered privately as no Israelites were present. Said R. Jehudah in the name of Rabh: It happened to one that he saw a woman and became sick through his infatuation, and he consulted physicians, who saw that there was no remedy for him unless he had connection with her, and the sages decided that he should rather die than have connection. The physicians, however, said: "Let her stand before him naked; perhaps this may do something in his behalf. But even this the sages did not allow. Let her talk to him behind a fence. Even this the sages forbade. R. Jacob b. Idi and Samuel b. Na'hmani differ. According to one she was a married woman, and according to the other she was single. Single! Why such strictness? Said R. Papa: Because of the dishonor of her family, as a daughter of an Israelite must not be sold for prostitution. And R. Ahbah b. R. Ika said: To prevent such becoming a habit among the daughters of Israel. But why did he not marry her? Said R. Itz'hak: This would not satisfy him. As it reads [Prov. ix. 17]: "Stolen waters are sweet, and bread of secrecy is pleasant."

CHAPTER IX.

RULES AND REGULATIONS CONCERNING THOSE TO WHOM BURNING AND THOSE TO WHOM SLAYING APPLIES. WHO IS CONSIDERED A MURDERER DESERVING CAPITAL PUNISHMENT AND WHO IS TO BE EXILED. THOSE WHO RECOVERED AFTER THEY WERE DIAGNOSED TO DIE ; KILLING SOME OTHER ONE INSTEAD OF THOSE WHOM HE HAD INTENDED.

MISHNA I.: To the following the punishment of burning applies: To one who has intercourse with a woman and her daughter, and to a daughter of a priest who has sinned. Under the general rule of a woman and her daughter comes his own daughter, the granddaughters of his daughter and son, the daughter of his wife, her granddaughters of her daughter and her son, his mother-in-law, and the mother of his mother and father-in-law.

GEMARA: The Mishna does not state a woman whose daughter he has married, but "a woman and her daughter," which seems to be that the intercourse with both of them was a sin, and this can only be with his mother-in-law and her mother. And from the expression, "Under the general rule of a woman and her daughter," it is to be assumed that both are mentioned in the Scripture, which is not so, as the mother of his mother-in-law is only inferred from an analogy. Read: If one has had intercourse with a woman whose daughter he has married. Whence is this deduced? From what the rabbis taught: It reads [Lev. xxi. 4]: "And if a man take a woman and her mother." This is concerning a legal wife and her mother. But whence do we know that the same is the case with the illegal daughter of a ravisher (referring to Deut. xxii. 28), and her granddaughters from her daughter and her son? From the analogy of the expression "incest" (zimha), which is to be found here in the verse cited and also in Lev. xviii. 17. And as there it speaks of an ordinary woman, and it is plainly mentioned the granddaughters of her son and daughter, the same is the case here (that all of them must be punished by burning).

And whence do we know that the males who have committed the crimes in question are also to be punished by burning, the same as the females? Again from the same analogy of the expression *zimha*. As there the verse speaks of the male perpetrator of the crime, so also in the case here we are not to make any difference in the punishment between males and females. And whence do we know that the latter generations—*i.e.*, the daughters and the granddaughters—are to be equalized to the earlier generations—*i.e.*, the mothers of one's father and mother-in-law? Again from the analogy of the same expression. As there the Scripture does not make any difference between the expression in verse 15, which speaks of a father with his daughter-in-law, and that of the seventeenth, which speaks of the latter generations, and at the end of which it reads: for *they* are near kins—"women," which refers to all of them, so here the punishment of the earlier generations is to be equalized to that of the latter.*

The father of R. Abbin taught: Because there is no definite commandment in the Scripture concerning the daughter of a ravisher, it was necessary for the scripture to state [Lev. xxi. 9]. "And if the daughter of *any* priest"—"esh cohn," instead of "cohen." From which we infer that, were she a legal or an illegal daughter, if he sins with her, she must be burned.

But if so, let the punishment of burning apply only to the daughter of the abuser, but not to the abuser himself, as so is the case with the daughter of a priest in which the punishment applies only to her, but not to her abuser. Said Abayi: Concerning the daughter of a priest it reads: "Her father does she profane." Exclude this case, in which the father is profaning her. Rabha, however, said: For this no verse is necessary, as it is common sense. In the case of a priest's daughter, if you have excluded her abuser from burning, he is nevertheless left under the category of choking, which applies to any one having intercourse with a married woman. But here, if you exclude the abuser from the punishment which applies to her, under what category can you put him? Should you put him under the category of those who have had intercourse with single women, who are free from any

* It is impossible to give a literal translation of this Boraitha with even an abstract of the explanation as discussed by the Amoraim at length in the text. It is so complicated that the Amoraim themselves could not explain it without correcting the Boraitha or without giving to it an entirely strange interpretation. As was said by Rabha: "In any event, the analogy of expressions cannot be used without objections and difficulties." We therefore give a free rendering of the Boraitha, omitting the discussion.

punishment, is it possible that she should be burned for this crime, and he who is the abuser of her mother and the seducer of herself should be free? Now we have had the punishment for such, but where is the warning? It is correct for both Abayi and Rabha as they infer the warning from the same which states the punishment. But according to the father of R. Abbin, whence is deduced? Said R. Ailea, from [Lev. xix. 29]: "Do not profane thy daughter, to cause her to be a prostitute." R. Jacob, the brother of R. Abha b. Jacob, opposed: Is not the verse just cited necessary to that of the following Boraitha: "Thou shalt not profane thy daughter," etc? Lest one say that it speaks of a priest who marries his daughter to a Levite or an Israelite, therefore it reads "to cause her to be a prostitute." Hence it speaks only of him who gives his daughter other than in marriage. From the "ll" in the word "techallel" (profane), instead of "tochal," which would have the same meaning, the warning in question may also be inferred. And both Abayi and Rabha, who have inferred the warning in this case from the same verse mentioning the punishment—what do they infer from the verse just cited? Said R. Mani: Him who marries his daughter to an old man, as the following Boraitha states: "You shall not profane your daughter," etc. According to R. Eliezer: He who marries his daughter to an old man is meant; and according to R. Aqiba, he who leaves his daughter unmarried until she becomes "vigaros."

R. Kahana in the name of R. Aqiba said: There is none poor in Israel, but a shrewd-wicked and he who has left his daughter unmarried until "vigaros." How is this to be understood? Is not one to be called a shrewd-wicked if he left his daughter unmarried for his own benefit, that she should do the housework until "vigaros"? Said Abayi: He means thus: There is none poorer than he who is compelled because of his poverty to leave his daughter unmarried until "vigaros," as then he is equal to a shrewd-wicked.

R. Kahana in the name of R. Aqiba said again: Be careful in your counsellor in order that you shall not listen to him who counsels you for his own benefit.

R. Jehudah said in the name of Rabh: He who marries his daughter to an old man and he who marries his minor son to a woman of age; to both the verses [Deut. xxix. 18, 19]: "In order that the indulgence of the passions may appease the thirst (for them): The Lord will not pardon him," apply.

The rabbis taught: Concerning the verse Lev. xx. 14, in which

the words "him and them" are mentioned, R. Ismael and R. Aqiba differ. According to the former it means "him and one of them," and according to the latter, "him and both of them." What is the point of their differences (even R. Ismael agrees that both of them are to be punished)? Said Abayi: They differ only as to the texts from which the law is derived. According to R. Ismael, who maintains "him and one of them," it is because in Greek *εἷς* means one, and the expression in the passage is "es'-en." Hence, biblically his mother-in-law is to be burned, while her mother is inferred only rabbinically by an analogy of expression. And according to R. Aqiba both of them are meant in this verse. Hence both, biblically, are to be burned. Rabha, however, maintains that the point of their difference is an intercourse with one's mother-in-law after the death of his wife. According to R. Ismael, even then she must be burned, as in the verse cited it reads "and them," which makes no difference whether his wife is still alive or dead. And according to R. Aqiba, after the death of his wife, it is only a prohibition, but not a crime to which burning applies.

MISHNA II.: To the following, punishment with the sword applies: To a murderer and the men of a misled town. A murderer who strikes his neighbor with a stone or with an iron so that he dies; if one pressed down a person while he is in water or in fire, preventing him from coming out, until he dies—he is guilty. If, however, he pushes him into water or into fire and he was able to come out, but nevertheless dies without being prevented by him who pushed him, he is not guilty of a capital crime. If he sets a dog or a serpent upon him, he is not guilty of a capital crime. If, however, he applies the snake to his body with his hand, and it bites him to death, R. Jehudah makes him guilty of a capital crime, and the sages free him.

GEMARA: Samuel said: Why is there not mentioned in the Scripture the word "yod" concerning iron in Num. xxxv. 16, as is done concerning stones and wood in *ibid.*, *ibid.* 17, 18? Because even a fragment of iron brings death. So also we have learned in a Boraitha: Rabbi said: It is known to Him who created the whole world by one word, that a fragment of iron may bring death, and therefore He has not prescribed any size concerning iron. (Says the Gemara:) This is only when he pierced him with it; but if (he struck him with iron), it must be of a size to cause death.

"*If he presses down,*" etc. The first part teaches a preponderance, and so does the second. The preponderance of the first

part is that, although he did not push him, but only prevented him from coming out, he is nevertheless guilty of a capital crime. And the preponderance of the second part is that, although he pushed him in, yet, so long as the victim could come out and was not prevented, he is not guilty of a capital crime. But whence do we know that one is guilty for pressing down? Said Samuel: From [ibid., ibid. 21]: "Or if in *enmity* he have smitten him with his hand," which means to include him who pressed him down.

There was one who urged cattle of his neighbor into the sun until they died. And Rabbini made him liable, but R. A'hal b. Rabh freed him. The former made him liable because of an *a fortiori* conclusion drawn from a murderer. As concerning a murderer the Scripture makes a difference between intentionally and unintentionally, between accident and premeditation, and nevertheless makes guilty the presser; and as concerning damages, where there is no difference between intentionally and unintentionally, between accident and premeditation, so much the more should a pusher be liable. And as to the reason of R. A'hal, who freed him, said R. Mesharshia: The reason of my grandfather, who freed him, is the above-cited verse: "He that smote him shall surely be put to death, for he is a murderer," meaning only in case of murder is one guilty of pressing, but not in a case of damages.

Rabha said: If one bound a person, and he died thereafter of hunger, he is not guilty of a capital crime. If, however, he bound him and put him in a sunny place, and he dies because of the sun, or he puts him in a cold place and he dies of cold, he is guilty. But if he put him in a sunny or a cold place, where there was not as yet either sun or cold, and thereafter, when it came, it caused his death, he is not guilty of a capital crime.

The same said again: If one bound a person and left him before a lion, he is not guilty of a capital crime. (Rashi explains that he could not save himself from the lion even if he were unbound. Rashi's reasons are not quite clear to us.) But if he bound him in a place where mosquitoes are abundant, he is guilty. R. Ashi, however, maintains that even in the latter case he is not guilty, as the mosquitoes which were on his body at the time he tied him, went away, and others came. Hence he did not cause his death directly.

It was taught: If one places a vat over a person and he dies from heat, or he removes the ceiling to let the cold come in,

and he dies from cold—Rabha and R. Zerah—one of them makes him guilty and the other frees him. Says the Gemara : It seems that Rabha is the one who frees him, as it is in accordance with his theory. Said above : If one bound a person and he dies of hunger, he is free. On the contrary, it seems R. Zerah is the one that makes him free, as it is in accordance with his theory elsewhere : He who puts a person in a house closed from all sides so that the air cannot go out, and lights a candle, which causes his death, is guilty. Hence we see that the reason of making him liable is the lighting of the candle, and if this were not done he would be free? Nay! It may be said that the heat which caused his death began with the lighting of the candle. The same is the case with the vat—the heat began just when he turned it over him.

Rabha said again : If one pushed a person into an excavation in which a ladder stood for coming out, and someone came and removed the ladder, or even if he himself removed it after he pushed him in, he is not guilty of a capital crime, as at the time he pushed him in he was able to come out.

The same said again : If one shot an arrow at a person who wore an armor and someone removed the armor, or even if he himself removed it after he shot, he is not guilty of a capital crime, as at the time he shot the arrow it could not injure him.

And he said again : If one shot an arrow at a person who was supplied with spices which could cure the wounds from the arrow, and someone came and scattered them, or even if he himself scattered them before the arrow reached him, he is not guilty, because the victim, at the time he shot, could be healed by the spices. Said R. Ashi : According to this theory he would not be guilty if there should be spices in the market which could cure the wounds? Said R. Ahbah, the son of Rabha, to R. Ashi : How is the law if it happened that spices were brought to him after he was shot, and he did not make use of them? And he answered : In such a case the court would not overlook this, and would accept the defence to his advantage.

Rabha said again : If one throws a stone at a wall, with the intention of killing a person with it, the stone, however, killing the man only by the rebounding, he is guilty of a capital crime. In explanation of this, it was taught, *e.g.*, ball-players—if one threw a ball with the intention of killing someone, he is to be put to death, and if it was unintentionally, he is to be exiled. Is this not self-evident? The teaching that one is to be put to death, if done intentionally, was necessary. Lest one say that such a

warning was of a doubtful nature, as who could predict that the ball would kill him by rebounding so that he should be forewarned of it, he comes to teach us that he is nevertheless guilty.

R. Tachlifa of the West taught in the presence of R. Abuhu concerning those who play ball: If the ball killed one by rebounding within a distance of four ells from the wall, he is free from exile, but if it exceeded four ells, he is guilty.

Said Rabbina to R. Ashi: Let us see, how was the case! If the player was pleased with the rebounding of the ball, then let him be guilty if the man was killed even within a nearer distance (as the law of killing a man unintentionally prescribes). And if he was not pleased with the rebounding, let him be free even at a greater distance. And he answered: The greater the distance a ball rebounds, the more is the pleasure of the ball-player.

It was taught: R. Papa said: If one bound a person and turned a stream of water upon him, it is considered as if the man were killed directly by his arrow, and he is guilty of a capital crime. However, this is only when he was killed by the first stream which poured upon him; but if he dies from the continued flow, it is not considered direct killing, but only a cause of death.

The same said again: If one throws a stone on high and it swerves and kills a man, he is guilty. Said Mar. b. R. Ashi to him: Let us see what is the reason of your theory! Because the stone went by his force? But if so, the force must only be considered when it went on high; and when his force ends it should fall down vertically. But according to your theory it swerves, hence it is not by his force. It must be said, however, if this cannot be called his exact force, it may nevertheless be considered a part of his force.

The rabbis taught: If one was assaulted by ten different persons, no matter whether at once or at different times, and was killed, none of them has to suffer capital punishment, as according to the Scripture it must be known who was the cause of the death. R. Jehudah b. Bathyra, however, holds: In case the assault was made by one after the other, the last one is guilty, for he hastened his death.* Said R. Johanan: Both parties took their theories from one and the same passage [Lev. xxiv. 17]: "And he that taketh the life of all the soul of man."† The rabbis hold that all the "soul" means one is not guilty unless he

* Against our method, here are repeated a few lines from First Gate, pp. 55 and 56; but we could not do otherwise, because of the explanation in the text.

† Leaser's translation does not correspond.

takes the whole soul. And R. Jehudah holds that it means all that was as yet left of the soul.

Said Rabha: All agree that if one kills a person whose windpipe and larynx (gullet) are cut, or whose skull is fractured, he is free (for it is considered as if he had attacked a dead man). And they agree also that, if one killed a person who was struggling with death through sickness caused by Heaven, he is guilty of a capital crime. And the point of their difference in the above Boraitha is, if one killed a man who was struggling with death through sickness caused by man. According to the rabbis, it is similar to him whose windpipe, etc., are cut. But according to R. Jehudah b. Bathyra, it is similar to him who was struggling with death through sickness caused by Heaven.

A disciple taught in the presence of R. Shesheth: The above-cited verse, which commences with "and a man," means if one struck a person with an article which can cause death, but the man was not entirely without life, and another came and put an end to him entirely, the latter is responsible, as the ordinary opinion is in accordance with R. Jehudah b. Bathyra.

Rabha said: If one kills a person whose windpipe and larynx are cut he is free; but if the latter killed a person, if this was in the presence of the court, he is guilty. As it reads [Deut. xiii. 6]: "And thou shalt put the evil away from the midst of thee." But if not in the presence of the court, but in the presence of other witnesses, he is free, as their testimony cannot be taken into consideration, because they cannot be made collusive (as their intention was to kill a man already dead). And there is a rule that such a testimony as was given by those cannot be made collusive is not considered as testimony at all.

And he said again: Although the witnesses who had testified against the man whose windpipe, etc., were cut were thereafter found collusive, they are not to be put to death; if the windpipe, etc., of the witnesses themselves were cut at the time they testified, and thereafter they were found collusive, they are to be put to death, because of the above-cited verse. R. Ashi, however, maintains that they are not, because the witnesses who made them collusive could not be punished if their testimony were found false, as their intention was to kill men who are considered already dead.

And Rabha said again: An ox of such a kind, if he killed a person, is guilty. But if the ox was a healthy one and his owner was of that kind, he is free; because it reads [Ex. xxi. 29]: "The ox

should be put to death and the owner also." And as in this case the owner is considered already dead, and the expression "he shall also be put to death," does not apply to him, we therefore do not apply to the ox the beginning of the verse. R. Ashi, however, maintains that even if the ox was of that kind, he is also free for if its owner would be such it would be free; therefore it is to be free when it itself is of this kind.

"*If he set a dog or a serpent,*" etc. Said R. Abbah b. Jacob: If you wish to know the reason of their difference, it may be said thus: According to R. Jehudah, the venom of the serpent is always between its teeth (*i. e.*, with the bite of the serpent the venom is injected into the body, which causes death directly) and, therefore, if he applied the serpent to the body he is to be decapitated, and the serpent is free. And according to the sages, the poisoning comes after the bite, from the venom of the serpent. Hence the biting did not cause death directly, and therefore the serpent must be stoned and he who applied it is free from capital punishment.

MISHNA III: If one strikes a person with a stone or with his fists, and he was diagnosed (by the physicians of the court) to die, and thereafter he improved, and was diagnosed to live, and then again becomes worse and dies, he is guilty of a capital crime. R. Nehemiah, however, maintains that he is free, because it is reasonable to say that he did not die directly from the blow, but from some other cause.

GEMARA: The rabbis taught: The lecture of Nehemiah concerning this matter was thus: It reads [Ex. xxi. 19]: "If he rise again and walk abroad upon his crutch, then shall he that smote him be acquitted." Can it be supposed that one should be put to death because he struck a person who later walks in the market, if there were not a passage which commands the contrary? We must then say that the passage means that if when he was struck he was diagnosed to die, and thereafter he improved, walked in the street, and was diagnosed to live, and then became worse and died, he is nevertheless free. What do the opponents of R. Nehemiah infer from the words "be acquitted"? That the person who struck must be kept in arrest until the outcome shall be known. R. Nehemiah, however, maintained that no verse is necessary for this, as this is to be inferred from the woodgatherer, who was arrested immediately after committing the crime. Why did not the rabbis also infer from the woodgatherer? (Moses was aware that) he was surely guilty of a capital

crime, but did not know what kind of death applied to him. But concerning the murderer in question, it is not known whether he came under the category of capital punishment at all? R. Nehemiah, however, infer this from the blasphemer, of whom Moses did not know whether he came under the category of capital punishment at all, and nevertheless he was imprisoned. The rabbis, however, do not infer this from the blasphemer, as according to their opinions it was only a decision for that time, as we have learned in the following Boraitha: Moses our master was aware that the woodgatherer was guilty of capital crime. As it reads (Ex. xxxi. 14): "Everyone that defileth it shall be put to death." But he did not know what kind of death; as it reads: [Num. xv. 34]: "Because it had not been declared what should be done to him." Concerning the blasphemer, however, it is not so written, but: "To the decision of the Lord," hence Moses was not aware whether he came under the category of death at all.

The rabbis taught: If one struck a person and he was diagnosed to die, but he nevertheless remained alive, they may free him. And if he was diagnosed to die and he improved, the sick man must be examined again, and appraisement made concerning the money which is to be collected from his smiter; and if thereafter he becomes worse and dies, he must be charged according to the second examination. So is the decree of Nehemiah. The sages, however, maintain that there is no other examination after the first. There is another Boraitha: If he was diagnosed to die, but he did not, he must be examined again. But if the first opinion was that he would live no second examination as to dying may take place (for if it happened that he dies, it is probably not from the previous blow). If, however, he was diagnosed to die, and he becomes better, the sick man must undergo an appraisement concerning money. And if thereafter he becomes worse and dies, his murderer must pay for damages and the suffering of the deceased, to the heirs from the time he was struck till his death. And this anonymous Boraitha is in accordance with R. Nehemiah, who frees such from capital punishment.

MISHNA IV. : To the following, capital punishment does not apply: To one who intended to kill an animal and killed a man, an idolator and killed an Israelite, a miscarried child and killed a mature one. The same is the case with one who intended to strike another on the loins with an article which was not sufficient to cause death, but the blow was made on his heart, for which it was sufficient, and he dies; or if he intended to

strike him on the heart with an article which was sufficient to cause death if striking same, but he struck the loins and the man dies, although it was not sufficient to cause death if struck on the heart or even if he intended to strike an adult with an article which was not sufficient for such, but it happened that he struck a minor and he dies, as for a minor it was sufficient; or, on the contrary, if he intended to strike a minor with an article which was sufficient for such, but not for an adult, and it happened that he struck with it an adult and he nevertheless dies. To the following, however, capital punishment does apply: To one who intended to strike a person on the loins with an article which was sufficient for this purpose, and he strikes him to death on his heart, or if he intended to strike an adult with an article which was sufficient to cause his death, but it happens that he strikes to death a minor with it. R. Simeon, however, maintains: Capital punishment does not apply even to him who intended to kill a certain person, and it happened that he killed another.

GEMARA: To which part of the Mishna belongs R. Simeon's theory? If to the latter part only it should read: And R. Simeon frees him (*i.e.*, him who intended to kill an adult and killed a minor). We must then say that it belongs to the first part, which states: an animal—an idolater—an Israelite—a miscarried child, etc., to which capital punishment does not apply, from which it is to be understood that if there were two resembling persons, and he intended to kill one and killed the other, capital punishment does apply. And to this R. Simeon came to say that even in such a case capital punishment does not apply. Now, let us see! If, *e.g.*, there were Reuben and Simeon, and the murderer said, "I intend to kill Reuben and not Simeon," and finally Simeon was killed, and not Reuben—this is the case in which the first Tana and R. Simeon differ. But how is it if the murderer said, "I intend to kill one of them"; or the murderer mistook Simeon for Reuben? Does R. Simeon differ even in this? Come and hear the following Boraitha: R. Simeon said: Capital punishment does not apply, unless one said, "I intended to kill so and so," and he did so. And what is his reason? [Deut. xix. 11]: "But if any man be an enemy to his neighbor and lie in wait for him," which means only when he killed the intended person. Said the disciples of Janai: And what do the rabbis say to this verse? It excludes him who throws a stone into an excavation in which men are standing, without the intention of killing any particular one. Now, let us

see! According to the rabbis, who apply capital punishment to him who killed one person, although he intended to kill another, the verses Ex. xxi. 22 and 23, "If men strive . . . then shalt thou give life for life," are in accordance with the explanation of R. Elazar, stated above, that the verses speak about him who intends to kill. But how should this passage be explained in accordance to Simeon's theory? In accordance with Rabbi of the following Boraitha: "Thou shalt give life for life" means money (*i.e.*, the value of the woman should be paid to her heirs). You say "money," but perhaps it means literally "life"? The expression here "thou shalt give," is to be explained similarly to *ibid.*, *ibid.* 22: "He shall give according to the decision," etc. As there it means money, the same is the case here.

Rabha said: The following statements, taught in the school of Hiskia, correspond neither with Rabbi nor with the rabbis mentioned above. Namely: It reads [Lev. xxiv. 21]: "And he that killeth a beast shall make restitution for it, and he that killeth a man shall be put to death." As in the case of a beast there is no difference whether it was intentionally or unintentionally, by an error or by premeditation, while he was ascending or descending, he is always liable and must pay. The same is it in the latter case of a human being: there is no difference whether it was intentionally, etc.,—he is absolved from any money payment.

Now let us see what is meant by the expression "unintentionally" concerning a human being. Shall we assume, *i.e.*, that it was done without any intention? Then it was an error, which has been already mentioned. Why, then, the repetition? You must then say that it means, if he intended to kill one and killed another person, and nevertheless it states that he is absolved from any payment. Now, if he should hold with the rabbis that such is guilty of a capital crime, then such a statement is not necessary, as there is a rule that no payment is required in a case of capital punishment. We must therefore say that it does not agree with them; nor can we say, on the other hand, that it agrees with Rabbi, as the latter requires payment, while Heskia does not.

MISHNA V. : A murderer mixed up among others—all of them are free. R. Jehudah maintains: All of them must be taken to *χυφος* (a life-long prison, to be done with as explained farther on). If it happen that the persons sentenced to deaths of differ-

ent kinds, and are so mixed that it is not known who comes under this kind of death and who under another, all of them must be executed with the more lenient death, *e.g.*, if those who are to be stoned are mixed up among those who are to be burned, according to the sages all of them must be executed by burning, as stoning is more rigorous; and according to R. Simeon all of them are to be executed by stoning, as burning is more rigorous. Said R. Simeon to the sages: Were burning not more rigorous, it would not apply to a daughter of a priest who had sinned. Answered the sages: Were stoning not more rigorous, it would not apply to a blasphemer and an idolater. If they who are to be slain by the sword are mixed among those who are to be choked, according to R. Simeon they must be decapitated, and according to the sages, they must be choked.

GEMARA: What does the Mishna mean by the words, "among others"? Does it mean others who are innocent? Is it not self-evident that they are all free? And secondly, could R. Jehudah say that such are to be imprisoned? Said R. Abuhu in the name of Samuel: It speaks of a murderer who was not as yet sentenced, and was mixed among those who were already sentenced; and as the verdict of death must be rendered only in the presence of the criminal, therefore all of them are free from execution according to the rabbis. R. Jehudah, however, maintains that such cannot be entirely free, since they are murderers, and therefore, they must be taken to the kyphos.

Resh Lakish said: The Mishna does not mean human beings at all, but oxen—*i.e.*, whether an ox which was not as yet sentenced to death was mixed among others which were already sentenced is the point of their difference. According to the rabbis the ox must be judged the same as its owner. As its owner cannot be sentenced to death if not present, the same is the case with the ox; and as he is now mixed among others, all of them are free. And R. Jehudah maintains that all of them must be taken to the kyphos.

Said Rabba: How can such an explanation be given to the Mishna? Does not a Boraitha add to this: Said R. Jose: Even if among the others was Abbah Halafta (who was known as a great man). How, then, can the Mishna be interpreted that it means other murderers or oxen? Therefore explains he: It means if, *e.g.*, two were standing shoulder to shoulder and an arrow came out from one of them and killed a person, both of them are free. And to this R. Jose said: Even if Abbah Halafta was among the

two, and it is certain that Abbah Halafta would not commit such a crime. Nevertheless, the other is free. And the saying of R. Jehudah belongs to another case, as the Mishna is not completed, and should read thus: And if an ox which was sentenced to death was mixed among other innocent oxen, they must all be stoned. R. Jehudah, however, maintains that all of them must be taken to the kyphos, and it is in accordance with the following Boraitha: If a cow has killed a human being, and thereafter gave birth, before she was sentenced to death, the offspring is valid; but if it happened after she was sentenced, the offspring is invalid. And if such were mixed among others, and even if some of the others among which it is mixed were mixed with still others, all of them must be taken to the kyphos. R. Elazar b. Simeon, however, maintains: All of them are to be brought to the court and stoned.

"All who were sentenced to death," etc. Infer from this that if one is forewarned of a rigorous crime, it suffices for a lenient one. (This question was not yet solved.) Said R. Jeremiah: The Mishna speaks of a case where the criminal was warned in general; and it is in accordance to the Tana of the following Boraitha: All the crimes to which capital punishment applies, the perpetrators of them are not put to death unless there were witnesses who warned them, and unless they warned them that they were liable to die by the decision of the court. And according to R. Jehudah, only when they notified them by which kind of death they would be executed.

The first Tana, who does not require that they should be notified by which death, infers it from the case of the woodgatherer; and according to R. Jehudah, nothing is to be inferred from the case of the woodgatherer, as it was only a decision of that time.

"Among those who are to be burned," etc. R. Ezekiel taught to Rami his son: If those who are to be burned were mixed among those who are to be stoned, according to R. Simeon, they are to be executed by stoning, as burning is more rigorous. Said R. Jehudah (his older son) to him: Father, do not teach so, for, according to your teaching (as "those who are to be burned were mixed among those who are to be stoned") it seems that the majority of them come under the category of stoning: Hence the reason why they are to be stoned is not because it is more lenient, but because so was it to be done with the majority. And to the question of his father: How, then, shall I teach? The answer was: As our Mishna states: If those who are to be stoned

were mixed among those who are to be burned, R. Simeon said, etc. But if so, how is the latter part, "And the sages said that they are to be executed by burning, because burning is more rigorous," to be understood? Also here the reason may be that the majority who are to be executed come under the category of burning? Nay! The expression of the rabbis, "stoning is more rigorous," was not as a reason, but as an answer to R. Simeon. And it is to be explained thus: If they were mixed among those who are to be burned, it must be done with them in accordance with their majority. And your supposition to care about the minority, because we have to select for them a lenient death, does not hold good, as in reality stoning is more rigorous. Said Samuel to R. Jehudah: Genius! do not express yourself in such terms to your father, as there is a Boraitha: If a son saw his father transgressing what is written in the Scripture, he must not say to him, "Father, you have transgressed the law," but, "Father, so and so is written in the Scripture."

But is it not finally one and the same? It means he shall say: "Father, there is a verse in the Scripture which reads so and so," and in such a tone that it shall not seem a rebuke, but an intimation.

MISHNA VI.: If one committed a crime which deserves two kinds of death (*e.g.*, one who has intercourse with his mother-in-law who is married, commits two crimes—with a married woman, to which choking applies, and with his mother-in-law, to which burning applies), he must be tried for the more rigorous one. R. Jose, however, maintains: According to that act, he began first. (Illustrations in the Gemara.)

GEMARA: Is this not self-evident? Should one who has committed another crime which brings an easier punishment be benefited by it? Said Rahba: It speaks of where he was tried for a case which deserved a lenient death, and was sentenced, and then committed a crime to which a more rigorous death applies. Lest one say that this man is to be considered as already killed and not to be tried again, it comes to teach us that he must be tried and punished with the more rigorous death.

The brother of R. Jose b. Hanna questioned Rabba b. Nathan: Whence is this law deduced? (And the answer was:) from Ezek. xviii. 10-13; " . . . Upon the mountains he eateth . . . and his eyes he lifteth up to the idols of the house of Israel . . . and the wife of his neighbor he defileth . . . " To bloodshed the sword applies, to adultery with a married woman choking

applies, and to idolatry stoning applies, and it ends with "his blood shall be upon him," which means stoning. Hence he is to be executed with the more rigorous one. R. Na'hman b. Itz'hak opposed: Perhaps all the crimes mentioned in this passage come under the category of stoning, namely, a "dissolute son," means a stubborn and rebellious son, to whom stoning applies; "he defileth the wife of his neighbor" means a betrothed damsel, to whom also the same applies; "to the idols he lifteth up," which is idolatry, to which stoning applies? If it were so, then what came Ezekiel to teach? And lest one say that he was only repeating what is in the Scripture, then he ought to have done as did Moses our master, who said [Deut. xvii. 18]: He shall write the *repetition* of the law."*

R. Abhah b. Hanina lectured about the passage [ibid. 6]: "Upon the mountains he eateth not," which ends with [ibid. 9]: "He is righteous, he shall surely live." Is it possible that, because he has not committed such crimes, he should be called righteous? Therefore these verses must not be taken literally, but "upon the mountains he eateth not" means that he does not live upon the reward of the meritorious acts done by his parents; "his eyes he lifteth not up to the idols" means that he never walked overbearingly; "and the wife of his neighbor he defileth not," means that he never tried to compete in the special trade of his neighbor; "unto a woman on her separation he cometh not near" means that he never tried to derive any benefit from the treasure of charity—and to this it reads: "He is righteous, he shall surely live."

Rabban Gamaliel, when he came to this passage, used to weep, saying: It seems as if he who has done all of them is righteous, but not he who has done only one. Said R. Aqiba to him: According to your theory, the verse [Lev. xviii. 24]: "Do not defile yourself with all of these things," also means with all of them, but one of them is allowed? Hence it means to say with "any" of them. The same is to be said here: If one does one of the things mentioned above, he is righteous.

"*A crime which deserves two kinds*," etc. There is a Boraitha: How is R. Jose's decision in our Mishna to be illustrated?—*e.g.*, if the crime which he committed with this woman was that she became first his mother-in-law and then married. Hence the prohibition of having intercourse with her applied, even before she

* Leeser's translation, "a copy of the law," is entirely wrong.

married again. Then he must be tried under the crime "with a mother-in-law." But if she became his mother-in-law after her marriage, then he must be tried under the crime "with a married woman," as the prohibition against intercourse with her existed already before she became his mother-in-law.

Said R. Adda b. Ahabah to Rabha: In the first case, in which she married after she became his mother-in-law, why should he not also be tried for the crime with a married woman? Did not R. Abuhu say that R. Jose agrees in case a prohibition were added. (*E.g.*, when she was his mother-in-law but unmarried, she was prohibited to him only, but allowed to the whole world, and when married she became prohibited to the whole world. Hence one prohibition was added. And in such a case R. Jose agrees that the second crime must also be taken into consideration.) And Rabha answered: Adda, my son, do you want us to execute him twice? (R. Jose considers the added prohibition to be only concerning sin-offerings, when incurred through error.)

MISHNA VII.: He who receives stripes, and relaxes into the same crime, and is punished again and does not repent, the court takes him to the kyphos, and feeds him with barley until his abdomen bursts.

GEMARA: Because he received stripes twice, should the court imprison him in the kyphos forever? Said Jeremiah in the name of Resh Lakish: The Mishna speaks of crimes to which korath applies, and he was forewarned of stripes, and was punished twice for the same crime. And as this man deserves death by Heaven, but his time has not yet come, and we see that he devotes his life to sin, the court imprisons him to hasten his death. Said R. Jacob to R. Jeremiah b. Tahlifa: Come and I will explain to you the real meaning of Resh Lakish: The Mishna means that he has committed the same crime thrice, for two of which he has received stripes. And as the court does not see any remedy for him, it puts him in the kyphos after the third time. If, however, he has committed different crimes to which korath applies, he is not taken to the kyphos, as he is not considered as devoting his life to this crime, but as one careless concerning prohibitions.

"*He who receives stripes twice,*" etc. Twice, although he was not punished a third time! Shall we assume that our Mishna is not in accordance with R. Simeon b. Gamaliel, who says that until one has repeated the same crime thrice it is not considered

a hazakah* (habit). Said Rabbina: It may be even in accordance with R. Simeon, as the crime was committed thrice, and he considers it a habit, although he was not beaten thrice.

An objection was raised from the following: He who has committed a crime twice to which the punishment of stripes applies receives the stripes twice; repeating same a third time, the court puts him in the kyphos. Abba Shaul, however, maintains that even to the third time he receives stripes, and only after he has committed the crime a fourth time does the court imprison him. Is it not to be assumed that the Tanaim of this Boraitha differ in the same point as R. Simeon b. Gamaliel and Rabbi differ—namely, whether it should be considered a hazakah after two times, which is the opinion of Rabbi, or after three times, according to R. Simeon? Nay; all agree with R. Simeon. And the point of their difference is that, according to the first Tana, the crimes which were committed thrice counted, and according to Abba Shaul, the stripes, and not the crimes, are to be counted.

Where is to be found an allusion in the Scripture to the kyphos in question? Said Resh Lakish [Ps. xxxiv. 22]: "The evil will slay the wicked." And the same said again: It reads [Eccl. ix. 12]: "For man also knoweth not his time, like the fishes that are caught in an evil net," from which the same is to be inferred.

MISHNA VIII.: He who kills a person, not in the presence of witnesses, is taken to the kyphos and is fed on scant bread and water.

GEMARA: But whence do we know if it was not in the presence of witnesses? Said Rabh: If there was only one witness, or even if there were two who saw this from separate places. And Samuel said: If he committed the crime without forewarning. And R. Hisda in the name of Abimi said: Even when the witnesses contradicted themselves in unimportant matters—as, e.g., a Mishna stated above: Ben Sakkaï examined them concerning the size of figs, etc., and they were not contradicted in the examination.

"*And is fed with scant bread and water.*" And above it was said that he was fed with barley? Said R. Shesheth: In both cases it is meant that he was first fed with scant bread and water till his abdomen shrank, and afterwards with barley, from which it swelled till it burst.

MISHNA IX.: If one steals a kisvah, or one curses his

* See footnote, Vol. XIV., p. 217.

neighbor, invoking God as "a carver," or one has intercourse with a female heathen, zealous people (like Pinehas) have a right to strike him when caught in the act. If a priest performed the service in the Temple while he was unclean, his fellow-priests would not bring him to the court, but the youths would take him out of the sanctuary and split his head. If a common Israelite served in the Temple, according to R. Aqiba, he was choked by the court, and according to the sages he would come to his death by Heaven.

GEMARA: What is meant by "*kisvah*"? Said R. Jehudah: It means service vessels [*cf.* Num. iv. 7]. And where is there to be found an allusion to this in Scripture? [*Ibid.*, *ibid.*, 20]: "That they may not go in to see when the holy things are covered, and die."

"*Who curses*," etc. R. Joseph taught: May the carver strike his carving. And another explanation by Rabah b. Mari is: May the carver strike him himself, and his creator and his creation.

"*One who has intercourse*," etc. R. Kahana questioned Rabh: What is this punishment if there were no zealous men? Rabh forgot his traditional answer to this, and it happened that it was read before R. Kahan in a dream, etc. [Mal. ii. 11]: "Judah hath dealt treacherously, and an abomination hath been committed in Israel and in Jerusalem; for Judah hath profaned the sanctuary of the Lord which he loveth, and hath married the daughter of a strange god." And he came to Rabh and told him that so was it read to him, and therefrom Rabh recollected that this passage was an answer to his question, as it reads immediately after it: "The Lord will cut off, unto the man that does this, son and grandson, out of the tents of Jacob, and him that bringeth near an offering unto the Lord of hosts"—which means, if he was a scholar, that he should not have a son among the scholars or a grandson among the disciples; and if he was priest, that he should not have a son who should bring an offering, etc. Hyya b. Abuhu said: He who has had intercourse with the daughter of an idolater is considered as if he mingles himself with the idols. As it reads: "He hath married the daughter of a strange god." Has, then, an idol a daughter? Hence it means as is just mentioned above.

When R. Dimi, or Rabbin, came from Palestine, he said that the court of the Maccabees decreed: He who does so transgresses concerning the following four things: Neda (menstruation), Shif'ha (female-slave), Goiye (strangers in faith), and prostitution.

Said R. Hisda: If one comes to the court with the question, "May one take revenge on the criminal mentioned above?" his question must not be answered. And so also said Rabba b. Hana in the name of R. Johanan, and not only this, but if it should happen that Zimri were killed by Phinehas after he separated himself from Cozbi, Phinehas would be put to death for this crime. Furthermore, if Zimri, seeing that Phinehas seeks his life, were to kill him in self-protection, he would not be punished, as Phinehas would be considered a seeker of life.

It reads [Num. xxv. 5]: "Moses said to the judges of Israel," etc. The tribe of Simeon went to Zimri ben Saul and said: They (the judges) are judging cases of capital punishment, and you keep silent! What did he do? He gathered twenty-four thousand of his tribe and went to Cozbi, pleading with her to listen to him. And to her answer, "I am a princess, the daughter of a king, and my father commanded me not to listen to any one but the greatest of Israel," he said: I myself am a prince of a tribe in Israel, and I am greater than Moses, as I am from the second tribe, while he is from the third. He took her by the locks of her hair, and brought her to Moses, saying: Son of Amram, is this damsel allowed to me, or prohibited? And should you say that she is prohibited, I would ask you, Who allowed to you the daughter of Jethro? Moses, however, had forgotten the traditional Halakha, and he and all who accompanied him wept. As it reads [ibid., ibid. 6]: "And these were weeping by the door of the tabernacle of the congregation."

And farther on it reads: "And Phinehas saw." What did he see? Said Rabh: He saw Zimri's act, from which he recollected the traditional Halakha. And he said to Moses: Granduncle, didst thou not teach me, on thy descending from Mount Sinai, that zealous men might take revenge on him who has had intercourse with the daughter of an idolater? To which Moses answered: Let him who reads the letter be the carrier—*i.e.*, let him who gives the advice be its executor.

Samuel, however, said: Phinehas saw [Prov. xxi. 30]: "There is no wisdom, nor understanding, nor counsel against the Lord—*i.e.*, in a case where there is a violation of the Holy Name the honor of the master must not be considered (and therefore Phinehas did it without the consent of his master Moses).

R. Itz'hak, in the name of R. Elazar said: He saw the angel who destroyed the people. It reads: "Arose and took a javelin in his hand." From this it may be inferred that one must not

enter with arms into the house of learning. He took out the javelin from its sheath, sharpened it, and replaced it in the sheath so that it should not be visible; and went to the headquarters of Simeon's tribe, saying: Whence do we know that the tribe of Levi is greater than Simeon's? And the people who were there thought: Phinehas himself is coming to do the same as Zimri has done. Hence the scholars decided that this is allowed.

Said R. Johanan: Six miracles occurred to Phinehas when he came to smite Zimri. One—Zimri has not separated himself, etc (The continuation of the Haggadah will be translated farther on.)

"If a priest performed the service . . . while he is defiled," etc. R. Ahbah b. Huna questioned R. Shesheth: Is a priest who does service, being defiled, deserving of death by Heaven, or not? And he answered: This we have learned in our Mishna: "A priest who does service in the Temple, being defiled, his fellow-priests would not bring him to court, but the youths would take him out and split his head." Now, if it should be supposed that he was guilty of death by Heaven, why did not they leave him to the heavenly punishment? Rejoined he: Do you mean to say that he was not guilty at all? Is there such a thing—that Heaven frees him and we should put him to death? Yea! Does not the court put one who is twice beaten with stripes in the kyphos and cause him to die? (What comparison is this?) Did not R. Jeremiah say that it speaks of crimes of a kind to which korath applies? Hence such an offender deserves death. But is the case not the same with him who steals a kisvah, and with the two other cases mentioned in our Mishna? To all of them it is taught that there are allusions in the Scripture implying that they deserve death, viz., concerning a kisvah [Num. iv. 20]: "That they may not go in to see when the holy things are covered, and *die*," concerning one cursing his neighbor, etc., it was explained by R. Joseph that it looks like blasphemy, and concerning an intercourse with a daughter of an adulterer, Rabh recollected his tradition, as said above.

An objection was raised from a Boraitha which states: And the following are liable to death by Heaven: An unclean priest who served in the Temple, etc. Hence we see that his punishment is death, R. Shesheth being objected to, and the objection remains.

The same Boraitha continues thus: The following deserve death by Heaven: One who eats grain in which the heave-offer-

ing is mixed, an unclean priest who eats a heave-offering while defiled, and a commoner who partakes of the heave-offering, a commoner who performs service in the Temple, a priest, while defiled, serving in the Temple, a priest who has had a legal bath after defilement and performs the service in the Temple before sunset, the same is if he performs the service without the prescribed dress, or he who performs service before the prescribed offering after defilement is brought, and also he who serves without the prescribed washing of his hands and feet, or he serves while drunk, or without having cut his hair at the prescribed time. However, one uncircumcised, a mourner while the corpse is not yet buried, and he who worships while sitting, do not come under the category of death by Heaven, but are only forewarned. A priest who has a blemish and he who derives benefit from the sanctuary intentionally—according to Rabbi he comes under the category of death by Heaven, and according to the sages he comes under the category of the forewarned.

Concerning heave-offering mentioned in the Boraitha, said Rabh: A commoner who partakes of heave-offering is to be punished with stripes. Said R. Kabana and R. Assi to him: Let the master say he deserves death by Heaven. And he answered: It reads [Lev. xxii. 9, 10]: "They die therefore . . . I am the Lord who sanctify them. And no stranger shall eat of a holy thing." Hence between "they will die" and "no stranger shall eat" intervenes "I am the Lord," etc., to teach that the punishment of death does not apply to a stranger. But does not the above Boraitha state that such comes under the category of punishment by Heaven? Do you want to contradict Rabh from a Boraitha? Rabh is a Tana, and has the right to differ.*

"*If a common Israelite served in the Temple,*" etc. There is a Boraitha: R. Ismael said: It reads [Num. xviii. 7]: "And the stranger that cometh nigh shall be put to death"; and [ibid. xvii. 28] "Everyone that cometh near at all unto the tabernacle of the Lord shall die." As the verse just cited speaks of death by Heaven, the same is the case with the former.

R. Aqiba, however, said: Here the Scripture says: "And die therefore"; and [Deut. xiii. 6]: "And that prophet, or that dreamer of dreams, shall be put to death." And as there it means by stoning, the same is the case here. And R. Johanan

* All that is mentioned in the Boraitha cited is inferred from different passages in the Scripture by analogy of expression, followed by a discussion at length about them, which does not belong here and is therefore omitted.

b. Nuri said: As a false prophet is punished with choking, the same is the case here. What is the point of their difference? R. Aqiba holds that the expression "put to death" must be analogized with "put to death," and not "put to death" with "shall die." And R. Ismael holds that we should equalize a commoner with a commoner, and not a commoner with a prophet. According to R. Aqiba, however, a prophet who has misled is worse than a commoner.

And the point of difference between R. Aqiba and R. Johanan b. Nuri is the same wherein R. Simeon and the rabbis differ in the following Boraitha: To a prophet who has misled, stoning applies; according to R. Simeon, however, choking applies. But does not a Mishna above state (p. 239): R. Aqiba said: Choking applies. There are two Tanaim who differ concerning R. Aqiba's statement. Our Mishna mentioned R. Simeon, who said so, in accordance with R. Aqiba's theory; but the Boraitha is in accordance with the rabbis, who are of the opinion, with R. Aqiba, that choking applies.

CHAPTER X.

RULES AND REGULATIONS CONCERNING THEM TO WHOM CHOKING APPLIES. CONCERNING A REBELLING JUDGE; WHAT SHALL BE HIS CRIME FOR WHICH HE IS TO BE EXECUTED; AT WHICH PLACE AND WITH WHICH KIND OF DEATH; AND CONCERNING A FALSE PROPHET.

MISHNA *I.*: To the following, choking applies: To him who strikes his father or mother, to him who steals a living soul of Israel, to a judge rebelling against the Great Sanhedrin, to a false prophet, to him who prophesies in the name of an idol, to the paramour of a married woman, and to the collusive witnesses of the married daughter of a priest who has sinned, and to her abuser.

GEMARA: Whence do we know that choking applies to the smiter of his father or mother? From [Ex. xxi. 15]: "Put to death"; and wherever the Scripture mentions death without specifying what kind, choking is meant. But perhaps the verse cited means "when he kills him or her"? How can it be supposed if one who kills a stranger is executed by the sword, that he who kills his father should be executed by choking, which is more lenient? However, this is correct according to him who holds that choking is lenient; but according to him who holds that the sword is lenient, what can be said? Therefore, from [ibid., ibid. 12]: "He that smiteth a man so that he die," and from [Num. xxxv. 21]: "Smitten with his hand that he die," we infer that when it is not mentioned "that he die," it means smitten only. And it was necessary for the Scripture to write both of the following passages, namely [Ex. xxi. 12]: "He that smiteth a man so that he die," and [Num. xxxv. 30]: "Whoever it be that killeth a person (soul)," for if the first only were written, one might say that one is liable only when he kills an adult, but not a minor; and if the second only were written, one might say that one is liable even if he killed a miscarried child or one who was born in the eighth month, and therefore both are necessary.

But from the above theory it is to be understood that if one smote his father he is guilty of a capital crime even if he did not

wound him. Why, then, does the succeeding Mishna state that he is *not* guilty unless he wounds him? This is inferred from [Lev. xxiv. 21]: "And he that smiteth a beast shall make restitution for it, and he that smiteth a man shall be put to death."* As concerning a beast the striker is not liable unless he makes a wound, as in *ibid.* 18 it reads "nefesh" (soul, blood of it), the same is the case if he smote a person—he is not guilty unless he made a wound. R. Jeremiah opposed: According to this theory, if one has made lean an animal by using it to carry stones, should he not be responsible? Therefore we must say, as verse 30 is not necessary for this case, because of verse 18, apply it to human life. If so, why the analogy? In accordance with what was taught by the school of Hiskia (above, p. 233). But this is only correct for him who agrees with the school of Hiskia. But for him who does not agree with this theory, to what purpose is the analogy? To teach that, as there is no liability if one wounds an animal for the purpose of curing it, the same is the case with a human being. A similar question was propounded by the schoolmen: May one bleed his father to cure him? R. Mathna said: From "Thou shalt love thy neighbor as thyself" it may be inferred that he may. And R. Dimi b. Henna said: It is inferred from the analogy just mentioned. As there is no liability for wounding an animal to cure, the same is the case with a human being. Rabh did not allow his son to take out a string from his finger, lest he might wound him unintentionally, which is prohibited for one to do to his father; and Mar b. Rabhina did not allow his son to open for him a wound, for the same reason.

R. Shesheth was questioned: May a son be a messenger from the court to punish his father with stripes, or to put him under the ban?† Said Rabba b. R. Huna: And so also was it taught by the school of R. Ismael: Concerning all the crimes mentioned in the Torah, the court must not appoint the son of the criminal to strike, to curse his father, etc., except in the case of a seducer, about whom it reads [Deut. xiii. 9]: "Nor shall thy eye look with pity on him," etc.

MISHNA II.: A son is not guilty of a capital crime unless he wounds his father by striking him. Cursing is in one respect

* Lesser's translation does not correspond.

† A discussion at length about this matter is omitted from the text, as most of the objections and answers are already translated, or will be translated in their proper places. Here, however, it is of no importance at all, as the question is solved by Rabba without any objection or opposition.

more rigorous than striking, as for the latter one is guilty when done to his living father only, and for the former he is guilty even if he did it after his father's death.

GEMARA: The rabbis taught: It reads [Lev. xx. 9]: "His father and mother has he cursed," which means even after his death. And this is repeated only for this purpose, lest one say that one is guilty for striking his father and for cursing him. Hence, as the former applies to a living father only, the same is the case with the latter. But this is correct only for R. Jonathan, as according to him the verse just cited is superfluous; but for R. Jashiah, who uses this verse for inferring father *or* mother (above p. 192), whence does he deduce the above statement? From [Ex. xxi. 17]: "And he that curseth his father," etc. But let the Mishna state that in another respect striking is more rigorous than cursing, as concerning the former one is guilty if he did so to his father even if he were of another faith, which is not the case with cursing (according to the opinion of some Tanaim). The Tana of our Mishna holds that cursing is compared to striking even in the latter case; *i.e.*, one is also guilty if he curses his father who is of another faith.

Shall we assume that the Tanaim of our Mishna differ in the same way as the Tanaim of the following Boraithas, one of which states: If one's father was a Samaritan, he is forewarned against striking him, but not against cursing; and the other states: He is forewarned neither against striking nor against cursing? The schoolmen who learned these Boraithas thought: Both Boraithas agree that at the beginning the Samaritans were true proselytes (this refers to II. Kings, vii. 23-34), but at that time they were decadent. Hence the point of their difference is that, according to one Boraitha, striking is equal to cursing, and according to the other it is not? Nay! All agree that they are not equal, consequently the point of their difference is, whether the ancient Samaritans were true proselytes, or only embraced Judaism from fear of the lions. Hence they were not considered Israelites at all, but heathens.

MISHNA III.: If one steals a person, he is not guilty of a capital crime, unless he brings him upon his own premises. R. Jehudah, however, said: One is not guilty for only bringing him upon his premises, but after he used him for work. As it reads [Deut. xxiv. 7]: "And he treateth him as a slave."

If one steals his own son and sells him, R. Ismael, the son of R. Johanan b. Beroka, makes him guilty; the sages, however, free

him. If one steals a person who is half free and half slave, *i.e.*, a slave of two owners, one of whom has freed him, R. Jehudah makes him guilty, and the sages free him.

GEMARA: And the first Tana of our Mishna does not require any work (notwithstanding that so it is written in the Scripture)? Said R. Ahbah b. Rabha: They differ if he worked with him to the value of less than a perutha. (According to the first Tana he is guilty, and according to R. Ismael he is not.)

R. Jeremiah questioned: How is the law if one steals a person while asleep and sells him in this condition, or if he stole a pregnant woman for the purpose of selling her embryo, is it considered treating as a slave, or, because he has not done it in the usual manner, is it not so considered? Usual manner! Let him say that there was not any kind of slavery at all? He speaks of when he used the sleeping one as a support and the pregnant woman as a protection against the wind (and as she is more stout because of the embryo, the protection is stronger). And to this was the question: "Is it considered slavery, or, because it was in an unusual manner, is it not? This question is now decided.

The rabbis taught: It reads [Deut. xxiv. 7]: "If a man be found stealing any one of his brethren of the children of Israel." From this we know only concerning a male, but whence do we know concerning the stealing of a female? It reads [Ex. xxi. 16]: "And he that stealeth a man—whatsoever. However, from both verses we know about a man who stole either a male or a female. But whence do we know that the same is the case when a woman steals a male or female? As to this, it reads in the verse above cited: "Then shall that thief die," meaning what person soever.

There is another Boraitha: The verse just cited means that there is no difference whether he stole a male or a female, a proselyte, or a bondsman who was freed, or a minor. However, if he stole him and did not sell him, or even if he sold him, but he is still on his own premises, he is not condemned to capital punishment. If he sold him to the father or brother of the stolen one, or to some one else of his relatives, capital punishment does apply. However, for stealing slaves it does not. This Boraitha was repeated by one of the disciples before R. Shesheth, and he rejoined: I teach: R. Simeon said: It reads: "From his brethren," which means that he is not guilty unless he took him out from the control of his brother. And you teach: He is guilty of a capital crime if he sold him to his father or brother.

Go and teach that he is free. (Says the Gemara :) And what is the difficulty? Why not say that the Boraitha is in accordance with the rabbis? This cannot be supposed, as there is a rule that all the anonymous Mishnayoth are in accordance with R. Mair, anonymous Toseptas in accordance with R. Nehemiah, anonymous Siphra in accordance with R. Jehudah, and anonymous Siphri in accordance with R. Simeon. And all of them are after R. Aqiba's instructions. And the Boraitha above cited is to be found in Siphri.

"If one stole his own son," etc. What is the reason of the rabbis, who free him? Said Abayi: It reads [Deut. xxiv. 7]: "If a man be found 'stealing,'" which means to exclude him who is often with him. Said R. Papa to Abayi: According to your theory [ibid. xxii. 22]: "If a man be found lying with a woman," etc., is also to be explained to exclude him who is often with her; *e.g.*, in the house of so and so, which is crowded, and men and women are often together—should one not be liable for adultery? And he answered: I call your attention to [Ex. xxi. 16]: "And he will be found in his hand" (which is not the case with a father, whose son is usually in his hand). Said Rabha: According to this theory, teachers of schoolchildren and masters with their disciples are considered often together, and if it happened that one of the masters stole one of the children, he is free from capital punishment.

"Half a slave," etc. There is a Mishna (First Gate, p. 193): R. Jehudah says that there is no disgrace for slaves. And ibid. 195 (*q.v.*), the reason of R. Jehudah is given from [Deut. xxv. 11]. However, what would be his reason here? Thus: "From his brethren" means to exclude slaves; "children of Israel" means to exclude a half slave; "of the children of Israel" means again an exclusion, and means to exclude the same. And there is a rule that an exclusion after an exclusion comes to add. Hence a person who is half slave and half free is added to those for whom guilt is incurred. The rabbis do not hold his theory that "of his brethren" means to exclude slaves, as a slave is also considered a brother who is obliged to perform all the commandments which are obligatory on a woman. Hence, according to them, "children of Israel" means to exclude a slave, and "of the children of Israel" means to exclude half a slave and half a free man. But whence do we know about the forewarning of stealing a person of Israel? According to R. Jashiah: From [Ex. xx. 13]: "Thou shalt not steal." And according to R.

Johanan: From [Lev. xxv. 42]: "They shall not be sold as bondmen are sold." And they do not differ, as one master counts the negative commandment of stealing, and the other the negative commandment of selling.

The rabbis taught: "Thou shalt not steal," in the third commandment, means human beings. But perhaps it means simply money? It may be said: Go and learn it from the thirteen methods by which the Torah is to be explained, one of which is that a word or (passage) is to be explained from its connection or from what follows,* and as the connection of this passage speaks of human beings, you must explain also that "stealing" applies to human beings. There is another Boraitha: It reads [Lev. xix. 11]: "Ye shalt not steal," meaning money. You say money, but perhaps it means human beings? Go and learn it from the thirteen methods, etc., one of which is that a word or (passage) is to be explained from what follows. And as the continuation of this passage is concerning money [ibid. 13], so also stealing is to be explained as meaning money.

It was taught: If there were two parties of witnesses, and one party testified that one stole a human being and the other testified that he sold him, and thereafter one of the parties, or both, were found collusive, they are not to be put to death, according to Hiskia. According to R. Johanan, however, they are. Hiskia's reason is that he holds in accordance with R. Aqiba, who used to say (Last Gate, p. 135): A case, but not half a case. And R. Johanan is in accordance with the rabbis, who said: Even for half a case. R. Papa, however, said, concerning the witnesses of selling: All agree that they are to be put to death. But the point of their difference is concerning the witnesses of the stealing. According to Hiskia they are not to be put to death, because stealing and selling are two separate crimes. R. Johanan, however, is of the opinion that the stealing is the beginning of the selling. The latter, however, agrees that the first witnesses concerning a stubborn and rebellious son are not to be put to death if found collusive, as they could say: Our intention was only that he should be punished with stripes, as it is said above that the son in question is not put to death unless he first received stripes.

Said Abayi: There are three cases concerning a stubborn and

* "We refer the reader for the real meaning of this method to Mielziner's "Introduction to the Talmud" (par. No. 50 of page 174).

rebellious son. In two of them all agree, and in one of them they differ. Namely, concerning the first witnesses in this case, all agree that they are not to be put to death if collusive, as they could say: Our intention was only that he should receive stripes. And their claim must be taken into consideration. And also all agree concerning the second witnesses of same, that they are to be put to death, as the first witnesses are considered as concerning stripes only. Hence the second witnesses only would be the cause of death to the criminal son, if they were not collusive; and they have done the whole case even according to R. Aqiba, who requires the whole, and not half a case.

And the third case in which they differ is, if there were two parties of witnesses, one of which testifies: "In our presence he stole," and the other testified: "In our presence he consumed." And as the law regarding the criminal son dictates that he is not to be put to death unless he stole from his father and consumed on the premises of strangers, both things depend on each other. Hence according to R. Aqiba each of the parties has done only half a case. And if one or both were found collusive, they cannot be put to death for half a case; and according to the rabbis they can, as they make one guilty for half a case.

MISHNA IV.: A judge rebelling against the Great Sanhedrin (to whom, as stated in the first Mishna of this chapter, chok-ing applies) is commanded in the Scripture as in Deut. xvii. 8-13. There were in Jerusalem (at the time of the Temple) three courts: one was situated at the gate of the Temple Mount (this was the east gate, inside of the surrounding wall, preceding the women's court); and another was situated after the women's court, but preceding the court of the common Israelites; and the third one was situated in the Temple treasury for congregational sacrifices. And in case a judge in the country had a dispute about the law with his colleagues, as to which the Scripture commands to bring their case before the court in Jerusalem, they came to the first court, situated at the above-mentioned gate. And the judge in question related his case before the court: I have lectured thus and thus, and my colleagues have lectured otherwise—thus and thus. I have taught in accordance with my lecture so and so, and my colleagues so and so. And if this court were able to decide it traditionally, they rendered their decision; and if not, they came before the other court, explaining the same again. If this court were able to decide it traditionally, they rendered their decision; and if not, all of them came to the Great Sanhedrin,

which was in the Temple treasury, from which the law proceeds to all Israel, wherever found. As it reads [ibid., ibid. 10]: "From that place which the Lord will choose, and thou shalt observe to do according to all that may instruct thee." Then if the judge returns to his own city and continues his lectures as before, he is not culpable. If, however, he gives his decision for practice, he is subject to capital punishment. As it reads [ibid., ibid. 12]: "And the man that will act presumptuously," etc., which means that he is not culpable unless he decides for practice.

A disciple who is not a judge, who decides for practice against the decision of the Great Sanhedrin, is not culpable. Hence the rigorousness which lies upon him, not to give his decision in any law (until he shall be forty years of age), becomes lenient concerning the punishment.

GEMARA: The rabbis taught: It reads [ibid., ibid. 8]: "khi j'pola," literally, "if it will wonder." Hence the passage speaks of the wonder (prime) judge of the courts. "*Mimcho*"—"from thee," means a counsellor. As it reads [Nahum, i. 11]: "There is gone forth (mimcho) out of thee he that devised evil against the Lord, the counsellor of infamous things." "Dabhor"—"a matter," means a Halakha; L'michphat means a decision of money matters. "Between blood and blood" means blood of menstruation and the blood of purification after birth (referring to Lev. xii. 4) or blood of infliction. "Between plea and plea" means criminal and civil cases and cases of stripes; "Between lepers and lepers"—bodily leprosy, leprosy of houses, of dress, etc.; "matters"—excommunications, appraisement of things belonging to the sanctuary; "controversy"—a thing which came from a controversy between a husband and wife (ref. to Num. v. 11-25); breaking the neck of the heifer (Deut. xxi.)—the purification of men who were afflicted with leprosy; "within thy gates"—about gathering grain of the poor, forgetters of sheaves and peah (corner tithe); "shalt thou arise"—from thy court. "Get thee up"—infer from this that the Temple was the highest building in all Jerusalem, and the land of Israel was situated higher than all other countries. "Unto the place"—infer from this that the place is the cause of the situation of the high court.

The rabbis taught: A rebelling judge is not guilty unless he gave his decision in a matter to which, if done intentionally, korath applies; and if unintentionally, a sin-offering. So is the decree of R. Mair R. Jehudah said: As to a matter of which the source is to be found in the Scripture, and the interpretation is

by the scribes. R. Simeon, however, maintains: Even as to one observation of the many observations of the scribes.

Said R. Huna b. Hinna to Rabha: Can you explain to me this Boraitha which has enumerated all the cases inferred from Deut. xvii. 8, in accordance with R. Mair's decree? And Rabha said to R. Papa: Go and explain it to him. And he explained thus: The Boraitha which states a counsellor, means him who is able to establish leap years and to appoint the days of the month. And a difference of opinions may cause the eating of leavened bread on Passover; namely, according to some a leap year may be established during the whole month of Adar, and according to others only until Purim. Hence if the law is in accordance with one of them, and it was done to the contrary, people would eat leaven on Passover. The Halakha which is mentioned in the same Boraitha means the difference of opinion between R. Johanan and Resh Lakish concerning the tenth day of menstruation—whether it is still to be counted menstruation blood or of infliction (explained in Tract Nidda, 72b). Criminal cases means the case concerning the daughter of a coercer mentioned above. Concerning blood of menstruation, Akabia b. Mahalalel and the rabbis differ (Nidda, 19a). Concerning blood of purification, Rabh and Levi differ (ibid. 35b). Concerning blood of infliction, R. Eliezer and R. Jehoshua differ (ibid. 36b). Concerning civil cases, Samuel and R. Abuhu differ (above, p. 7). Concerning criminal cases, Rabbi and the rabbis differ (above, p. 3); stripes, R. Ismael and the rabbis differ (in the first Mishna of this tract); leprosies, R. Jehoshua and the rabbis differ (Nidda, 19b); leprosy of houses, R. Elazar b. Simeon and the rabbis differ (above, p. 4); leprosy of dresses, Jonathan b. Abtulmes and the rabbis (Nidda, 19a); appraisement of men, R. Mair and the rabbis (Arachin, 5a); ex-communications, Jehudah b. Bathyra and the rabbis (ibid. 28b); sanctification, Eliezer b. Jacob and the rabbis (above, p. 32); controversies concerning a woman who is suspected by her husband, R. Eliezer and R. Jehoshua (Sota, 2a); breaking the neck of the heifer, R. Eliezer and R. Aqiba (ibid. 45b); purification of leprosy, R. Simeon and the rabbis (above, p. 137); gathering, the schools of Shamai and Hillel (Tract Negaim, XIV. 9); forgotten sheaves (the same, ibid., ibid.); peah, R. Ismael and the rabbis (Themura, 6a). (And of all of them, the sources are in the Scripture and the explanation is by the scribes.)

"*There were three courts,*" etc. Said R. Kahana: If he says, "I have it from a tradition," and they (the Great Sanhedrin) also

say the same, he is not put to death. And the same is the case if he says: So is it according to my opinion; and they also say: According to our opinion. And so much the more if he says: I have it from a tradition; and they say: So is it according to our opinion. And only when they say: We have it from a tradition; and he says: According to my opinion it is the contrary—then (if he gives his decision for practice) he is put to death. And an evidence in support of this is that Akabia b. Mehalalel, who decided against the Great Sanhedrin, was not killed. R. Elazar, however, maintains that even if he says, "I have it from a tradition," and they say, "So it is according to our opinion," he is put to death, for the reason that quarrels should not increase in Israel. And your evidence from Akabia b. Mehalalel does not hold good, as he was not killed because his decision was not for practice. An objection was raised from our Mishna: I have lectured, etc. Does not the latter expression mean that he taught so from a tradition? Nay! "I taught so because of my opinion, and they taught so from a tradition."

Come and hear another objection: R. Jashiah said: The following three things I was told by Zeerah, one of the citizens of Jerusalem: A husband who has sacrificed his claim against his wife, it is considered (and his wife is not to be brought to the court); and the same is the case if the parents of a stubborn and rebellious son have sacrificed their claim; and the same is it also if the high court were willing to sacrifice their honor in the case of a rebelling judge. And when I came to my brethren in the South, they yielded to me concerning the first two, but not concerning the third—for the reason that quarrels should not be increased in Israel. Hence the reason as to a rebelling judge is not to increase quarrel, and there is no difference whether he says, "I have it from a tradition" or "from my own opinion." This objection remains.

There is a Boraitha: R. Jose said: Formerly there was no quarrel in Israel, but a court of seventy-one was situated in the Temple treasury, and two courts of twenty-three sat at the gate of the Temple Mount and at the gate of the common Israelites; and the same courts of twenty-three were established in every city of Israel; and if there was a matter of difference concerning which it was necessary to inquire, they used to bring it before the court of their own city. And if they were able to decide from a tradition, they did so; and if not, they brought it to the court of a near-by city; and if also they could not decide it, they brought

it before the court which was at the gate of the Temple Mount, and thereafter to that of the common Israelite, and he related to them : So have I lectured, etc., and so have I taught, etc. And if they had any tradition concerning this, they explained it ; and if not, all of them came before the court of the Temple treasury, in which the judges sat from the morning daily offering until that of the evening on week days. And on Sabbaths and on holidays they used to take their place in the chamber of the surrounding wall, and the question was laid before them. If they could decide it, they did so ; and if not, they stood up to vote, and their decision was according to the majority. However, since the disciples of Shamai and Hillel who had not accomplished their study increased in number, quarrels were increased in Israel, and it seemed as if the law came from two different lawgivers.

From the court of the Great Sanhedrin they used to write and send to all the cities of Israel : Whosoever is wise, modest, and is liked in the eyes of his people may be a judge in his own city. And thereafter, if he deserved it, he was advanced to the court at the gate of the Temple Mount ; and farther on, until he reached to be a member in the court of the Temple treasury.

A message was sent from Palestine : Who is the man who has surely a share in the world to come ? He who is modest, bends his head when he goes in, and the same when he goes out ; is always studying the Torah, and does not become proud thereof. And the rabbis gave their attention to R. Ula b. Abba (who possessed all these qualifications).

"Returned to his own city," etc. The rabbis taught : He is not guilty unless he himself practised according to his decision ; or, he decided so for others, and they practised. It is correct when he so decided for others, etc., as if he did so before he was not subject to a capital punishment. But if he himself has done according to his decision, he is guilty even before he goes to the higher courts ? Previously, if he gave a good reason for his decision, it would be accepted ; but after he came from the court, no longer is any reason accepted.

MISHNA V. : The punishment of him who transgresses the decision of the scribes is more rigorous than for that which is plainly written in the Scriptures, *e.g.*, if one says, "I do not see any commandment in the Torah about tephyllin (phylacteries)," with the intention of transgressing that which is written concerning them (*i.e.*, giving another interpretation to Deut. vi. 8, etc.), he is free. However, if he (the rebelling judge) should

decide that the phylacteries must contain five Totaphoth (portions), instead of the four enacted by the scribes, he is guilty.

GEMARA: Said R. Elazar in the name of R. Oshia: One is not considered a rebelling judge unless he decides upon a thing the sources of which are in the Scripture and the explanation is by the scribes, and there is something to add. However, if it is added, it harms the whole matter; and we cannot find such a thing in the whole Scripture but phylacteries, according to E. Jehudah (who maintains the four portions in question are to be attached one to the other*).

MISHNA *V.*: (The judge in question) was not put to death by the court of his own city, and also not by the court of the great Sanhedrin which was established temporarily in the city of Jamnia, but was brought to the supreme council in Jerusalem, kept in prison until the feast days, and executed on one of the feast days. As it reads [Deut. xvii. 13]: "And all the people shall hear and be afraid." So R. Aqiba. R. Jehudah, however, maintains that he must not be tortured by postponing the execution, but must be put to death immediately after being sentenced; and messengers were sent out to all the inhabitants of Israel that the judge so and so was sentenced and executed by the court for such and such a crime.

GEMARA: The rabbis taught concerning what was said by R. Aqiba mentioned in our Mishna: R. Jehudah rejoined: Does the Scripture read: "The people shall see and be afraid?" It reads: "They shall *hear* and be afraid." Why, then, should

* For the explanation of this passage we published a book, "Ursprung und Entwicklung des Phylacterien Ritus bei den Juden" (Pressburg, 1883), in which it is explained thoroughly. It is remarkable that the chief commentator of the Talmud (Rashi) does not give any sensible explanation hereon, other than that he dislikes the interpretation mentioned in our text in parentheses, and he would say that the expression, "according to R. Jehudah," means what was said by him elsewhere—that one is not guilty unless the matter discussed contains a study which relies upon the teaching of the sages how to practise. Thosphat remarks that R. Oshia, the author of this saying, ignores all that was inferred from Deut. xvii. 8, said above, without any other explanation. All the other commentators, however, keep silent.

Our book, mentioned above, is written in the language of the Talmud, and the very essence of this strange passage is that this Mishna was written after the Jewish Christians began to add to the four portions of the Scripture (viz.: Ex. xiii. 1-10; *ibid.*, *ibid.* 11-17; Deut. vi. 4-9; and *ibid.* xi. 13-21) the first portion of John in the New Testament. For the sources from which we establish that so was the custom of the Jewish Christians in the first centuries, A.C., we refer to the above-mentioned book, and also to our little book, "The History of Amulets, Charms, and Talismans," published in English (New York, 1893).

this man be tortured? Therefore I say that he is executed immediately, and messengers are sent out to notify the people.

The rabbis taught: The following four crimes must be heralded—of a seducer, a stubborn and rebellious son, a rebelling judge, and collusive witnesses. Concerning the first three it reads: "All the people of Israel (shall hear and be afraid)." And concerning collusive witnesses it reads [Deut. xix. 20]: "And those who *remain* shall hear"—because not all of Israel are qualified to be witnesses.

MISHNA VI.: A false prophet who is to be sentenced by the court is only he who prophesies what he (*personally*) has not heard and what he was not told at all. However, he who does not proclaim what he was told to do, or did not listen to another prophet, or he who acted against what he himself was instructed by Heaven, his death depends upon Heaven. As it reads [ibid. xviii. 19]: "I will require it from him."

He who prophesied in the name of an idol, saying, "So and so was said by such and such an idol," although it corresponds exactly with the Hebrew law, he is punished by choking. The same was the case with him who had intercourse with a married woman, as soon as she comes under the control of her husband, even before she has had intercourse with him. The same punishment applies to the collusive witnesses of the married daughter of a priest, and also to her abuser, there is a difference between this case and all other cases of collusive witnesses, who are to be punished with the same death which would apply to the accused if it were true; and also between the adulterer in this case and other adulterers to whom the death of those abused applies.

GEMARA: The rabbis taught: Concerning prophecy, there are three who are to be sentenced by the court; viz., he who prophesies what he has not heard, he who prophesies what was not said to him, and he who prophesies in the name of an idol. And there are three whose death is by Heaven; viz., he who does not proclaim his prophecy, he who acts against what he was told by another prophet, and he who acts against his own prophecy.

Whence is this deduced? Said R. Jehudah in the name of Rabh: It reads [Deut. xviii. 20]: "But the prophet who may presume to speak a word in my name" means him who has prophesied what he has not heard; "which I have not commanded *him*"—although it was commanded to his colleague. "Or who may speak in the name of other gods" means in the name of any

idol. "That prophet shall die" means by choking, as choking applies to all the deaths which are mentioned in the Scriptures without specifying which. And the other three above mentioned are inferred from the preceding verse [19]: "A man who will not hearken," etc.—which is to be understood both of him who does not make the people hear it and him who himself does not listen to it—which ends: "I will require it of him." (Now the illustrations.) He who prophesies what he has not heard—*e.g.*, Zedekiah ben Kenaanah, of whom it is written [II. Chron. xviii. 10]: "Made himself horns of iron," etc. But why was he guilty? Did not the spirit of Naboth make him err? As it reads [*ibid.*, *ibid.* 19 to 21]: "And the Lord said, Who will persuade Achab, the king of Israel, that he may go up and fall at Ramoth-gilead? And one spake saying after this manner, and another saying after that manner. Then came forth a spirit, and placed himself before the Lord, and said, I will persuade him. And the Lord said unto him, Wherewith? And he said, I will go forth and I will become a lying spirit in the mouth of all his prophets. And he said, Thou shalt persuade him, and also prevail; go forth and do so." And to the question: What spirit? R. Johanan said: The spirit of Naboth Haisraeli. And what is meant by "go forth"? R. Jehudah said: Go outside of the fence of my glory (as a liar must not remain in it, hence it was not Zedekiah's fault, as he was deceived by the spirit)? He ought to have given his attention to what was said by R. Itz'hak: The sense of a divine oracle is given by Heaven to many prophets equally; the language, however, by the prophets cannot be identical even in two of them, as each prophet expresses it in his own language—*e.g.* [Jer. xlix. 16]: "Thy hastiness hath deceived thee—the presumption of thy heart"; and [Ob. i. 3]: "The presumption of thy heart hath beguiled thee." Here, however, it reads [II. Chron. xviii. 11]: "And *all* the prophets so prophesied, saying, Go up against Ramoth-gilead," etc. Hence, as all prophesied in identical language, he ought to have known that it was not a true prophecy. But perhaps Zedekiah did not know what was said by R. Itz'hak? There was Jehoshaphat, who told him that. As it reads [*ibid.*, *ibid.* 6]: "Is there not a prophet of the Eternal besides?" And to the question of Achab: Are not all these, who prophesy in the name of the Lord, sufficient? Jehoshaphat answered: I have a tradition from my grandfather's house that the sense of a divine oracle is given by Heaven, etc. And here I hear the same version from all of them. He who prophesies

what was not said to him—*e.g.*, Chananyah ben Azzur, who said [Jer. xxviii. 2]: "Thus hath said the Lord . . . I have broken the yoke." And this was only by an *a fortiori* conclusion, drawn from what was said by Jeremiah [ibid. 49]: "Thus hath said the Lord . . . behold, I will break the bow of Elam." And his *a fortiori* conclusion was thus: Elam, who came only to assist the king of Babylon, should be broken; the king of Babylon, who himself came to destroy the kingdom of Judah, so much the more should be broken. [Said R. Papa to Abayi: But this illustration does not correspond, as such a prophecy was not given to any one? And he answered: For if such an *a fortiori* conclusion were to be drawn, it is equal to its having been said to some one else; however, it was not said to him directly.] He who prophesied in the name of an idol—*e.g.*, the prophets of Baal. He who does not proclaim the prophecy—*e.g.*, Jonah b. Amitthai. He who does not listen to what he was told by another prophet—*e.g.*, the colleague of Michah; as its reads [I. Kings, xx. 35, 36]: "And a certain man of the sons of the prophets said unto his companion, by the word of the Lord, Smite me, I pray thee. But the man refused to smite. Then said he unto him, Forasmuch as thou hast not obeyed the voice of the Lord . . ." And a prophet who acted against that wherein he himself was instructed by Heaven—*e.g.*, Edah the prophet, of whom it is written [ibid. xiii. 9]: "For so was it charged me by the word of the Lord"; and [ibid., ibid. 18]: "And he said unto him, I also am a prophet like thee." And farther on it is written [19]: "So he returned with him," ending [34]: "And when he was gone, a lion met him on the way and slew him." [A disciple taught in the presence of R. Hisda: He who does not proclaim the prophecy he was told has to receive stripes. And R. Hisda said to him: Should one who ate dates from a sieve receive stripes? Who warned him? And Abayi said: His colleagues, the prophets. And whence did they know this? Said Abayi: From [Amos, iii. 7]: "For the Lord Eternal will do nothing, unless he have revealed his secret unto his servants the prophets." But perhaps the decree was changed by Heaven? If it were so, all the prophets would be notified. But was not such the case with Jonah, who was not notified that the decree was changed? There was the prophecy: Nineveh will be overthrown, which had two meanings, to be destroyed, and also to be turned over from evil to righteousness, and he did not understand the real meaning. "Who does not listen to another prophet." But whence is one

aware that he is a true prophet, that he should be punished? In case he gives him a sign. But was not Michah, who was punished for not listening to the prophet (as said above), although he did not give any sign? With him who has long been recognized as a true prophet it is different. For if the case were not so, how could Isaac have trusted his father that his prophecy was a true one, since such a commandment was never before heard, and also no sign was given by Abraham. And also, how could they rely upon Elijah, who commanded them to sacrifice outside of Jerusalem, which was prohibited by the Scripture? Hence, because they were recognized prophets, one must listen to them in any event.*

The rabbis taught, concerning what was taught by rabbis (above, p. 151) as to a prophet who had misled, to whom stoning applies according to the rabbis, and choking according to R. Simeon: Said R. Hisda: The point of their difference is in case one removed the whole portion of the Scripture concerning idolatry, saying: I was so commanded by Heaven. Or even if he said: To perform some of its worship and to abolish the rest. But if he removed a portion which speaks concerning other commandments, all agree that choking applies. And if he told to perform some of them and abolish the others, he is free according to all. R. Hamnuna, however, said: The point of their difference is if he removed a portion of any commandment, be it concerning idolatry or some other; and also in performing some worship of idolatry and abolishing the rest. As it reads: "From the way"—which means even a part of it. But if he prophesied as to performing some of the commandments and abolishing the others, all agree that he is free.

The rabbis taught: If one commands by prophecy to remove a commandment from the Scripture, he is guilty; but if to abolish some of it, and perform the remainder, R. Simeon frees him. However, concerning idolatry, even if he commands "To-day worship," and on the morrow to abolish it, all agree that he is guilty. Hence it contradicts the explanations of both R. Hisda and R. Hamnuna? Abayi, who holds with R. Hisda, explained the Boraitha just cited: According to his theory—viz., if one commands by prophecy to remove a commandment from the Scripture—all agree that he is to be choked. "As to performing some," etc., R. Simeon makes him free, and the same do the

* Here are also some Haggadas, which we transfer to the Haggadic chapter.

rabbis. But concerning idolatry, even if he said: "To-day worship," and on the morrow to abolish, he is subject to a capital punishment—according to the rabbis by stoning, and according to R. Simeon by choking. Rabha, however, who holds with R. Hamnuna, explains according to his theory thus: He who commands by prophecy to remove, etc., either concerning idolatry or some other commandment, is subject to a capital punishment—each of the masters according to his opinion. "As to performing some," etc., R. Simeon makes him free, and so also do the rabbis. Concerning idolatry, however, even if he says: "To-day," etc., he is guilty accordingly—each of the masters according to his opinion.

R. Abuhu in the name of R. Johanan said: In every case mentioned in the Torah, if a true prophet commands you to transgress, you may listen, except as to idolatry, when you must not listen, even if he were to stop the sun for you, as was done by Joshua.

R. Jose the Galilean said: "There is a Boraitha: The Torah foreshadowed the final mind of idolatry and therefore gave force to it, for the purpose that one should not listen to him who commands to commit it, even if he were to stop the sun for him in the middle of the sky. Said R. Aqiba: God forbid that the sun should be stopped for them who are acting against His will. But it means even, *e.g.*, Hananiah b. Azzur, who was a true prophet when he began to prophesy, and became a false one only afterwards.

"*Collusive witnesses of the married daughter of a priest,*" etc. Whence is this deduced? Said Abhah b. R. Ika: From the following Boraitha: R. Jose said: Why is it written: "Then shall ye do unto him . . . unto his brother." (Would it not be sufficient if it should read: "As he purposed to do"?) Because all who are to be put to death biblically, their collusive witnesses and their abusers are punished with the same, except in the case of the married daughter of a priest, where she is to be burned, but not her abuser, who is to be choked. However, concerning her collusive witnesses, it would not be known whether they were to be equalized to him or to her? Therefore the expression, "unto his brother," which means, not unto his sister.

END OF TRACT SANHEDRIN, PART I. (HALAKHA),
AND OF VOL. VII. (XV.).

VOLUME VIII. (XVI.)—TRACT SANHEDRIN.

PART II.—(HAGGADA.)

CHAPTER XI.

THE HAGGADIC PART ABOUT RESURRECTION ; SHARES IN THE WORLD TO COME ;
AND ABOUT THE MESSIAH, ETC.

MISHNA I. : All Israel has a share in the world to come. As it reads [Is. lx. 21] : " And thy people—they will all be righteous, for ever shall they possess the land, the sprout of my planting, the work of my hands, that I may glorify myself." The following have no share in the world to come : He who says that there is no allusion in the Torah concerning resurrection, and he who says that the Torah was not given by Heaven, and a follower of Epicurus R. Aqiba added, him who reads books of the Hizzunim and him who mumbles over a wound, reciting the verse [Ex. xv. 26] : " I will put none of those diseases upon thee, which I have brought upon the Egyptians ; for I the Lord am thy physician." Abba Shaül said : Also he who speaks out the Holy Name with its vocals.* Three kings and four commoners have no share in the world to come. The three kings are Jeroboam, Achab, and Menasseh. R. Jehudah, however, said : Menasseh has a share in the world to come. As it reads [II. Chron. xxxiii. 13] : " And he prayed unto him and he permitted himself to be entreated by him, and heard his supplication and brought him back to Jerusalem unto his kingdom." And he was answered : He was returned to his kingdom, but not to the world to come. The four commoners are Bileam, Doeg, Achitopel, and Gchazi.

GEMARA : Is he who does not believe that the resurrection is hinted at in the Torah such a criminal that he loses his share in the world to come? It was taught : He denies resurrection, therefore he will not have a share in it, as punishment corresponds to the deed ; for all retributions of the Holy One, blessed

* The explanation of this term, with a difference, is found in the Gemara farther on. It is prohibited to mention the name of Jehovah as it is written, and we read it with the expression " Adonay." See a footnote in Chapter VII. We have to add thereto, that none of the Jews—not even the reformers of that time—dared to mention this Holy Name as it is written, and wherever it was mentioned they read it " Adonay."

be He, are in correspondence with man's doing. And R. Samuel b. Na'hmani in the name of R. Jonathan said: Whence do we know that so it is? From [II. Kings, vii. 1, 2]: "Then said Elisha, Hear ye the word of the Lord: Thus hath said the Lord, About this time to-morrow a seah of fine flour shall be sold for a shekel, and two seahs of barley for a shekel, in the gate of Samaria. Then answered the lord of the king, on whose hand he used to lean, the man of God, and said, Behold will the Lord make windows in the heavens, that this thing shall be? And he said, Behold, thou shall see it with thy eyes, but thereof shalt thou not eat." And this chapter ends [ibid. 20]: "And it happened unto him so; for the people trod him down in the gate and he died." But perhaps this was because Elisha cautioned him? As R. Jehudah in the name of Rabh said: If a sage cautions some one, even if the one cautioned had not deserved such, it falls upon him nevertheless? If it were so, it should read: And the people trod on him and he died." Why in the *gate*? Thus because of his protest which he made at the gate.

Where is resurrection hinted at in the Torah? [It reads, Num. xviii. 28]: "And ye shall give thereof the heave-offering of the Lord to Aaron the priest." Should, then, Aaron remain alive forever? He did not even enter into the land of Israel. How, then, could Israel give him heave-offering? Infer from this that he would experience resurrection and Israel would give him heave-offering. Hence here is a hint of resurrection. The school of R. Ismael, however, taught: (Nothing is to be inferred from this,) as the words "to Aaron" mean priests who are similar to him—viz., scholar as he was. And from this it is inferred that no gift whatsoever should be given to a priest who is ignorant. Samuel b. Na'hmani in the name of R. Jonathan said: Whence do we know that one must not give heave-offering to a priest who is an ignoramus? From [II. Chron. xxxi. 4]: "To give the portion of the priests and the Levites, in order that they might hold firmly to the law of the Lord." Hence the priest who knows to hold firmly the law has a portion, but not he who is ignorant of the law. R. Johanan said that he who does so causes death to the ignorant priest. As it reads [Lev. xxii. 9]: "That they may not bear sin through it, and die therefor, if they profane it." The disciples of R. Eliezer b. Jacob taught that [ibid., ibid. 16] also applies to him who gives heave-offering to an ignoramus.

There is a Boraitha: R. Sinai said: The hint of resurrection in the Torah is to be found in [Ex. vi. 4]: "And as I did also

establish my covenant with them, to give unto them the land of Canaan." It does not read "to you" (as it should, the patriarchs of that time being already dead), but "to them"—hence this is a hint that they would be restored. The Minim questioned Rabban Gamaliel: Whence do you deduce that the Holy One, blessed be He, would restore the dead? And he answered: From the Pentateuch, Prophets, and Hagiographa. However, they did not accept it. From the Pentateuch—[Deut. xxxi. 16]: "Thou shalt sleep with thy parents 've-qom,'"—"and arise."* And they answered: Perhaps this word *ve-qom* is connected with its succeeding words.

From the Prophets—[Is. xxvi. 19]: "Thy dead shall live, my dead bodies shall arise. Awake and sing, ye that dwell in the dust; for a dew on herbs is thy dew, and the earth shall cast out the departed." And they answered: Perhaps the verse cited means those dead who were restored by Ezekiel [chap. xxxvi.]. In the Hagiographa—[Solomon's Song, vii. 10]: "And thy palate like the best wine, that glided down for my friend gently, exciting the lips of those that are asleep." And they answered: This cannot be taken as an evidence, for it is not certain that "are asleep" means the dead. [(Says the Gemara:) R. Johanan, in the name of R. Simeon b. Jehozodok, used to cite this verse with his statement that if a Halakha is mentioned in the name of a dead sage the lips of the latter move (mumble) in his grave.] Thereafter, when Gamaliel mentioned to the Minim [Deut. xi.

* The translation of this verse by the translator of the Bible according to the sense does not correspond. The reason, however, of the Talmud's opinion is because it should read, "Sleep with thy father, and the people will go astray." Hence the word "arise" is superfluous. Furthermore, as it reads, "and arise," it is therefore enumerated among the five verses of which the explanation was doubtful to the most famous Tanaim of the Talmud. These verses are: Gen. iv. 7: The word "sheath," which has two meanings, "atone" and "carry" (the sin)—whether it belongs to its preceding words and the former is the meaning, or to its succeeding words and the latter is the meaning; Ex. xxv. 34: the word "almond-shaped"—whether it belongs to the candlestick or to its succeeding words; *ibid.* xvii. 9: whether the word "to-morrow," mentioned in this verse, belongs to preceding or succeeding words; Gen. xlix. 7: whether the word "cursed" ends verse 6 (at that time the verses were not as yet marked) or it is the beginning of verse 7 (explained elsewhere); and the verse in question cited, whether the word "ve-qom" belongs to the preceding or succeeding words. This was said by Issi b. Jehudah, the greatest authority among the ancient Tanaim, to whom even the word Rabban was not added, as to Hillel and Shammai. (See Passover, 236, explaining who Issi b. Jehudah was.) And after him no lesser authorities than Rabban Gamaliel and R. Jehoshua b. Chananiah interpreted this verse on the assumption that the word "ve-qom" belongs to its preceding words. Hence, in accordance with our method, we could not omit this strange supposition.

9], "And the Lord hath sworn unto your fathers to give unto them," which does not read "to ye," but "to them"—hence it is a hint of resurrection from the Torah—it was accepted. According to others he mentioned before them [Deut. iv. 4]: "But ye that did cleave unto the Lord your God are alive every one of you this day" which means, as this day every one of you is alive, so will it be in the world to come. The officers of Rome questioned R. Jehoshua b. Hananiah: Whence do you know that the Holy One, blessed be He, will restore the dead and that there is also revealed before Him all that will be in the future? And he answered: Both things are inferred from Deut. xxxi. 16, cited above. And to their answer: Perhaps the word "ve-qom" belongs to its succeeding words, he rejoined: Accept at least the half (the second question)—that there is revealed before Him all that will be in the future. The same was taught also by R. Johanan in the name of R. Simeon b. Jehai, that from this verse both the resurrection and that there is revealed before Him all that will be in the future is inferred.

There is a Boraitha: R. Eliezer b. Jose said: I have shown the falsification in the books of the Minim, who used to say that there is no hint about resurrection in the Pentateuch. And I said to them: You have falsified your Torah, but you have nothing in your hand to say that there is no hint of resurrection. Does it not read [Num. xv. 31]: "That person shall be cut off, his iniquity is upon him"? Upon him—when? Does it not mean after he shall be cut off? Hence it means even in the world to come. (Questioned the Gemara:) Above, this passage is explained by R. Aqiba and R. Ishmael. But neither of them has explained what means "his iniquity shall be upon him"? They may explain it as in the following Boraitha: Lest one say that he will be cut off even after his repentance, therefore "the iniquity is upon him" means only when it is still upon him, but if he repented it is no more upon him.

Queen Cleopatra questioned R. Mair thus: I am aware that the dead will be restored. As it reads [Ps. lxxii. 16]: "And (men) shall blossom out of the city like herbs of the earth." My question, however, is: When they shall be restored, will they be naked or dressed? And he answered: This may be drawn by an *a fortiori* conclusion from wheat. A grain of wheat which is buried naked comes out dressed in so many garments: the upright, who are buried in their dress, so much the more shall they come out dressed in many garments.

Cæsar questioned Rabbon Gamaliel : You say that the dead will be restored. Does not the corpse become dust? How, then, can dust be restored? And the daughter of Cæsar said to R. Gamaliel : Leave the question to me and I myself shall answer it. And she said (to her father) : If there were two potters in our city, of whom one should make a pot from water and the other from clay, to which of them would you give preference? And he said : Certainly to him who creates from water; for if he is able to create from water, he is undoubtedly able to create from clay. (And she said: This is an answer to your question.)

The school of R. Ismael taught : One may learn it from glass-wares, which are made by human beings, and if they break there is a remedy for them, as they can be renewed : human beings, who are created by the spirit of the Lord, so much the more shall they be renewed (restored).

There was a Min who said to R. Ami : You say that the dead will be restored. Does not the corpse become dust? How, then, can dust be restored? And he told him : I will give you a parable showing to what this thing is similar. A human king said to his servants: Go and build me a palace in such a place, where there is no earth and no water. And they did so: and after it collapsed he commanded the same to build it for him in a place where there was earth and water. And they answered: We cannot do so. And he became angry, saying: When you could build it in such a place where there was no earth and no water, ought you not to be able to build it where they are? And if you don't believe it, go into a valley and see a mouse, which is half flesh and half earth (it being believed that there is a species of mice developed from earth), and to-morrow it multiplies and becomes all flesh. And should you say that it takes much time till it becomes so, go up into the mountain, and see that to-day you cannot find even one helzun,* and on the morrow, after rain, you will find the mountains full of them.

There was another Min who said to Gebiah b. Psisa : Woe to you, wicked, who say that the dead are restored. The living die—should the dead come to life? And he answered: Woe to you, wicked, who say that the dead will not come to life. That which has not existed at all comes to life—shall those who had

* It is explained elsewhere that the color of its body is like to that of the sea, the body itself like that of a fish, and that it comes out once in seventy years, and also that with its blood the Tkheles were dyed. See also the description of it in S'hönback's Dictionary.

life once not come to life again? Said the Min to him : You call me wicked. If I arise, I will kick thee and level thy hump from off thee (drive out thy conceit). And he rejoined : If you do so, you will be a specialist physician, and you will receive a great reward.

The rabbis taught : On the twenty-fourth of Nissan the contractors of duty were taken off from Judah and Jerusalem. This was when the Africans summoned Israel before Alexander of Macedonia, claiming that the land of Canaan belonged to them. As it reads [Num. xxxiv. 2] : " The land of Canaan according to its boundaries "—and that they were the descendants of Canaan. Said Gbiah b. Psisa to the sages : Permit me, and I will appear before Alexander as advocate of the defendant Israel, and if they defeat me, say to them, " You have defeated an ignoramus among us " ; and if I defeat them, say to them, " The law of Moses has defeated you." He got this permission, and did so. Then he said to them : What is your evidence? And their answer was : From your Torah. Then said he : I in defence will also bring my evidence from the same. It reads [Gen. ix. 25] : " And he said, Cursed be Canaan ; a servant of servants shall he be unto his brethren." Now, to whom belongs the estate of a slave, if not to his master. And not this only, but I summon you before the king for the many years you have not done any service for us. And Alexander commanded them to give answer, for which they requested from him three days' time. And he gave it to them. And as they could not find any right answer at the appointed time they fled, leaving their fields, which were sown, and their vineyards, which were planted. And this year was a Sabbatical one.

It happened again that the Egyptians summoned Israel before Alexander of Macedonia, demanding from them the gold and silver which they had borrowed from them at the time of their exodus. As it reads [Ex. xii. 36] : " And the Lord hath given the people favor in the eyes of the Egyptians, so that they gave unto them what they required ; and they emptied out Egypt." And Gbiah b. Psisa requested from the sages permission to be the advocate of the defendant Israel, with the same reason mentioned above. He got this permission, and did so. Then he said to them : What is your evidence? And their answer was : From your Torah. Then said he : I in defence will also bring my evidence from the same, which reads [ibid., ibid. 40] : " Now the time of the residence of the children of Israel, which they dwelt

in Egypt, was four hundred and thirty years." Hence I demand of you the wages for the labor of six hundred thousand men whom your parents compelled to work for them all the time they were in Egypt. And Alexander decided that the Egyptians should give a proper answer—for which they requested three days' time, which was allowed to them. But they could not find a satisfactory answer, and they fled, leaving their sown fields and their planted vineyards. And also this year was a Sabbatical one.

And it happened again that the descendants of Ishmael and the descendants of Keturah summoned Israel before Alexander, claiming to have a share in the land of Canaan, as they also were descendants of Abraham. And again Gbiah b. Psisa requested for permission to be Israel's advocate, which he received. And the same question of evidence was put to them, and their answer was: From your Torah [Gen. xxv. 12 and 19], which shows that Ishmael as well as Isaac were Abraham's children. And he then also brought his evidence from the same [ibid., ibid. 5 and 6]: "And Abraham gave all that he had unto Isaac. But unto the sons of the concubines that Abraham had, Abraham gave gifts; and he sent them away from Isaac his son." Now, on a father who made a *legatum* (bequest) to his children, and separated them while he was still alive, can they have any claim thereafter!

Antoninus said to Rabbi: The body and the soul of a human may free themselves on the day of judgment by Heaven. How so? The body may say: The soul has sinned; for since she has departed I lie in the grave like a stone. And the soul may say: The body has sinned; for since I am separated from it, I fly in the air like a bird. And he answered: I will give you a parable to which this is similar: A human king, who had an excellent garden which contained very fine figs, appointed two watchmen for it—one of whom was blind, and the other had no feet. He who was without feet said to the one who was blind: I see in the garden fine figs. Take me on your shoulders, and I shall get them, and we shall consume them. He did so, and while on his shoulders he took them off, and both consumed them. And when the owner of the garden came and did not find the figs, and questioned them what became of them, the blind one answered: Have I, then, eyes to see them, that you should suspect my taking them? And the lame one answered: Have I, then, feet to go there? The owner then put the lame one on the shoulders of the one who was blind, and punished them together. So also

the Holy One, blessed be He—He puts the soul in the body and punishes them together. As it reads [Ps. l. 4]: "He will call to the heavens above, and to the earth beneath, to judge his people." "To the heavens above" means the soul, and "to the earth beneath" means the body.

Antoninus again questioned Rabbi: Why does the sun rise in the east and set in the west? And he answered: If it were contrariwise, you would also question the same. Rejoined Antoninus: I mean to say, why does he set in the west (let him go around without setting, until he reach the place where he arose)? And he answered: For the purpose of greeting with peace his Creator (as the Shekhina is in the west). Rejoined again Antoninus: Let him then travel to half of the sky, greet the Creator, and set? This would harm the laborer, and those who are on the road.

The same questioned again the same: At what time does the soul come into the body—at the moment of conception, or at the time the embryo is already formed? And the answer was: When it is already formed. Said Antoninus to him: Is it possible that a piece of flesh shall keep three days or more without being salted, and it shall not become stinking? And therefore it must be said: At conception. Said Rabbi: This teaching I accepted from Antoninus, and a support to him is to be found in [Job, x. 12]: "And thy providence watched over my spirit."*

Antoninus questioned Rabbi again: At what time does the evil spirit reach man? At the time the embryo is formed, when it comes out from the womb? And he was answered: At the time it is formed. Rejoined Antoninus: If so, the embryo would kick the entrails of the mother and go out; therefore it must be from the time it comes out. And Rabbi said: This teaching I received from Antoninus, and he is supported by Gen. iv. 7: "Sin lieth at the door."

Resh Lakish proposes the following contradiction: It reads [Is. xxxv. 6]: "Then shall the lame leap as a hart, and the tongue of the dumb shall sing"; and [Jer. xxxi. 7 †]: "Among them the blind and the lame, the pregnant woman and she that

* Conception in Hebrew is termed "pqiddha," and the term in the verse cited is "up-qudos'ha." Hence the analogy.

† In Leeser's translation of the Bible, which we follow in our edition, there is an error, as the first verse of Jer. xxxi. is misplaced and ought to be the twenty-fifth of xxx., with which it ends, and chap. xxx. begins with: "Thus hath said the Lord." Hence the verse cited is 7, and not 8, as in Leeser.

travailleth with child together." (Hence the passages contradict each other.) It must therefore be said: They will be restored with the blemishes they had in their life, and thereafter they will be cured.

Ula advanced another contradiction: It reads [Is. xxv. 8]: "He will destroy death to eternity; and the Lord Eternal will wipe away the tear from off all faces, and the shame of his people will he remove from off all the earth; for the Lord hath spoken it"; and [ibid. lxv. 20]: "There shall no more come thence an infant . . . for as a lad shall one die a hundred years old"? This presents no difficulty. The former speaks of Israel's self, and the latter of those concerning whom it reads [ibid. lxi. 5]: "And strangers shall stand and feed your flocks, and the son of the alien shall be your ploughmen and your vintners."

R. Hisda also advanced a contradiction: It reads [ibid. xxiv. 23]: "And the moon shall be put to the blush and the sun be made ashamed; for the Lord of hosts will reign on mount Zion"; and [ibid. xxx. 26]: "And the light of the moon shall be as the light of the sun, and the light of the sun shall be sevenfold, as the light of the seven days"? This presents no difficulty. The latter speaks of the time when the Messiah shall appear, and the former, of the world to come. And to Samuel, who maintains that there will be no difference between this time and the time of Messiah, except that Israel will no longer be under the dominion of foreigners, the explanation of these contradictory verses may be thus—that the latter speaks of the camp of the upright and the former of the camp of the Glory of the Shekinah.

Rabha propounded another contradiction: It reads [Deut. xxxii. 39]: "I make one die and I make one alive"; and further on it reads: "I wound and I heal"? It means that the Holy One, blessed be He, says: All that I made to die shall I bring to life again, and thereafter shall I cure what was wounded.

The rabbis taught: Lest one say that the verse just cited means, I make one die and another one shall I bring to life. therefore it reads, "I wound and I cure." As wounding and curing apply to one person only, the same is the case with death and life—they apply to one person. This is an answer to those who say that there is no hint in the Torah about resurrection.

There is a Boraitha: R. Mair said: It reads [Ex. xv. 1]: "Then Moses and the children of Israel will sing this song." It does not read "sang," but will sing (yoshir). This is a hint of

resurrection in the Torah. Similar to this is [Joshua, viii. 30]: "Then Joshua will build an altar." It does not read "did build," but "will build." This is also a hint of resurrection. (Says the Gemara): However, this cannot be taken as a support, as the same expression is to be found in I. Kings xi. 7, and nevertheless it does not mean in the future, but in the past.

R. Jeoshuah b. Levi said: It reads [Ps. lxxxiv. 5]: "Happy are they who dwell in thy house: they will be continually praising thee." It does not read "praised thee" in the past, but in the future. Hence it is a hint of resurrection.

The same said again: He who sings to his Creator in this world will be rewarded by singing the same in the world to come, as the verse just cited reads.

Hyia b. Abah in the name of R. Johanan said: It reads [Is. lii. 8]: "The voice of thy watchmen—they raise their voice, together shall they sing; for eye to eye shall they see, when the Lord returneth unto Zion." It does not read "sung," in the past, but in the future. Hence it is a hint of resurrection.

The same said again in the name of the same authority: In the future all the prophets together will sing a song of praise with one voice, as the verse just cited reads.

R. Jehudah said in the name of Rabh: He who hesitates in declaring a Halakha to a disciple is considered as if he would rob him of the inheritance of his parents. For it reads [Deut. xxxiii. 4]: "The law which Moses commanded us is the inheritance of the congregation of Israel." Hence the law is considered as an inheritance to all Israel since the creation of the world.

R. Hana b. Bizna in the name of R. Simeon the Pious said: He who hesitates in declaring a Halakha to a disciple, even the embryos in the entrails of their mothers denounce him. As it reads [Prov. xi. 26]: "Him that withholdeth corn, the people* will denounce." And what is the reward for declaring such? Said Rabha in the name of R. Shesheth: He will be rewarded with the blessing with which Joseph was blessed, as the end of the verse cited reads: "But blessing will be heaped upon the head of the one that selleth it," which means Joseph; as it reads [Gen. xlii. 6]: "And Joseph, he was the governor over the land, he it was that sold corn to all the people."

* The Hebrew term for "people" is "Leum," and for "corn" "bor," and he infers from the analogy of expression that the latter means the Torah and the former means embryos.

R. Shesheth said again: He who teaches the Torah in this world will be rewarded by teaching it in the world to come. As it reads [Prov. xi. 25]: "He that refresheth (others) will do same in the future." * Rabha said: Resurrection is hinted at in the Torah in [Deut. xxxiii. 6]: "May Reuben live, and not die"—which means that he may live in this world, and not die in the world to come. Rabhina, however, maintains that it is hinted at in [Dan. xii. 2]: "And many of those that sleep in the dust of the earth shall awake, some to everlasting life, and some to disgrace and everlasting abhorrence." And R. Ashi said: From [ibid., ibid. 13]: "But thou, go (thy way) toward the end; and thou shalt rest, and arise for thy lot at the end of the days."

R. Elazar said: A leader of a congregation, who leads them humbly, will be rewarded by leading the same in the world to come. As it reads [Is. xlix. 10]: "For he that hath mercy on them will lead them, and by springs of water will he guide them."

The same said again: Great is wisdom, as it was placed between two divine names [I Sam. ii. 3]: "For a God of knowledge is the Lord."

And he said again: Great is the Temple, as the word "mikdash" (Temple) [Ex. xv. 17] is also placed between two divine names.

R. Adda b. Karthinaah opposed: According to this theory "revenge" is also great, as it is also placed [Ps. xciv. 1] between two divine names. And he was answered: And it is in accordance with Ula. (This will be translated in Berachoth, as the proper place.) R. Elazar said again: Every man who possesses wisdom may consider himself as if the Temple were built in his days, as both "wisdom" and "temple" are placed between two divine names. And he said again: A man who possesses true wisdom will finally become rich. As it reads [Prov. xxiv. 4]: "And thorough knowledge are chambers filled with all manner of precious and pleasant wealth." And he said again: He who does not possess any knowledge does not deserve that one should have mercy with him." As it reads [Is. xxvii. 11]: "For it is not a people of understanding: therefore he that made it will not have mercy on it, and he that formed it will show it no favor." And he said again: He who feeds one who does not possess any

* Leeser's translation does not correspond. It seems also that in the Bible which was before the sages of the Talmud "yarah" had an *h* at the end, as so it is cited, while in our Bibles it ends with an "a," and has another meaning.

knowledge, chastisement will be the reward for it. As it reads [Ob. i. 7]: "They that eat thy bread have struck thee secretly a wound. There is no understanding in him." And he said again: Such a man as has no knowledge will finally be exiled. As it reads [Is. v. 13]: "Therefore are my people led into exile, for want of knowledge." * R. Jehudah said: Exile atones for three things. As it reads [Jer. xxi. 9]: "He that remaineth in this city shall die by the sword, or by the famine, or by the pestilence; but he that goeth out and runneth away to the Chaldeans that besiege you, shall remain alive, and his life shall be unto him as a booty."

R. Johanan, however, said: Exiles atones for everything. As it reads [ibid. xxii. 30]: "Thus hath said the Lord, Write ye down this man as childless, as a man that shall not prosper in his days; for no man of his seed shall succeed to sit upon the throne of David, and to rule any more in Judah." And in I Chron. iii. 17, it reads: "And the sons of Yechonyah: Assir, Shealthiel his son." And there is a tradition that Assir, Shealthiel is one person, and was Nehemiah b. Chachalyah. And why was he called Assir? Because he was conceived in prison. (The term in Hebrew for prisoner is Azzir.)

R. Elazar said: A house in which the words of the Torah are not heard in the nights will finally be burned. As it reads [Job, xx. 26]: "Entire darkness is laid by for his treasures: a fire not urged by blowing will consume him; it will destroy any one left in his tent." The Hebrew term for left is "sharid." As it reads [Joel, iii. 5]: "Among the remnant (shridim)." And he said again: He who does not benefit scholars by his estate will never see a sign of blessing: As it reads [Job, xx. 21]: "Nothing was spared from his craving to eat; therefore shall his wealth not prosper." (There also the Hebrew term is "sharid," which, according to him, means a scholar, as analogized above.) And from the same passage the same inferred that he who does not leave any bread after his meal will not see any blessing. But did not the same say elsewhere that he who left pieces of bread after his meal is considered as if he were to worship idols? This presents no difficulty. In the latter saying he means, after finishing the meal he puts a whole loaf on the table, which is prohibited. As it reads [Is. lxv. 11]: "That set out a table for the god of Fortune and that fill for Destiny the drink-offering." On the

* Transferred from 376 of this tract.

former saying he speaks of leaving some crumbs of bread for the poor. The same said again : He who changes his word is considered as if he were to worship idols. As Gen. xxvii. 12 reads : "Seem to him as a deceiver"; and as in Jer. x. 15 : They are vanity, the work of deception." And he said again : A man shall always be modest, but nevertheless shall be strong in his mind, so that he shall not be overruled by any one. (As then he may be sure that he will exist.) Said R. Zera : A hint of this is to be found in the following Mishna (Negaim vii. 3) : If there seems to be leprosy in a house which is dark, windows must not be opened for investigation. (Hence if one is strong in his mind, and at the same time modest, his defects cannot be investigated.)

R. Tabi in the name of R. Joshiah said : It reads [Prov. xxx. 16] : "The nether world, and a barren womb ; the earth which is not satisfied with water ; and the fire which never saith, Enough." What correspondence is there between the nether world and the womb? This is only to say that as the nature of the womb is, if something be brought in, to give it out, the same is the case with the nether world—it gives out what is brought in. And it is to be inferred by an *a fortiori* conclusion thus : A womb into which corpses are privately brought gives them out with much noise, the nether world, into which corpses are brought with much noise, so much the more shall they come out with great noise. And this may be an answer to those who say that resurrection is not hinted at in the Torah.

The disciples of Elijah taught : The upright who will be restored in the future by the Holy One, blessed be He, will never return to dust. As it reads [Is. iv. 3] : "And it shall come to pass that whoever is left in Zion, and he that remaineth in Jerusalem, shall be called holy, everyone that is written down into life in Jerusalem." And as the Holy One is forever, so also those who are mentioned in this verse will be forever. And lest one say, "What will they do at the time the Holy One, blessed be He, shall renew his world," as it reads [ibid. ii. 17] : "And exalted shall be the Lord *alone* on that day." The upright in question will be supplied with wings similar to the wings of the eagles, and they will fly over the world. As it reads [Ps. xlv. 3] : "Therefore will we not fear when the earth is transformed, and when mountains are moved into the heart of seas." And lest one may say that they will be inflicted—to this it is written [Is. xl. 31] : "Yet they that wait upon the Lord shall acquire new strength ; they shall mount up with wings as eagles ; they shall

run and not be weary; they shall walk and not become faint." But why not infer from the dead who were restored by Ezekiel, and who died again? He (Elijah) holds with him who says that in reality Ezekiel did not restore any dead at all, and the whole prophecy was only a parable for the Jewish nation that it would be restored again. And this is related in the following Boraitha: The dead whom Ezekiel restored arose on their feet, sang a song, and died again. And what kind of a song was it? The Lord makes one die justly, and mercifully restores him. So R. Eliezer. R. Joshua said: The song was from I Sam. ii. 6: "The Lord killeth, and maketh alive; he bringeth down to the grave, and bringeth up." R. Jehudah, however, said: Really, it was only a parable. Said R. Nehemiah to him: If really, then it is not a parable; and if a parable, it is not really. Say, then, in reality it was a parable. R. Eliezer b. R. Jose the Galilean, however, said: The dead who were restored by Ezekiel went to the land of Israel, married, and brought forth sons and daughters. And R. Jehudah b. Bathyra arose on his feet, saying: I myself am a descendant of them, and these are the phylacteries which I inherited from my grandfather, who told me that they were used by the restored. But who were the restored dead in question? Said Rabh: They were the sons of Ephraim who erred concerning the promised time of redemption from Egypt. As it reads [I Chron. vii. 20-23]: "And the sons of Ephraim: Shuthelach, and Bered his son, and Thachath his son, and Eladah his son, and Thachath his son, and Zabad his son, and Shuthelach his son, and Eser and Elad whom the men of God that were born in that land slew . . . And Ephraim their father mourned many days, and his brethren came to comfort him." Samuel, however, said: They were the men who disbelieved in resurrection. As it reads [Ezek. xxxvii. 11]: "Then said he unto me, Son of man, these bones are the whole house of Israel; behold, they say, Dried are our bones, and lost is our hope; we are quite cut off." R. Jeremiah b. Abah said: They were the bodies of men in whom there was no sap of any meritorious act. As it reads [ibid., ibid. 4]: "O ye dry bones, hear ye the word of the Lord." And R. Itz'hak of Nabhar said: They were the men who did what was mentioned in [ibid. viii. 10]: "So I went in and saw; and behold there was every form of creeping things, and cattle, abominations, and all the idols of the house of Israel, engraven upon the wall all round about." And it reads [ibid. xxxvii. 2]: "And he caused me to pass by them all round about," etc. And R. Johanan said: They were the dead of the

valley of Dura, whom Nebuchadnezzar killed. This is what he said elsewhere, that from the river Achar to the city of Rabath in the valley of Dura there were young men of Israel who were exiled by Nebuchadnezzar the wicked, who were so beautiful that there were none similar to them under the sun; and the women of Chaldea became sick when they looked upon them. The king then commanded to slay them all and to tread down their faces.

The rabbis taught: At the time Nebuchadnezzar threw Chananya, Mishaël and Azaryah into the caldron the Holy One, blessed be He, told Ezekiel to go and restore the dead of the valley of Dura, and the vessels which were made from the bones of those who were slain by Nebuchadnezzar kicked him in the face. And to his question, "What is the matter?" he was told that the colleagues of those whom he had thrown into the caldron were engaged in restoring the dead of the valley of Dura. He then said [Dan. iii. 33]: "His signs—how great are they! and his wonders—how mighty are they! his kingdom is an everlasting kingdom, and his rule is over every generation." Said R. Itz'hak: May hot melted gold be put in the mouth of that wicked, for if an angel had not come and shut his mouth, he would have brought to shame all the songs and praises which were said by David in the Psalms.

The rabbis taught: Six miracles occurred on that day: (a) The caldron floated upwards; (b) it broke; (c) its foundation was crumbled by the heat; (d) the golden image fell upon his face; (e) men from four kingdoms were burned; and (f) Ezekiel restored the dead in the valley of Dura. All of them are known traditionally. However, concerning the men from the four kingdoms, there is to be found in the Scripture [Dan. iii. 2]: "And King Nebuchadnezzar sent to assemble (his) lieutenants, the superintendents and the governors, the judges, the treasurers, the counsellors, those learned in the law, and all rulers of the provinces; and [ibid., ibid. 12]: "There are certain Jewish men," etc., and further on (27) it reads: "And the lieutenants, superintendents and governors, and the king's counsellors, being assembled together, saw these men," etc. (Hence four of those mentioned in verse 2 are missed.)

The disciples of R. Eliezer b. Jacob taught: Even at the time of danger one shall not change the dress belonging to his dignity. As it reads: [ibid., ibid. 21]: "Then were these men bound in their mantles," etc. Said R. Johanan: Upright men are greater than angels, as it reads [ibid., ibid. 25]: "He answered and said, So, I see four men unbound, walking in the midst of the fire, and

there is no injury on them ; and the appearance of the fourth is like a son of the gods." (Hence the angels are mentioned last.)

R. Tanhin b. Hanilai said : When Chananyah, Mishael, and Azaryah came out of the caldron, the nations came and kicked Israel in their faces, saying : Ye have such a God, and ye bowed yourself to the image ! They (Israel) immediately confessed, saying [ibid. ix. 7] : "Thine, O Lord, is the righteousness, but unto us belongeth the shame of face, as it is this day."

R. Samuel b. Nah'maine, in the name of R. Jonathan, said : It reads [Solomon's Song, vii. 9] : "I thought, I wish to climb up the palm-tree, I wish to take hold of its boughs." I thought, I will take hold of the whole tree, but now I claim only one branch (of the palm Israel)—that of Hanania, etc. R. Johanan said : It reads [Zech. i. 8] : "I saw this night, and behold there was a man (ish) riding upon a red horse," etc. "This night"—the Lord intended to plunge the whole world into night. "Behold there was a man"—the Holy One, who is named [Ex. xv. 3] "ish, lord of war." "Upon a red horse"—he intended to plunge the world into blood, but after looking upon Chananyah, Mishael and Azaryah he gave up his intention. As it reads further on, "And he was standing among the myrtle-trees (hadisin)." And by myrtle-trees are meant the upright. As it reads [Esther, ii. 7] : "And he brought up Hadassah." And "deep valley" means Babylon. As Is. xlv. 27 reads : "That saith to the deep, Be dry, and thy rivers will I dry up." "Behind them were red"—immediately the red which were filled with anger became pale, and the red became white. Said R. Papa : Infer from this that if one sees a white horse in his dream, it is a good sign. But what became of Chananyah, Mishael, and Azaryah after they came out of the caldron (as there is no further mention of them)? According to Rabh, they died from an evil eye ; and according to Samuel, they died in order not to bring further shame on Israel. R. Johanan, however, said that they returned to Palestine, married, and begot children. As it reads [Zech. iii. 8] : "Do but hear, O Joshua the high-priest, thou and thy fellows that sit before thee, for men of wonder are they." And who were the men to whom wonder was done, if not Chananyah, etc.? But where was Daniel at the time that they were thrown into the caldron? Said Rabh : He went to dig a river in the city of Tiberius. And Samuel said : He was sent by Nebuchadnezzar to bring a certain kind of grass from Palestine, to build it in Babylon. And R. Johanan says : He was sent to bring swans from Alexander of Egypt. But was it

not said above by Tudus the physician that no swan left Alexandria without removal of the womb (for the purpose that they should not multiply in other countries)? He brought little ones, and the Egyptians were not aware that he took time for the purpose that they should multiply in Babylon.

The rabbis taught : According to the advice of the following three, Daniel went away before the affair of Chananyah, etc., happened : The Holy One, blessed be He, Daniel himself, and Nebuchadnezzar. The Holy One, for the reason that people should not say they were saved because of Daniel's good deeds. Daniel said : I shall go away that it shall not be done with me as in Deut. iii. 25 : "The graven images of their gods shall ye burn with fire." And Nebuchadnezzar said : Let Daniel go, in order that people shall not say I have burnt my god in fire. And whence do we know that Nebuchadnezzar worshipped him? From [Dan. ii. 46] : "Then did king Nebuchadnezzar fall upon his face, and he bowed down to Daniel."

It reads [Jer. xxix. 21-23] : "Thus hath said the Lord of hosts, the God of Israel, concerning Achab the son of Kolayah, and of Zedekiah the son of Maasseyah, who prophesy unto you in my name falsehood . . . And a curse shall be derived from them for all the exiled of Judah who are in Babylon, saying: May the Lord make thee like Zedekiah and like Achab, whom the king of Babylon roasted in the fire." It does not read whom he "burned," but whom he "roasted." And R. Johanan in the name of R. Simeon b. Johai said : Infer from this that they were roasted as people roast grain. It reads farther on [ibid., ibid 23] : "Because they have done scandalous deeds in Israel, and have committed adultery with the wives of their neighbors." What had they done? They went to the daughter of Nebuchadnezzar. Achab said : The Lord has commanded me to tell thee that thou shalt listen to Zedekiah. And the latter said the same—that she should listen to Achab. And she went and told this to her father. To which he answered : It is known to me that their God abhors incest. When they shall come to you again, send them to me. She did so. And to the question of Nebuchadnezzar : Who told you to do so? they said : The Lord. "But Chananyah and his colleagues told me that such a thing is prohibited." And they answered : We are also prophets as they are, and this command was given to us, of which they were not aware. Then said the king : I would try you as I did Chananyah and his colleagues. And to their claim, "They were three, and we are only two," he gave

them the choice of any one they liked, who should be thrown with them into the caldron. And they selected Jehoshua the high-priest, thinking that his merit was so great that it would save them also. Jehoshua was then brought, and all three were thrown into the caldron. They were burned, but Jehoshua was saved; only his garments were singed. And this is what it reads [Zech. iii. 1-3]: "And he showed me Jehoshua the high-priest standing before the angel of the Lord. And the Lord said unto the accuser, The Lord rebuke thee, O accuser," etc. Satan said to him: I know that you are an upright man, but why did the fire affect your garments, which was not the case with Chananyah, Mishaël and Azaryah? And he answered: They were three, and I one. And to the question: Was not Abraham the patriarch also only one when he was thrown into the caldron? he answered, With Abraham there were no wicked ones whom permission was given to the fire to affect, but with me were two wicked, and permission was given to the fire. And this is what people say: Two dried pieces of charred wood burn the third which is wet.

But why was he punished? Said R. Papa: Because his sons married such as were not fit to be the wives of priests, and he did not object; and this is meant by "filthy garments," mentioned in the verse cited.

R. Tanhūn said: Bar Kappara lectured in Ciporias thus: It reads [Ruth. iii. 17]: "These six barleys gave he unto me." How is to be understood six barleys? It cannot be meant literally, for would a man like Boas give six grains of barley as a gift? And it also cannot be said "measures of barley," as it is not customary for a woman to carry six measures. Therefore the six barleys were a hint that in the future six sons would come out from her, each of whom would be blessed with six blessings: viz., David, Messiah, Daniel, Chananyah, Mishaël, and Azaryah. David—as it reads [I Sam. xvi. 18]: "Then answered one of the servants, and said, Behold, I have seen a son of Jesse the Bethlehemite, who is skilful as a player and a mighty valiant man, and a man of war, and intelligent in speech and a person of good form, and the Lord is with him." Messiah—as it reads [Is. xi. 2]: "And there shall rest upon him the spirit of the Lord, the spirit of wisdom and understanding, the spirit of counsel and might, the spirit of knowledge and of the fear of the Lord." Daniel, Chananyah, Mishaël, and Azaryah—as it reads [Dan. i. 4]: "Lads in whom there should be no kind of blemish, but who should be

handsome in appearance, and intelligent in all wisdom and acquainted with knowledge, and understanding science, and such as should have the ability to serve in the king's palace, and that these should be taught the learning and the language of the Chaldeans." (Hence all of them were blessed with six things.)

[Concerning the verse cited about David, said R. Jehudah in the name of Rabh: The whole verse is a slander, said by Doeg the Edomite. "Who is skilful as a player"—who knows how to propound questions; "mighty valiant man"—who knows how to answer questions; "a man of war"—who understands argument in the disputations of the Torah; "intelligent in speech"—he understands from one thing another one; "a person of good form"—who is able to give good reasons for Halakhas; "the Lord is with him"—the Halakha always prevails with him. To all the things mentioned above Saul said: "My son Jonathan possesses all the same qualities. But when he heard that the Halakha prevailed with him, a qualification which he himself did not possess (for concerning Saul it reads [I Sam. xv. 47]: "And whithersoever he turned himself, he caused terror," and about David it is written: "In whatsoever he turned to be he was successful" †), he was dejected, and began to be jealous. But whence do we know that it was Doeg who said so? From [ibid. xvi. 18]: "One of the servants"—the most distinguished of them; and [ibid. xxvi. 8]: "And his name was Doeg the Edomite, the chief of the herdsmen that belonged to Saul." Concerning the verse cited about Messiah, it reads also farther on "vahari'hu" (animated), from which R. Alexandri infers that he is always overloaded with the divine commandments and chastisements resting upon him as "re'hayim" (a handmill). And Rabha said: The term "vahari'hu" means smelling—*i. e.*, he judges by smelling. As farther on it reads: "And not after the sight of the eyes shall ye judge, and not after the hearing of the ears . . . (but nevertheless) he judges with righteousness the poor and decides with equity for the suffering ones of the earth, and he shall smite the earth with the rod of his mouth, and with the breadth of his lips shall he slay the wicked." Hence, if not by the eye and not by the ear, it must be by smelling; and therefore the sages did not recognize Bar Kochba, who claimed to be the Messiah and ruled

* The Hebrew term for this is "nabun dabhar"—literally, "understanding things." Leeser, however, took it as "dibur," meaning "talk."

† This passage is not to be found in the Scripture (see footnote in the original, 93b).

two and a half years, because he did not judge by smelling. And now concerning the verse cited about Chananyah, Mishael, etc., that they had no blemish. Said R. Haman b. Hanina: Not even a scratch was to be found on their bodies. "The ability to serve in the king's palace"—that they were able to restrain themselves from laughing, sleeping, and dreaming, and even from departing for one's necessity for fear of the king. It reads farther on [ibid. 6]: "Now there were among these, of the children of Judah," etc. According to R. Elazar, all of them were of the tribe of Judah; and according to Samuel b. Na'hmane, Daniel only was of Judah, but Chananyah, Mishael, and Azaryah were of other tribes.

It reads [Is. lvi. 5]: "I will indeed give unto them . . . an everlasting name." Said R. Tanhun: Bar Kappara lectured in Ciporias that this means the book of Daniel, which is named after him.* Let us see! All which is written in the book of Ezra was said by Nehemiah b. Chackhalyah. Why, then, was it not named after him? (The book of Nehemiah in our Bible was not as yet separated from Ezra in the time of the Talmud.) Said R. Nehemiah b. Abah: Because he was proud of it. As it reads [Neh. v. 19]: "Remember for me, my God for good, all that I have done for this people." But did not David also say similar to this [Ps. lvi. 4]: "Remember me, O Lord, when thou favorest thy people?" This was said only as a prayer.

R. Joseph said: The book was not named after him because he slandered the former governors. As it reads [Neh. v. 15]: "Former governors . . . had made it heavy . . . had taken of them bread and wine, besides forty shekels." And in this slander Daniel, who was greater than he, was also included, as he was of the former governors who made their exodus from Babylon a long time before Nehemiah. And whence do we know that Daniel was greater than he? From [Dan. x. 7]: "And I, Daniel, saw alone this appearance; but the men that were with me did not see the appearance; nevertheless a great terror fell upon them, so that they fled to hide themselves." Who were these men? Said R. Jeremiah, and according to others, R. Hyya b. Abah: Haggai, Zechariah, and Malachi. In one respect he

* In the text this is inferred from the term "sarissim," which has two meanings—"servants" and "eunuchs"; and [Is. xxxix. 7] in the prophecy to Hiskia it is said that his descendants will be sarissim in the palace of the Babylonian king. Here (lvi. 4) this prophecy was said to the sarissim who would keep the Sabbath; and Daniel was a descendant of Hiskia, and among the sarissim who were taken to Nebuchadnezzar's palace.

was better than they, for he saw the appearance, but they did not. And in another respect they were better than he, as they were prophets, while he was not. But why were they shocked when they saw nothing? Though they did not see it, their guardian angels did. Said Rabbina: Infer from this, that if a man is shocked, unaware of the cause, his guardian angel must be aware of it; and his remedy is stepping back four ells, or reading the portion of Shema. And if he stands in a dirty place, where it is not allowed to recite the portion of "Shema Israel," he may say, "The goats of the butcher are stronger than I."

It reads [Is. ix. 6]: "For promoting the increase of the government, and for peace without end," etc. Said R. Tan'hun: Bar khapara lectured in Ciporias about this verse thus: Why is the first word of this verse distinguished? In all other words if a "mem" happens to be among its letters, if at the beginning or in the middle, it is an open one **מ**. Here, however, the "mem," which is the second letter of this word, is closed **מ**, which is usually only at the end of a word? It is because the Holy One, blessed be He, was about to make Hiskiah the Messiah, and Sanherib who declared war against him as a substitute for Gog and Magog the future nations who will declare war against the Messiah. Said the divine attribute of justice for Him: Lord of the Universe, David, the king of Israel, who recited before Thee so many songs and praises, Thou madest him not a Messiah; Hiskiah to whom Thou hast done so many miracles, and he recited neither songs nor praises—shouldst Thou make him a Messiah? And therefore the "mem" was closed (as a hint to this). The earth, however, opened her mouth and said: Lord of the Universe, I will recite songs before Thee instead of this upright, and Thou, I pray Thee, make him a Messiah. And she did so immediately, as it reads [ibid. xxiv. 16]: "From the edge of the earth have we heard songs 'Glory be to the righteous.'" And the governor of the world also said before Him: O Lord of the Universe, do, I pray Thee, the desire of this upright. Then a heavenly voice was heard saying: "It is my secret, it is my secret! To which the prophet exclaimed: Woe is me! Tell what time will it be postponed? And the heavenly voice answered: "Till the treacherous will have dealt treacherously." And Rabha, and according to others, R. Itz'hak, explained this: Until disgrace after disgrace will have come upon Israel.

It reads [ibid. xxi. 11]: "The prophecy concerning Dumah. Unto me one calleth out of Le'ir, Watchman, what of the night?"

Watchman, what of the night? Said R. Johanan: The angel who rules the souls after their departure from this world, is named Dumah. And the latter said that all spirits gathered themselves to him questioning him: What said the watchman of the world (the Lord) about the exile which is equalized to night? And he answered. So said the watchman: The morning cometh, but previously will be a long, long night. If, however, ye desire to pray that He shall hasten it, try to do so by repenting of your sins, and coming again prepared for redemption.

It was taught in the name of R. Pepiyas: It is a shame for Hiskiah and his associates not to have recited any song until the earth recited hers, as the verse "from the edge of the earth," etc., cited above, reads. Similar to this it reads [Ex. xviii. 10]: "Blessed be the Lord who hath delivered you." And it was taught also in the name of Pepiyas: It was a shame for Moses and the six hundred thousand Israelites with him who didn't say this benediction till Jithro came. It reads [ibid., ibid. 9]: "Vayi'had" (rejoiced) Jithro, the Hebrew term "had" means to sharpen. And according to Rabh, it means that he passed a sharp razor upon the flesh of his body. (He performed the ceremony of circumcision). And according to Samuel it means that his whole body pained as if stuck with sharp needles. Said R. Papa: This is what people say: One shall not dare to disgrace any heathen before a descendant of a proselyte, even if he is of the tenth generation.

It reads [Isa. x. 15]: "Therefore will the Lord, the Eternal of hosts, send forth among his 'bmashmanov' (fat ones) leanness." What is meant by the term "bmashmanov"? (in Hebrew shamuno means eight). The Lord said: Hiskiah who has eight names shall take revenge on Sanherib who also has eight names. Hiskia's eight names are enumerated in [Isa. ix. 5]: "For a child is born unto us, a son hath been given unto us, and the government is placed on his shoulders and his name is pele, yaez, el gibaur, abbi, ad, sar, shalaum." And concerning Sanherib it reads [II Kings, xv. 9]: "Thiglash pilesser" [ibid., ibid. 19]: "Pul" [II Chron. xxviii. 20]: "Pilnesser" [II Kings, xvii. 3]: "Shalmanesser" [Isa. xx. 1]: "Sargon" and [Ezra, iv. 70]: "Assnapper, rabha, v'yaqira." The name Hiskia is not counted, for he was named so because God strengthened him. And the name Sanherib is also not counted, for he was named so because he said vile words against Heaven.

Said R. Johanan: Why was he named Assnapper, the hon-

ored and the great? Because he did not speak evil of the land of Israel, as it reads [II Kings, xviii. 32]: "Until I come and take you away to a land like your own," etc.

Rabh and Samuel. According to one he was a clever king, because if he would have said that he would take them in a better land than theirs they would consider him a liar. And according to the other he was a fool, for what use could it be for them to go in a land which is not better than their own? To where did he exile the ten tribes of Israel? According to Mar Sutra to Africa, and according to R. Hanina to the mountains of Slug. However, the ten tribes of Israel slander the land of Israel, for when they reached the city of Sus they said that it was like their own land. And when they came to the city of Elmin they said that it is like our Elmin (Jerusalem). And when they reached the second Sus they said that it was much better than their own land.

It reads [Isa. x. 16]: "And under his glory shall be kindled." According to R. Johanan it means "under his dress garments," as he used to call garments glory. Hence the body was burned, but not the garments. R. Elazar, however, maintains "under his glory" means under the flesh—*i.e.*, only the soul was burned as by the children of Aaron.

There is a Boraitha in the name of R. Joshua b. Kharha: Pharaoh who personally blasphemed Heaven, was also punished by Heaven. Sanherib, who blasphemed though a messenger, was also punished though a messenger. Concerning Pharaoh, it reads [Ex. v. 2]: "And Pharaoh said, Who is the Everlasting, whose voice I am to obey?" And he was punished by Heaven, as it reads [ibid. xiv. 27]: "And the Lord overthrew the Egyptians in the midst of the sea." And also [Habakkuk, iii. 15]: "(But) thou didst pass along over the sea." Concerning Sanherib it reads [II Kings, xix. 23]: "By thy messengers thou has blasphemed the Lord." He was punished through a messenger, as it reads [ibid., ibid. 35]: "And it came to pass . . . that an angel of the Lord smote in the camp of the Assyrians, one hundred eighty and five thousand.

R. Hanina b. Papa propounded a contradiction from [Isa. xxxvii. 24]: "I will enter into the height of its summit." [II Kings, xix. 23]: "I will enter into the lodgings of its summit." Thus thought Sanherib: I will first destroy the lower dwelling and thereafter the higher one. R. Jehoshua b. Levi said: It reads [ibid. xviii. 25]: "Now am I come up without the Lord('s will)

against this place to destroy it? The Lord hath said to me, Go up against this land, and destroy it." What is it? He heard the prophet who said [Isa. viii. 6-7]: "Forasmuch as this people despiseth the waters of Shiloach that flow softly, and rejoice in Regin and Remalyabu's son," etc. Said R. Joseph: Were it not for the translation of this verse into Chaldaic, we would not understand its meaning. The translation is thus: Because this people despised the kingdom of David, who ruled them gently like the waters of Shiloach which flow gently, and grew fond of Regin and the son of Remalyabu.

R. Johanan said: It reads [Prov. iii. 33]: "The curse of the Lord is in the house of the wicked"—Peckach b. Remalyabu, who used to consume forty saas of pigeon as a dessert. "But the habitation of the righteous will he bless"—Hiskia, king of Judah, whose whole meal consisted of a liter of herbs.

It reads [Isa. viii. 7 and 8]: "The king of Assyria . . . and he shall penetrate into Judah, overflow and flood over, even to the neck shall he reach. Now as Sanherib acted in accordance with the prophecy, why then was he punished? The prophet prophesied concerning the ten tribes, and he himself made up his mind to go to Jerusalem. Then came the prophet and said [ibid., ibid. 23]: "And no fatigue (befalleth) him that oppresseth them." And R. Elazar b. Breakhya explained the passage thus: A people who are occupied with the study of the law will not be delivered over to their oppressor. "In the first time, he made light of the land of Zebulun and of the land of Naphtali, and at the last he will deal hard, with the way by the sea, on the other side of the Jordan, (up to) the Galilee of the nations"—not like the first, who threw off the yoke of the Torah, but like the latter, who tolerated the heavy yoke of the Torah, and therefore deserved that a miracle should happen to them as happened to those who passed the Red Sea and to those who stepped over the Jordan. Hence if he will retract to turn away from Jerusalem, well and good, but if not, I will make him a shame among all other nations.

It reads [II Chron. xxxii. 1]: "After these things and veritable events came Sanherib the king of Assyria, and invaded Judah, and encamped against the fortified cities, and thought to break them open for himself." Is such a present given to the men of truth? And also what is meant by "after"? Said Rabhina: It means after the Holy One, blessed be He, had sworn, saying, If I would tell Hiskiah that I will bring Sanherib, and

deliver him in his hands, he would say I want neither to be scared nor to have him delivered to me. And therefore the Lord swore that he will bring him in, as it reads [Isa. xiv. 24 and 25]: "Sworn hath the Lord of host, saying, Surely as I have purposed, so doth it come to pass; and as I have resolved, so shall it occur. To break Asshur in my own land, and upon my mountains will I tread him under foot; then shall his yoke be removed from off them, and his burden shall be removed from off their shoulders."

Said R. Johanan: The Holy One, blessed be He, said: Sanherib with his companions shall come and be made a crib for Hiskiah and his associates.

It also reads [ibid. x. 27]: "And it shall come to pass in that day, that his burden shall be removed from off thy shoulder, and his yoke from off thy neck, and the yoke shall be broken because of the fatness." Said R. Itz'hak of Nafha: The yoke of Sanherib was broken because of the fats of Hiskia which he used to kindle in the prayer house and in house of learning. He placed a sword on the gate of the house of learning as a sign that he who will not occupy himself with the Torah shall be slain by the sword. And thereafter a search was made from the city of Dan to the city of Beersheba, and there was not found one ignoramus among them. And also from the city of Gebeth to the city of Antiphras, and there was not found one who was not acquainted with the law of purification, even among the women and children. And to that generation it reads [ibid. vii. 21]: "And it shall come to pass on that day, that a man shall nourish (but) one young cow and two sheep." And (23): "And it shall come to pass on that day that every place, where there are (now) a thousand vines worth a thousand silver shekels, shall be—yea, this shall be (given up) to briers and thorns," which means though the vine was so valuable it was left to briers and thorns because all of them occupied themselves with the study of the law.

It reads [ibid. xxxiii. 4]: "And your spoil shall be gathered as the cricket gathereth." The prophet said to Israel: Gather your spoils. And to the question: Shall each one gather for himself or shall it be divided into equal shares? the prophet answered: As the cricket gathereth—as the gathering of the cricket is each one for himself, so also shall be your gathering. And when they objected, saying, Is there not among these the property of the ten tribes which was robbed by the Assyrian? he answered:

So long as it was mingled among it, it is not considered the property of the ten tribes.*

R. Huna said: Ten trips had the wicked made on that day, as it reads [ibid. x. 28 to 32]: "He cometh to Ayath, he passeth on to Migron; at Michmash he layeth up his baggage: They go through the pass; they take up their lodgings at Geba; Rama trembleth; Gib'ah of Saul fleeth. Let thy voice resound, O daughter of Gallim! listen Layshah; O poor Anathoth! Madmenah is in motion (the inhabitants of Gebin)," etc. Are there not enumerated more than ten places? Verse 30 the prophet said to the assembly of Israel thus: Those daughter of Gallim means Abraham, Isaac and Jacob, who performed divine commandments as numerous as the waves of the sea. Layshah means be not afraid of Layshah, which means Sanherib, but of Nebuchadnezzar, who is equalized to a lion, as it reads [Jer. iv. 7]: "The lion has come up from his thicket. O poor Anathoth!"—there will come a prophet from Anathoth, Jeremiah, who will prophesy the destruction of Jerusalem.

(Verse 32): "As yet will be remain at Nob." What does this mean? Said R. Huna: There was one day more appointed for the punishment of the iniquity of Nob. And the astrologers told Sanherib that if he could reach Jerusalem on that day he would be victorious. He therefore hastened his march and made a journey of ten days in one. And when he reached Jerusalem a ladder was made for him, upon which he ascended to view the whole city which was visible from that place. And it appeared to him very small, so that he exclaimed: Is this the city of Jerusalem for which I have troubled all my forces? Is she not smaller and weaker than all the great cities and countries which I have besieged with my powerful arm? He nodded his head, and gestured with his hands over the mountain of the Temple in Zion and over the court of the Temple in Jerusalem. And as his army wanted to put their hands on Jerusalem immediately, he told them that they were at present too tired, but on the morrow every one of them should bring with him a piece of the wall which surrounds it. Concerning that night, however, it reads [II Kings, xix. 35]: "And it came to pass, on that same night, that an angel of

* This answer is inferred from the end of the cited passage with a strange interpretation. However, it was impossible for us to translate it, as the Hebrew term "gebin" was translated by Leeser with "locusts," and according to the Talmud it means water-pipes, the source of which is unknown to us. We therefore gave the answer without the reason.

the Lord . . . smote . . . of the Assyrians one hundred eighty and five thousand men ; and when the people arose early in the morning, behold they were all dead corpses."

Said R. Papa : This is what people say : If the judgment is postponed over one night, there is hope that it will be abolished entirely.

It reads [II Sam. xxi. 16] : " And Yishbi at Nob, who was of the children of the Raphah, the weight of whose spear was three hundred shekels of copper, he being girded with a new armour, thought to slay David." What is meant by "Yishbi at Nob"? Said R. Jehudah in the name of Rabh : It means that this happened because of that which was done to the city of Nob. The Lord said to David : How much longer will the iniquity of Nob rest upon thee? Thou caused the destruction of the priest's city of Nob. Thou caused the iniquity of Doeg the Edomite, and through thee Saul and his three sons were killed. Now thou hast the choice of one of the following two. Either thou shalt not leave any issue, or that thou couldst be delivered over to thy enemies. And he answered : Lord of the Universe, it is better for me to be delivered over to the enemy than my descendants shall be destroyed.

It happened then that David went to a village and the Satan appeared to him in the form of a ram. He shot an arrow at it, but it did not reach it. So he ran after it till he passed the border of the Philistines. And when Yishbi of Nob saw him he said : This is he who killed my brother Goliath. He bound him, gagged him and put him under an olive press. However, a miracle occurred in that the earth under him became soft, and he was not killed. To this it is written [Ps. xviii. 37] : "Thou enlargest my steps under me, so that my joints do not slip." That day was an eve of Sabbath. And Abishai b. Zeruyah used to wash his head with four pitchers of water, and spots of blood appeared on the water. According to others, a dove flew to him, flapped her wings as if in trouble. And he said the assembly of Israel is equalized to a dove. Hence it must be that David the king of Israel is in trouble. He went to David's house but did not find him there. And he said, I was taught : One must not ride on a king's horse, must not sit on his chair, etc. But how is it at the time of danger? He went to the college and questioned concerning it. To which he was answered that at the time of danger one may. Then he rode upon the king's mule and miraculously the earth jumped towards him. And while riding he saw

Arpa, the mother of Yishbi, sitting and spinning. When she saw him she broke the thread of her spindle and threw it at him with the intention of killing him (simulating that it had accidentally slipped). Then she said : Young man, hand me my spindle. And he took the spindle, threw it at her head, and she was killed. When Yishbi of Nob saw Abishai, he said : Now there are two, and they will be able to kill me. He took David and threw him up high, and placed the point of his spear so that David should fall upon it, and be killed. And Abishai mentioned a certain holy name, through which David remained between the sky and the earth. [But why didn't David himself mention such a name? Because a prisoner cannot liberate himself from prison without help.]

Abishai then questioned David what he was doing there. And he narrated before him what the Lord told him and what his answer to it was. Said he to him : Reverse thy prayer. Thy grandson may go and sell wax, but thou thyself must not take any trouble upon thee. Rejoined David : If it must be so, then succor me to pray. For it reads [Sam. xxx. 17] : " But Abishai the son of Zeruyah succoured him." And R. Jehudah, in the name of Rabh, said that he succored him in prayer. Thereafter Abishai mentioned another holy name and took David up on the knees, and both ran away. And Yishbi ran after them. And when they reached the village of Kubi (situated on the boundary of Palestine) they thought : Let us stop here and fight him. However, they went to the village of Tri and said to themselves that two cubs of a lion are able to kill a big lion. When the fight began they said to him : Go back, and you will see that your mother is dead. And when he heard this he became weak, and then they killed him. And this is what is written [ibid. 17] : " Then swore the men of David unto him, saying : Thou shall go out no more with us to battle, that thou mayest not quench the lamp of Israel."

The rabbis taught : To the following three the earth jumped : To Eliezar the servant of Abraham, to Jacob our father, and to Abishai b. Zeruyah : To the latter, as it was said above. To Eliezar the servant of Abraham, as it reads [Gen. xxiv. 42] : " And I came this day unto the well." " This day " means on the same day he went from home. To Jacob our father, as it reads [ibid. xxviii. 10 and 11] : " And Jacob went out from Beer-sheba and went towards Charan. And he "vayiphga" (lighted) upon a certain place and tarried there all night, because the sun

was set," etc. When he reached Charan he said: Is it right of me not to have prayer when I passed the place my parents passed? He resolved to return, and soon after his resolution the earth jumped and he met Bethel.

And another explanation is that "vayiphga" means praying, as it reads [Jer. vii. 16]: "But thou—pray not thou in behalf of this people, nor lift up in their behalf entreaty or prayer, nor make an intercession ("al-tiphga") to me, for I will not hear thee." "And tarried there all night," etc. He wanted to return after he prayed, but the Holy One, blessed be He, however, said: This upright came to my inn and he should go away without staying over night. He made, therefore, the sun set immediately. And this is what it reads farther on [ibid. xxxii. 32]: "And the sun rose unto him as he passed by Penuel." Does the sun only rise to him and not to the whole world? Therefore said R. Itz'hak, it means the sun which has set for his sake has risen now for him.

And whence do we know that David's children were destroyed? From II Kings xi. 1: "And when Athalyah the mother of Achazyahn saw that her son was dead, she arose and destroyed all the seed royal. But did not Yoash remain? There in the case of Nob also Ebyathar remained, as it reads [I Sam. xxii. 20]. And R. Jehudah said in the name of Rabh: If from Achimelech's family there would not one have remained there would not have remained from David's family a single soul.

R. Jehudah in the name of Rabh said: Sanherib the wicked, when he came to attack, brought with him forty-five thousand princes with their concubines in golden carriages, and eighty thousand valiant men which were clothed in coats of mail, and sixty thousand girded with swords, who ran before the army. And the remainder were riders. Similar to this army was the one that attacked Abraham. And such will come in the future with Gog and Magog. In a Boraitha it was taught: The length of his camp was four hundred parsus, and the width of the necks of his horses were forty parsus. And the total of camp was two hundred and sixty thousand, less one. Questioned Abayi: What is meant by "less one"? Less one thousand, less one hundred, or less one literally? The question was not decided.

There is a Boraitha: The first part of Sanherib's army passed the Jordan by swimming, as it reads [Is. viii. 8]: "He shall penetrate into Judah, overflow," etc.; the middle part standing on their feet, as it reads: "Even to the neck shall he reach." (The water was so diminished by the swimming of the first part, that these

had to pass over on foot.) And by the last part (the Jordan was so dry) that the dust whirled up by the tramping of their feet. And they found no water to drink, and they had to bring it from another place; as it reads [ibid. xxviii. 25]: "I have dug and drunk water." But is it not written that the angel smote only one hundred eighty and five thousand, and when they arose early in the morning they were all corpses? Said R. Abuhu: This enumerates only the officers of the army. Said Rabbina: It seems to be so from [II Chr. xxxii. 21]: "And the Lord sent an angel, who cut off every mighty man of valor and leader and captain in the camp of the king of Assyria, and when he returned with shame of face to his own land, he went into the house of his god, and (those) that were come forth from his own bowels felled him there with the sword."

With what did the angel smite them? R. Eliezar said: With his hand. As it reads [Ex. xiv. 31]: "And Israel saw that great hand which the Lord had shown," *i.e.*, that which will take revenge on Sanherib. And R. Jehoshua said: With the finger. As it reads [ibid. viii. 15]: "Then said the magicians unto Pharaoh, this is a finger of God," "this" means the one which will take revenge on Sanherib. And R. Eliezar b. R. Jose the Galilean said: The Holy One, blessed be He, said to Gabriel: Is thy sickle (of death) polished? And he answered: Lord of the Universe, it is ready, polished, since the six days of the creation. As it reads [Is. xxi. 15]: "From the drawn sword, from the bent bow." R. Simeon b. Jochai said: That was the time when the fruit became ripe, and the Holy One said to Gabriel: When thou wilt go to make the fruit ripe, by the way, thou shalt attend to them. As it reads [ibid. xxviii. 19]: "For morning by morning shall it pass by, by day and by night; and the mere understanding of the report shall cause terror." Said R. Papa: This is what people *say*: When thou passest by the door of thy enemy, look at it. According to others the angel blew into their nostrils till they died. As it reads [ibid. xl. 24]: "When he breathed upon them, they withered." R. Jeremiah b. Abah said: They died from the striking of his hands. As it reads [Ezek. xxi. 22]: "I will strike my hands together, and I will cause my fury to be assuaged."

And Itz'hak of Nafha said: He revealed their ears so that they hear the songs of the angel and become death from it. As it reads [ibid. xxxiii. 3]: "When thou liftedst thyself up nations were scattered." And how many remained of them? Accord-

ing to Rabh, ten, as it reads [ibid. x. 19]: "And the rest of the trees of his forest shall be few in number, so that a boy may write them down." And what can a boy write a י (yad) which counts ten. And Samuel said: Nine, as it reads [ibid. xvii. 6]: "Two or three berries on the top of the uppermost bough, four to five on the outmost branches of a fruitful tree." And R. Jehoshua b. Levi said: Fourteen, as the just cited verse reads two, three . . . four, five. R. Johanan, however, said: Only five, and they were Sanherib and his two sons, Nebuchadnezzar and Nebusaradan, the latter is known by tradition, and concerning Nebuchadnezzar, it reads [Dan. iii. 25]: "And the appearance of the fourth is like a son of the gods," and if he would not have seen him first, how would he know how an angel looks? And concerning Sanherib, it reads [II Kings xix. 37]: "And it came to pass, as he was prostrating himself in the house of Nisroch his god, that Adrammelech and Sharezer his sons smite him."

R. Abuhu said: Were it not for the following verse it would be impossible to believe. It reads [Is. vii. 20]: "On the same day, will the Lord shave with the razor that is hired, from among those on the other side of the river, with the king of Assyria, the head and the hair of the feet, and also the beard shall it entirely remove." The Lord sent an angel, who appeared before Sanherib as an old man, and questioned him: When thou wilt return to the kings of the East and the West, whose sons thou broughtst with thee, and who were killed, what excuse canst thou give to them? And he answered: I myself am trembling about this. Canst thou advise me what to do? And he rejoined: Go and change thyself that thou mayest not be recognized. And to the question how should this be done, he told him, Bring me scissors and I will cut your hair off. And to the question where he shall take the scissors, he showed him a certain house, telling him to go there and that he will find what he needs. He went there, and found angels who had appeared before him as men, engaged in grinding the kernels of dates. And he asked them for a scissors. To which they answered, grind one kernel and thou wilt get it. He did so and got the requested scissors. But when he returned it grew dark, and he was told to bring light. And while carrying the light, the wind blew and caught his beard, and therefore he was compelled to cut off his hair and his beard. And this is what is written, "and also the beard shall it entirely remove." [Said R. Papa, this is what people say: Then

you are engaged in cutting the hair of an Aramaen, cinge his beard, and you will have to laugh for a long time.] When he went away he found a board from the ark of Noah. And he exclaimed, This is the great God, who saved Noah from the flood. I vow that if I will succeed in the future, I will sacrifice my two sons to him. This his sons heard, and therefore they killed him, and this is what is written in the above cited verse [II Kings, xix. 37].

It reads [Gen. xiv. 15]: "And he divided himself against them, he and his servants by night (lajlha), and smote them." Said R. Johanan: The name of the angel who came to assist Abraham was lajlha (night), as it reads [Job, iii. 3]: "And the night when it was said, There hath been a male child conceived," etc. And R. Itz'hak of Nafha said: The term lajlha concerning Abraham means that the stars of the night assisted him in his war as they did in the war with Sissera [Judges, v. 20]: "From heaven they fought—the stars in their courses fought against Sissera." Said Resh Lakish: The explanation of Nafha is better than that of the bar Nafha (Johanan, who is always called bar Nafha).

R. Johanan said: When this upright (Abraham) reached the city of Dan he became weak, as he saw that in the future his children will worship idols in Dan, as it reads [I Kings, xii. 29]: "And the other put he in Dan." And also this wicked (Sanherib) did not feel strong until he reached Dan, as it reads [Jer. viii. 16]: "From Dan was heard the snorting of his horses."

R. Zera said: Although R. Joshua b. Levi sent a message, in which among other things he said be careful with the children of the gentiles, as it happens very often wisdom emanates from them, the following may be nevertheless proclaimed. It reads [ibid., xii. 1 to 3]: "(Too) righteous art thou, O Lord, that I could plead with thee; yet must I speak of (the principles of) justice with thee: Wherefore is the way of the wicked happy? Do all those prosper that deal treacherously? Thou hast planted them; they have also taken root; they grow; they also bring forth fruit: thou art near in their mouth, and far from their mind." And he was answered [ibid., ibid. 5]: "If thou hast run with the footmen, and they have wearied thee, how then canst thou contend with the horses? and if in the land of peace, (wherein) thou trusted, (they wearied thee), how then wilt thou do in the swelling of the Jordan?" As a parable to this is: One who proclaims that he is able to run three parsus in front of

horses in the swamps. And a pedestrian happened to say to him that he is able to do the same. And he tried to run in front of him three miles and became tired. And then he said, If you become tired by running in front of me, how much the more in front of horses? If only from three miles, how much the more from three parsus? If you become tired on dry land, how much the more would you become so in the swamps! Similar to this was it said to Jeremiah. Thou art wondering that I have rewarded that wicked for the four steps he was running for the sake of my glory: how much more will you wonder when I will come to pay the reward of Abraham, Isaac and Jacob, who used to run for me like horses! And this is what is written [ibid. xxiii. 9]: "To the prophets—Broken is my heart within me; all my bones shake; I am like a drunken man, because of the Lord, and because of his holy words."

But what four steps are meant? Those of [Isa. xxxix. 1]: At that time sent Merodach-baladon, the son of Baladon, the king of Babylon, letters and presents to Hezekiah, for he had heard that he had been sick, and was becoming strong again." And to this it reads also [II Chron. xxxii. 31]: "And in the same manner in the business of the ambassadors . . . who sent unto him to inquire concerning the wonder that had happened in the land." (And what is it?) What R. Johanan said: That the day on which Achaz died consisted of only two hours. And when Heskiah became sick and thereafter recovered, the Holy One, blessed be He, returned the ten hours to that day, as it reads [Isa. xxxviii. 8]: Behold, I will cause the shadow of the degrees, which is gone down on the dial of Achaz by the sun, to return backward ten degrees. So the sun returned ten degrees, by the degrees which he was gone down." Merodach-baladon then questioned why that day is so long. And he was told, because Hiskia was sick and recovered. He said then: If there is such a man, must he not be greeted? Write him a letter of greeting. And they wrote, Peace to the king Hiskiah, peace to the city of Jerusalem, and peace to the great God.

At that time Nebuchadnezzar was Merodach's scribe. But this letter was written in his absence. When he returned and heard of this he asked them what they wrote. And they told him so and so. And he exclaimed: Ye named Him the great God, and greet Him at the end! It ought to have been written, Peace to the great God, peace to the city of Jerusalem, and peace to Hiskiah! And they told him that the dictator of the letter

should be the messenger. He then ran after the messenger to make him return. But after he ran four steps Gabriel came and stopped him. And R. Johanan said : If Gabriel would not have stopped there would be no remedy for the people of Israel.

What does the term "ben baladon" mean? It was said that Merodach's father was a king whose appearance was changed to that of a dog. And his son baladon sat on the throne. And when he used to sign his name he did so in conjunction with his father's for the sake of his honor. And to this it reads [Malachi, i. 6]: "A son honoreth his father, and a servant his master." A son honoreth his father, as just mentioned, and a servant his master, as in [Jer., lii. 12 and 13]: "And in the fifth month on the tenth day of the month, which was the nineteenth year of King Nebuchadnezzar, the king of Babylon, came Nebusaradan, the captain of the guard, (who) served the king of Babylon, unto Jerusalem. And he burnt the house of the Lord," etc. But was Nebuchadnezzar, indeed, at that time in Jerusalem? Is it not written [II Kings xxv. 20]: "And Nebusaradan, the captain of the guard, took these, and conducted them to the king of Babylon to Riblah." And R. Abuhu said that Riblah is identical with Autukhia? R. Hisda and R. Itz'hak b. Abudimi: One said that the image of Nebuchadnezzar was engraved on his carriage, and the other that the fear of Nebuchadnezzar rested upon Nebusaradan, so that it always appeared to him that he was standing by him.

Rabha said: Three hundred mules loaded with iron saws which cut iron were given to Nebusaradan by Nebuchadnezzar while going to attack Jerusalem. And all of them were broken at one gate of Jerusalem, as it reads [Ps. lxxiv. 6]: "And now they hew in pieces the carver work thereof altogether with hatchets and hammers." Seeing this he thought to return, but a heavenly voice was heard: "Jumper, the son of a jumper, O Nebusaradan, jump now, and thou wilt succeed, as the time for the destruction of the sanctuary and for the burning of the Temple has arrived." And one saw remained with him, and with it he struck the gate, and it opened, as it reads [ibid., ibid. 5]: "(The enemy) is known as one that lifteth up high axes against the thickets of a forest." Then he slew every one coming under his hand till he reached the Temple and kindled it. However, the Temple wanted to fly away, but it was prevented by Heaven and was trodden down, as it reads [Lamentations, i. 15]: "A winepress hath the Lord trodden over the virgin, the daughter of

Judah." Nebusaradan became proud of all this, and a heavenly voice was heard saying: "You slew a killed nation, a burnt temple have you burned, grind flour have you grind," as it reads [Isa. xlvii. 2]: "Take the mill and grind meal; uncover thy locks, lift up the train, uncover the thigh, pass over the rivers." It does not read "and grind wheat," but "grind meal."

He then saw the blood of Zechariah the prophet, which was boiling. He asked: What is it? And he was told that it is blood of sacrifice which was spilled. And he said: I will bring such blood and see if it will be similar. He did so, but it didn't correspond. Said he to them: Reveal to me this secret, for if not I will scratch your flesh with iron combs. They told him then that it was that of a priest and prophet, who had prophesied the destruction of the Temple and was slain. Said he to them: I will reconcile him. He slew the rabbis over his blood, but it didn't become quiet. He brought then the little school children, slew them, and it didn't effect. He slew then the young priest over it, and it didn't cease to boil. He slew then altogether nine hundred and forty thousand, and still the blood did not rest. He approached the blood, saying: Zechariah, the best of thy people I slew; dost thou want that I shall slay all of them? And the blood immediately rested. He then repented, thinking they had suffered so much only for one person. I who have shed so much blood, how much will I have to suffer? He then ran away, sent his will to his house, and became a proselyte.

The rabbis taught: Naamani's proselytism was only to perform the seven commandments given to the descendants of Noah. Nebusaradan, however, was a true proselyte, from the descendants of Sissera were such who studied the law in Jerusalem, and from the descendants of Sanherib were such who taught the Torah among a majority of Israelites, and they are Shmayah and Abtalia. From the descendants of Haman were such who learned the Torah in the city Bne-Brack. And even the descendants of Nebuchadnezzar, the Holy One, blessed be He, thought to enter them under the wings of the Shekinah. But the angels prayed before Him: Lord of the Universe, he who has destroyed your house, burned your Temple, shouldst thou enter him under the wings of the Shekinah? And this is what reads [Jer. li. 9]: "We would have healed Babylon, but she was not healed." And Ula said this means Nebuchadnezzar. Samuel b. Na'hman, however, said: It means the waters along the (dry, or stony) palms of Babylonia.

Ula said: Amon and Moab were the two bad neighbors of Jerusalem, and when they heard the prophets prophesying the destruction of same, they sent to Nebuchadnezzar, "Come up," and to his answer that he is afraid that they will do to him as they have done with their former enemies, they said to him [Prov. vii. 19]: "For the man is not in his house," and by the man is meant the Lord. He, however, sent to them; he is near to them, and will return. They sent again to him, "He is gone on a journey a great way off." Nebuchadnezzar, however, sent to them: I am aware that among them are upright, who will pray for them to Him and He will return; and they answered: The bag of money hath he taken with him, and by a "bag of money," the upright are meant, as it reads [Hosea, iii. 2]: "So I bought me such a one for fifteen pieces of silver," etc. He sent again: The wicked of them will repent, pray, and will be listened to. And they answered: He has already appointed a time for repenting, as it reads [Prov. vii. 19]: "By the day of kesa only will he return," and the term kesa means "an appointed time," as it reads [Ps. lxxxi. 4]: "Blow on the new moon, the cornet at the time appointed (kesa) on the day of our feast." He, however, sent to them: It is winter, and I cannot come up because of snow and rain. And they sent to him: The mountains will protect thee, as it reads [Is. xvi. 1]: "Send ye the lambs of the ruler of the land from Sela, through the wilderness unto the mount of the daughter of Zion." He (Nebuchadnezzar) sent to them: When I will arrive there I will have no place to reside. And they answered: Their graves are better than your palaces, as it reads [Jer. viii. 1 and 2]: "At that time, saith the Lord, shall they bring out the bones of the kings of Judah, and the bones of the princes, and the bones of the priests, and the bones of the prophets, and the bones of the inhabitants of Jerusalem, out of their graves. And they shall spread them out before the sun, and the moon and all the hosts of heaven, which they have loved, and which they have served, and after which they have walked."

R. Na'hman said to R. Itz'hak: Have you heard when the fallen son will come? And to the question, Who is it? He answered: The Messiah. And the Messiah you call "The fallen son"? And he said: Yea, for it reads [Amos, ix. 11]: "On that day will I raise up the tabernacle of David, which is fallen." And he answered: Thus said R. Johanan: In the generation in which the son of David will come scholarly men will decrease, and

by the remainder their eyes will protrude from sighing and sorrow, many chastisements and many evil decrees will be renewed, one will not cease as yet, while another will have come.

The rabbis taught: In this Sabbatic period in which the son of David will appear in the first year there will be fulfilled what is written, in [Amos, iv. 7]: "And I caused it to rain upon one city, and upon another city I caused it not to rain." In the second year, arrows (tokens) of famine will be sent. In the third, a great famine, from which men, women, and children, pious men and men of good deeds will die, and the Torah will be forgotten by their scholars. In the fourth there will be abundance, and not abundance. In the fifth there will be great abundance, and the people will eat, drink, and enjoy themselves, and the Torah will return to her scholars. In the sixth, voices will be heard saying that the Messiah is near. In the seventh, war will be, and at the end of the seventh, ben David will come. Said R. Joseph: Were there not many Sabbatical periods which were like this, but still he did not come? Said Abayi: Were then the above-mentioned voices heard in the sixth? And was there in the seventh war? And secondly, has it then happened in the same order as said above? There is a Boraitha. R. Jehudah said: The generation in which the son of David will come, the houses of assembly will be converted into houses of prostitution. Galilee will be destroyed. The place called Gablan will be astonished. Men of the borders of Palestine will travel from one city to another, but will find no favor. The wisdom of the scribes will be corrupted. Men fearing sin will be hated. The leaders of that generation will have the nature of dogs. And truth will be missing, as it reads [Is. lix. 15]: "And thus is the truth missing." What does this mean? It was said in the college that it passes away like flocks.* "And he that departeth from evil is regarded as foolish." Said the school of Shila: He who turns away from evil is regarded as foolish in the eyes of the people. Said Rabha: Previously I thought there is no truth in the whole world. However, I met thereafter a certain rabbi named Tubuth, according to others R. Tibumi, and if the whole world filled with gold would be given to him, he would not change his word or tell a lie. It happened once that he came to a city named Kushta (truth). And the inhabitants of

* The Hebrew term for flocks, "eder," and concerning truth, the expression is, "neaderes."

that city would not change their word, and it never happened that one should die an untimely death. And he married one of its inhabitants, and she bore him two children. It happened once that his wife washed her head and a female neighbor came to ask for her, and he thought that it was not nice to say that she is washing her head, and therefore said that she is out. And the two children died. And when the inhabitants came to ask him what was the reason that such an unusual thing happened to him, he told them the truth. And they requested him to move away from their city in order not to cause untimely death.

R. Nehuraia taught: The generation in which the son of David will come, young men will make pale the faces of the old, old men will rise before youth, a daughter will rebel against her mother, a daughter-in-law against her mother-in-law, the leaders of the generation will have the nature of dogs, and a son will not be ashamed when his father reproaches him.

There is a Boraitha: R. Nehemiah said: The generation in which ben David will come, insolence will increase, an evil man will be honored, respect will be missed, the vine will give forth its fruit abundantly; wine, however, will be dear, and all the governments will be turned over to *Minuth* (will embrace the religion of the Minim), and no preaching will avail. And this is a support to R. Itz'hak, who said that ben David will not come unless all governments will be turned over to *Minuth*. Where is to be found a hint to this in the Scripture? [Lev. xiii. 13]: "It is all turned white, he is clean."

The rabbis taught: It reads [Deut. xxxii. 36 and 37]: "For the Lord will espouse the cause of his people, and bethink himself concerning his servants: When he seeth that their power is gone, and the guarded and fortified are no more." Ben David will not come until the denouncers will increase. According to others, unless the disciples will decrease; and still according to others, until the pockets will be empty of *aperuthar*. And some others also say unless they will renounce their hope to be redeemed. And this is as R. Zera found the rabbis occupying themselves with the question of the Messiah. And he told them, I beg you do not make the thing further than it is, as there is a Boraitha that the following three come suddenly after renouncing all hope for them, viz., the Messiah, found and a bite of a serpent. R. Ktina said: For six thousand years the world will continue, and in the seventh it will be destroyed. As it reads [Isa. xii. 11]: "And exalted shall be the Lord alone, on that day."

Abayi, however, said two thousand will be destroyed, as it reads [Hosea, vi. 2]: "He will revive us after two days. There is a Boraitha in accordance with R. Ktina: As in the Sabbatic period, the seventh year is a release, so will it be with the whole world that one thousand years after six will be a release, as above cited verse [Isa. xii. 1] and [Ps. xcii. 11]: "A Psalm or song for the Sabbath day," which means the day which will be all Sabbath. And as [ibid. xc. 4]: "For a thousand years are in thy eyes but as the yesterday when it is passed."

The disciples of Elijah taught: The world will continue for six thousand years, the first two thousand of which were a chaos (Tahu), the second two thousand were of wisdom, and the third two thousand are the days of the Messiah, and because of our sins many, many years of these have elapsed, and still he has not come. Elijah said to R. Jehudah, the brother of R. Sala the Pious: The world will continue for no less than eighty-five jubilaic periods, and in the last jubilaic period ben David will come. And to the question: At its beginning or at its end? he answered: I don't know. Has this passed already, or will it come? He also answered, I don't know. R. Ashi, however, said: Elijah told him thus: Until the above mentioned time will pass you shall not have any hope for him. But after that time, you may hope.

R. Hanan b. Tahlipha sent a message to R. Joseph: I met a man who possessed scrolls written in Assyrian characters and in the holy language. And to my question from where he got it, he answered: I hired myself to the Persian army, and among the treasures of Persia I found it. And it was written therein that after two thousand, two hundred and ninety-one years of the creation, the world will remain an orphan, many years will be the war of whales, and many more years will be the war of Gog and Magog, and the remainder will be the days of the Messiah. But the Holy One, blessed be He, will not renew the world before seven thousand have elapsed. And R. Aha b. R. Rabha said: After five thousand years from to-day.

There is a Boraitha: R. Nashan said: The following passages bore a hole to the depth (*i.e.*, as no one can fathom the depth, so no one can come to the exact meaning of these), viz. [Habukkuk, ii. 3]: "For there is yet a vision for the appointed time, and it speaketh of the end, and it will not deceive: Though it tarry, wait for it; because it will surely come, it will not be delayed." It is not as our masters lectured about this from [Dan. vii. 25]:

"And they will be given up into his hand until a time and times and half a time." And not in accordance with R. Simlai, who used lecture about this form [Ps. lxxx. 6]: "Thou feedest them with the bread of tears, and givest them tears to drink in great measure." And also not in accordance with R. Aqiba, who used to lecture about this from [Haggai, ii. 6]: "For thus said the Lord. . . . Yet one thing more (will I do), it is but little, when I will cause to quake the heavens and the earth, and the sea, and the dry land." But the first kingdom was of seventy years, the second of fifty-two, and the kingdom of Bar Kochba, two years and a half.*

What does the verse "Speaketh of the end" mean? Said R. Samuel b. Na'hman, in the name of R. Jonathan: Blown out shall be the souls of those who are sitting and appointing times for the arrival of the Messiah. Because they usually err, and when the appointed time comes and the Messiah does not appear, they say that he will not come any more. But every one has to wait for him, as it reads: "Wait for him, because he will surely come." And lest one say, We are awaiting but He does not wait, therefore it reads [Isa. xxx. 18:] "And therefore will the Lord wait, to be gracious unto you, and therefore will he exalt himself, to have mercy upon you." But if He and we are awaiting, who prevents Him to come? The divine attribute prevents. But if so, what is the use of our waiting? To receive reward for waiting, as the cited verse ends: "Happy are those that wait for him."

Abayi said: There are no less than thirty-six upright in every generation who receive the appearance of the Shekhina (see Succah, p. 68, and there it reads every day instead of every generation.) Is this so? Did not Rabha say that the row in front of the Holy One, blessed be He, contains eighteen thousand parsus, as it reads [Ezek. xlvi. 35]: "All around it shall be eighteen thousand rods"? This presents no difficulty. Abayi speaks of those who are looking in a "*speculare*," which gives the right light. And Rabha speaks of those who are looking in such, which does not give the right light. But are there, indeed, so many? Did not R. Simeon b. Jochai say: I see the very greatest men in the world are very few, etc. (see *ibid.*, *ibid.*, line 6)? This presents no difficulty. R. Simeon b. Jochai speaks of those who may enter without permission, and Rabha speaks of those who must have

* We do not understand the connection of this passage. And also Rashi, after quoting many commentaries, ignores them, and says that all these legends are not from a Mishna, nor from a Boraitha.

permission. Said Rabh : All the appointed times for the appearance of the Messiah have already ceased. And it depends only on repentance and good deeds. Samuel, however, said : It is sufficient for the mourner to remain with his own sorrow (*i.e.*, the suffering of Israel for such a long time is sufficient that they should be redeemed even without repentance.) And on this point the following Tanaim differ. R. Eliezar said : If the people of Israel will repent they will be redeemed, but not otherwise. Said Jehoshua to him : According to you, if they will not repent they will not be redeemed at all? (Replied R. Eliezar *) : The Holy One, blessed be He, will appoint, for this purpose, a king whose decrees concerning Israel will be as severe as Haman's were. And this will bring them back to the better side, and they will repent.

There is another Boraitha : R. Eliezar said : If the people of Israel will repent they will be redeemed, as it reads [Jer. iii. 14] : "Return, O backsliding children, I will heal your backslidings." Said R. Jehoshua to him : Is it not written [Isa. lii. 3] : "For thus hath said the Lord, for naught were you sold, and without silver shall ye be redeemed," *i.e.*, for naught were you sold to the idolaters, and not because of repentance and good deeds will you be redeemed. Rejoined R. Eliezar : But does it not read [Malachi iii. 7] : "Return unto me, and I will return unto you, said the Lord"? Rejoined he : Does it not read [Jer. iii. 14] : "For I am become your husband, and I will take you one of a city and two of a family, and bring you to Zion"? Said R. Eliezar again : It reads [Isa. xxx. 15] : "In repose and rest shall ye be helped." And R. Jehoshua answered : I call your attention to [ibid. xlix. 7] : "Thus hath said the Lord, the Redeemer of Israel, his Holy One, to him who is despised by men, to him who is abhorred by nations, to the servants of rulers, kings shall see it and rise up, princes, and they shall prostrate themselves, for the sake of the Lord who is faithful." And R. Eliezar rejoined : To this it is written [Jer. iv. 1] : "If thou wilt return, O Israel, saith the Lord, unto me, must thou return." Said R. Jehoshua to him : I call your attention to [Dan. xii. 7] : "Then heard I the man clothed in linen, who was above the waters of the stream ; and he lifted up his right hand and his left hand unto the heavens, and swore by the Everliving One that after a time, times and a half, and when there shall be an end to the crushing of the power of the holy people, all these things shall be ended." And R. Eliezar

* This of the parenthesis is from the Palestinian Talmud.

kept silent. Said Rabha : The appointed time for the Messiah cannot be more revealed than in this passage, as it reads [Ez. xxxvi. 8] : " But ye, O mountains of Israel, ye shall send forth your boughs, and your fruits shall ye bear for my people Israel." R. Elazar said also from [Zech. viii. 10] : " For before those days, there was no reward for man, nor any reward for beast ; and for him that went out or came in there was no peace, because of the oppressor." What do the last words in this passage mean ? Said Rabh : Also the scholars, of whom it reads [Ps. cix. 165] : " Abundant peace have they who love thy law," will also have no peace from the oppressor. Samuel, however, said : The cited verse means the Messiah will not come until high prices will be for all articles of life. R. Hanina said : The son of David will not come unless even a piece of fish will be sought for a sick one and it will not be found, as it reads [Ez. xxxii. 14] : " Then will I make clear their waters, and cause their rivers to flow like oil." And it reads also [ibid. xxix. 21] : " On that day will I cause to grow a horn for the house of Israel, and unto thee will I open the mouth in the midst of them.* R. Hana b. Hanina said : Ben David will not appear unless every office of the government, even the least one will be removed from the children of Israel, as it reads [Isa. xviii. 5] : " He will both cut off the tendrils with pruning-knives, and the sprigs will he remove and cut down." And thereafter it reads [ibid. 7] : " At that time shall be brought as a present unto the Lord of hosts a people pulled and torn." And Zera, in the name of R. Hanina, said : Ben David will not come until the haughty men of Israel will cease to be, as it reads [Zeph. iii. 11] : " For then will I remove out of the midst of thee, those that rejoice in thy pride, and thou shall never more be haughty again on my holy mount." And thereafter it reads [12] : " I will leave remaining in the midst of thee an humble and poor people, and they shall trust in the name of the Lord." R. Simlai said, in the name of R. Elazar b. Simeon : Ben David will not come unless there will cease to be judges and officers of Israel, as it reads [Isa. i. 25 and 26] : " And I will turn my hand against thee, and I purge away as with lye thy dross, and remove all thy tin. And I will restore thy judges as at first, and thy counsellors as at the beginning," etc.

Said Ula : Jerusalem will not be redeemed but by charity, as

* See Samuel Eidles (Mahrsbo) about the strange analogy of these two passages. It is remarkable in that the text quotes the verse xxix. 21 after that of xxxii. 14.

it reads [Isa. i. 27]: "Zion shall be redeemed through justice, and her converts through *zdaha*" (the meaning of which is both righteousness and charity). Said R. Papa: When insolence shall cease to be in Israel, the *magus* of the Persians who causes much trouble will also cease to be, as it reads [ibid., ibid. 25]: "And purge away as with lye thy dross, and remove all thy tin." When judges of Israel will cease to be, the brutal executions of the Persian court-servants will be abolished, as it reads [Zeph. iii. 15]: "The Lord hath removed mishophtakha (literally "the judges from thee"), he hath cleared away thy enemy." R. Johanan said: When you see that wisdom decreases continually from a generation, you may hope for the Messiah, as it reads [II Sam. xxii. 28]: "And the afflicted people thou wilt save." And he said again: If you see chastisements and evils are increasing in a generation like the waters of the rivers, await the Messiah, as [Isa. lix. 19]: "For there shall come distress like a stream." And the next verse reads: "But unto Zion shall come the redeemer." He said again: Ben David will appear either in a generation in which all will be upright or in one in which all shall be wicked. "All upright," from [ibid. lx. 21]: "And thy people—they all will be righteous, for ever shall they possess the land." And "all wicked," from [ibid. lix. 16]: "And he saw that there was no man, and wondered that there was no intercessor." And [ibid. xlviii. 11]: For my own sake, for my own sake, will I do it."

R. Alexandri said: Jehoshua b. Levi propounded a contradiction: It reads [ibid. lx. 22]: "I the Lord will hasten it in its time." "Hasten" and "in its time" contradict each other. And the answer was that if they will be worthy I will hasten it, and if not, they must wait till the right time will come. The same said again that the same authority propounded another contradiction from [Dan. vii. 13]: "Behold with the clouds of heaven came one like a son of man . . ." [Zech. ix. 9]: "Lowly and riding upon an ass." And the answer was, if they will be worthy he will come with the clouds of heaven, and if not, he will come upon an ass.

The king Sabur said to Samuel: You say that your Messiah will come upon an ass, let me send him the best horse of my stable. And he answered him: Do you then possess a horse of a hundred colors as the ass of the Messiah? (a joke to a joke). R. Jehoshua b. Levi met Elijah standing at the gate of the cave of R. Simeon b. Jochai and asked him if he will have a share in

the world to come. And he answered: If it will be the will of this Lord. Said R. Jehoshua: Two persons have I seen and the voice of the third have I heard.* I questioned him further when the Messiah will appear. And he answered: Go and ask him himself. "But where is he to be found?" "At the gate of Rome, among poor people inflicted with wounds." "And how can I recognize him?" All the inflicted poor open the bandages of all their wounds, fix all of them and then dress them. And he opens one bandage, fixes the wound and dresses it, and then goes on to the next one, for the reason that perhaps he will be cold and there will be a delay till all the wounds are dressed. R. Jehoshua went to him, and when he met him he said: Peace be to thee, my master and teacher. And he answered: Peace be with thee, son of Levi. And to Jehoshua's question: When will the master appear? he answered: This day. When Jehoshua met Elijah again, the latter questioned him as to what the Messiah said to him. And he said: Peace be with thee, son of Levi. Said Elijah: He assured you of a share for thyself and for thy father in the world to come. Rejoined Jehoshua: He made a fool of me by saying that he will come this day. And Elijah answered: The expression "this day" means as in [Ps. xcv.]: "Yea this day, if you will hearken to his voice."

The disciples of R. Jose b. Kisma questioned him when the son of David will appear. And he answered: I am afraid you will request from me a sign. And they assured him that they would not. He then said to them: When this gate will fall, be rebuilt and fall again, be rebuilt again and fall again. And before it will be rebuilt for the third time the Messiah will appear. The disciples then said: Our master, give us a sign. "Have you not promised that you will not ask of me for any sign?" They answered: Nevertheless we would like to have it. And he said: If it is as I say, the spring of the cave of Pancas shall be converted into blood. And so it happened. While dying he said to his disciples: Put my coffin very deep into the earth, for there will not be one tree in Babylon to which a horse of the Persians will not be tied. And there will not remain one coffin in the land of Israel from which the horses of the Madoites will not eat straw.

Rabh said: Ben David will not arrive until Rome shall have dominated over Israel nine months (see Yomah, p. 13, where it

* The explanation of this may be found in Samuel Eidlès (Marsho).

is said, "over the entire world"; see there the sources also). Said Ula: Messiah may appear in the near future; I, however, wish not to see him. And the same said Rabba. R. Joseph, however, said: I pray for his coming in my days, and that I shall have the preference to sit in the shadow of his ass. Said Abayi to Rabba: Why does the master not wish to see the Messiah? Is it because of the lot which will be at that time? Is there not a Boraitha that the disciples of R. Elazer questioned him: What may one do to be saved from the lot of the Messiah? And he answered: He shall occupy himself with the Torah and with bestowing favors to the people, and you, master, are doing both; why then are you afraid? And he answered: Perhaps sin will cause me to suffer by the lot. And this is in accordance with R. Jacob b. Idi, who propounded the following contradiction: It reads [Gen. xxviii. 15]: "And, behold, I am with thee, and will keep thee withersoever thou goest." And [ibid. xxxii. 8]: "Then Jacob was greatly afraid, and he felt distressed." Hence after he was promised by the Lord, he was still afraid? And the answer was that he was afraid perhaps his sins caused what happened, as we have learned in the following Boraitha. It reads [Ex. xv. 16]: "Till thy people pass over"—*i.e.*, their first coming to Palestine; "till this people pass over"—*i.e.*, their second coming to Palestine from Babylon; from which we may infer that the second coming ought to be equal in miracles with the first. And why did not miracles occur at the second coming? Because of their sins. R. Johanan also said: The Messiah may come, but I shall not see him. Said Resh Lakish to him: What is your reason? Is it because of [Amos, v. 19]: "As if a man were to flee from a lion, and a bear should meet him; and he enter into the house, and lean his hand against the wall, and a serpent should bite him." Come, and I will show you a similarity to this in the world at this time—*e.g.*, one is going to his field and a bailiff meets him (trying to contest this title to the field): is this not equal as if a lion should meet him? And when he enters the city a collector from the government meets him: is this not equal as if a bear should meet him? And when he enters his house and finds his sons and daughters starving: is this not equal as if a serpent would bite him? It must then be because of [Jer. xxx. 6]: "Ask ye now, and see whether a male doth give birth to a child? Wherefore do I see (gebher) every man with his hands on his loins as a woman in giving birth? and why are all faces turned pale?"

What is meant by "I see every *gebher*?" Said Rabba b. Itz'hak in the name of Rabh: Him (God) from whom all the strength comes. And what is meant by "*all* faces turned pale"? Said R. Johanan: The heavenly household and the household of the earth, as at the time the Holy One, blessed be He, said: Both Israel and the nations are my work, why then should I destroy the one for the other? Said R. Papa: This is what people say: If the ox which is liked by the owner falls while going on his way, and he is compelled to substitute for it a horse which he does not like very much, when the ox, however, becomes better it is difficult for him to remove the horse because of the ox.*

R. Giddel said in the name of Rabh: The years of abundance in the time of the Messiah, will benefit Israel. Said R. Joseph: Is this not self-evident? Who else then should have benefit from them, Hilek and Bilek (as in English Dick and Harry)? This was said by him in order to deny R. Hillel's theory, who said farther on, that Israel has no more to wait for a Messiah, as they have consumed him already at the time of Hezekiah. Said Rabh: The world is created only for such men as David. And Samuel said: For such men as Moses. And R. Johanan said: For such men as the Messiah. But what is his name? The disciples of R. Shilah said: Shilah is his name, as it reads [Gen. xlix. 10]: "Until Shilah will come." The disciples of R. Janai said *Jinun* is his name, as it reads [Ps. lxxii. 17]: "In the presence of the sun, Jinun is his name." And the disciples of R. Hanina said: Hanina is his name, as [Jer. xvi. 13]: "So that I will not grant you Hanina." (Favor.) According to others, Menachem b. Hiskia is his name as in [Sam. i. 16]: "For from me in Menachem (comforter) that should refresh my soul." And the rabbis said: The sufferer of the house of Rabbi is his name, as [Is. liii. 4]: "But only our diseases did he bear himself, and our pains he carried: while we indeed esteemed him stricken, smitten of God and afflicted." Said R. Na'hman: If Messiah is among the living he is a man like myself, of whom it reads [Jer. xxx. 21]: "And their leader shall be of themselves, and their ruler shall proceed from the midst of them." Said Rabh: If he is among the living it is our holy rabbi, and if he was from the death it was Daniel. Said R. Jehudah in the name of Rabh: In the future the Holy One, blessed be He, will create for them

* Rashi explains this thus: When Israel sins, the power is given to the nations. And therefore when Israel repents, and has to be redeemed, it is hard for Heaven to destroy the enemies because of Israel. (See also Marsho.)

another David, as it reads [ibid., ibid. 9]: "And David their king, whom I will raise up unto them." It does not read "I raised," but "I will raise." Said R. Papa to Abayi, Does it not read [Ezek. xxxvii. 25]: "David my servant shall be prince unto them forever"? As it is now a Cæsar and a half Cæsar.

R. Simlai lectured: It reads [Amos, v. 18]: "Wo unto you that long for the day of the Lord! for what do you wish the day of the Lord? It is (one of) darkness and not of light." It is similar to a cock and a bat who were waiting for light. The cock said to the bat, I look out for the light, because the light is mine (I see it), but for what purpose do you wait for it? And this is what a Min said to R. Abushu: When will your Messiah appear? When your people will be surrounded with darkness. Rejoined the Min: Do you caution me? And he answered: No, but [Isa. lx. 2] reads: "For behold, the darkness shall cover the earth, and a gross darkness the people; but over thee will shine forth the Lord, and his glory will be seen over thee."

There is a Boraitha: R. Eliezar said: Forty years will be the days of the Messiah. As it reads [Ps. xcv. 10]: "Forty years long did I feel loathing on this generation." R. Elazar b. Azaryah said: Seventy years, as [Isa. xxiii. 15]: "Seventy years like the days of one king." By "one king" the Messiah is meant. Rabbi, however, said: It will continue three generations, as [Ps. lxxii. 5]: "They shall fear thee, as long as the sun shineth, and in the presence of the moon throughout all generations." R. Hillel, however, said: There is no more any Messiah for Israel, as they have consumed him already in the days of Hiskia. Said R. Joseph: May the Lord forgive R. Hillel! Hiskia was at the time of the first Temple, and Zacharyah prophesied at the time of the second Temple, and said [Zech. ix. 9]: "Be greatly glad, O daughter of Zion; shout, O daughter of Jerusalem! Behold, thy king will come unto thee, righteous and victorious is he lowly, and riding upon an ass, and upon a colt the foal of a she-ass."

There is another Boraitha: The days of the Messiah are forty years, as it reads [Deut. viii. 3]: "And he afflicted thee, and suffered thee to hunger," and [Ps. xc. 15]: "Cause us to rejoice as many days as those wherein thou hast afflicted us." Hence, as their journey in the desert was forty years, so long will be the days of the Messiah; so R. Eliezar. R. Dusa, however, said: Four hundred years, as in [Gen. xv. 13]: "And they will afflict them four hundred years." And as the above cited verse reads, "to rejoice as many days as thou afflicted us," hence it is four

hundred years. Rabbi said : Three hundred and sixty-five years, according to the days of the year when counted after the sun, as [Isa. xxiii. 4] : " For the days of vengeance was in my heart, and the year of my redeemer was come." What is meant, the day of vengeance is in my heart? Said R. Johanan : I revealed it to my heart, but not to any other member of my body. And R. Simeon b. Lakish said : I revealed it to my heart, but not to the angels. Abimi b. Abuhu taught : Seven thousand years will be the days of Messiah, as it reads [ibid. lxii. 5] : " And as a bridegroom is glad over the bride, so will be glad over thee thy God," which is seven days, and each day of the Lord is a thousand years.

R. Jehudah said in the name of Samuel : The days of the Messiah will be as from the day of creation till now, as it reads [Deut. xi. 21] : " As the days of heaven over the earth." R. Na'hman b. Itz'hak said : As from the day of Noah till now, as [Isa. liv. 9] : " For as the waters of Noah is this unto me ; as I have sworn," etc.

R. Hyya b. Aba in the name of R. Johanan said : All the prophets have prophesied only for the days of the Messiah, but concerning the world to come it reads [ibid. lxiv. 3] : " No eye (also) had seen a god beside Thee." And he differs with Samuel, who says that there is no difference between this world and the days of the Messiah only concerning the dominion of foreigners over Israel. R. Hyya said again in the name of R. Johanan : The prophets prophesied only to those who have repented, but concerning the entirely upright, it reads : " No eye has seen," etc. And they differ with R. Abuhu, as he said that at the place where those who have repented will be placed, entirely upright cannot be placed, as it reads [Isa. lvii. 19] : " Peace, peace to him that is afar off, and to him that is near." Hence " afar off " is first, and then is " that is near." And what is meant by " far off " ? Who previously was far off and now is near. And what is meant by " near " ? He who was first near, and is also now near. R. Johanan, however, explained " far off " means one who was always far off from sin, and " near " means one who was near to sin, but now is far off.

The same said again in the name of the same authority : The prophets prophesied only to him who marries his daughter to a scholar, to him who is in business for a scholar, and to him who benefited the scholars by his estate, but to the scholars themselves " an eye has not seen," etc. What is this? Said R. Jehoshua b. Levi : This is the wine which is preserved in

the grapes since the days of the creation. And Resh Lakish said: That is the Eden which no eye has seen. And lest one say that Adam the First was there? Adam dwelt only in the garden. And lest one say that both are one and the same. To this it reads [Gen. ii. 10]: "And a river went out of Eden to water the garden."

"*And he who says that the Torah is not given by Heaven,*" etc. The rabbis taught: It reads [Num. xv. 31]: "Because the word of the Lord hath he despised and his commandment hath he broken." It means him who says that the Torah is not given by Heaven. According to others it means an Epicurean. Still another explanation is that "the word of the Lord hath he despised," means him who explains the Torah against the true law. "His commandment hath he broken"—means circumcision, Hikorath—shall be cut off from this world. Tikorath—from the world to come. Said R. Elazar the Modoi: It is inferred from this that he who profanes the sanctuary, who despises the festivals, he who breaks the covenant of Abraham our father, he who explains the Torah in a wrong way, he who makes pale in public the face of his neighbor, although they possess wisdom and good deeds, have no share in the world to come. There is another Boraitha: "He hath despised the word of God," means him who says that the Torah was not given by Heaven, and even if he says that the Torah is given by Heaven, except such and such, which is not by the Holy One, but by Moses himself. And even if he says that the whole Torah is by Heaven except such and such an explanation, such an *a fortiori* conclusion, such an analogy of expression, they are considered as despising the word of the Lord.

There is another Boraitha. R. Mair said: The just cited verse means him who learned the Torah but does not teach it. R. Nathan said: It means him who does not care for the Mishna. R. Nehoraim said: It means him who is possible to study the law, but does not. R. Ismael, however, said: It means an idolater. How does he infer this from this passage? As in the following Boraitha: The disciples of R. Ismael taught: "He hath despised the word of the Lord," means him who has despised the words which were said to Moses at Sinai, "I am the Lord thy God, there shall not be any other god before thee."

R. Jehoshua b. Karcha said: He who learns the Torah and does not repeat it, is similar to him who sows but does not harvest.

R. Jehoshua said: He who learned the Torah and forgot it, is similar to a woman who bears children and buries them. Said R. Aqiba: One shall systematize his study as a song which is to be sung daily (and this will cause his singing in the world to come). Said R. Itz'hak b. Abudimi: Where is an allusion to be found to this in the Scriptures? [Prov. xvi. 26]: "The desire of the laborer laboreth for him; for his mouth imposeth it on him," which means he is laboring here and the Torah labors for him in another place. R. Elazar said: Every man is created to labor, as it reads [Job, v. 7]: "But man is born unto labor." From this, however, we do not know if it means mental or manual labor. As the end of the above-cited verse [Prov. xvi. 26] ends "for his mouth imposeth it on him," hence mental labor is meant. But still I am not aware if it means wisdom or gossip. But as [Josh. i. 8] reads: "This book of the law shall not depart out of thy mouth," hence it means for the labor of the Torah. And this is what Rabha said: Every body is a *δρῦφαντο*. Well is to him who is a "druphanto" for the Torah. Resh Lakish said: He who occasionally studies the Torah lacks sense, as it reads [Prov. xxii. 18]: "For it is a pleasant thing if thou keep them within thy bosom, if they be altogether firmly seated upon thy lips."

The rabbis taught: It reads [Num. xv. 30]: "But the person that doth aught with a high hand," means Menasseh b. Hiskia who was offending the legends of the Torah by saying: Has not Moses written something better than in [Gen. xxxvi. 22]: "And Lotan's sister was Thimna," or that she was a concubine of Eliphaz b. Esau, or that of [ibid. xiii. 14]. "And Reuben went in the days of the wheat harvest and found mandrakes in the field." A heavenly voice was then heard [Ps. l. 20]: "Thou sittest and speakest against thy brother, against thy own mother's son thou utterest slander." And to him also applies [Isa. v. 18]: "Woe unto those that draw iniquity with the cords of falsehood, and as with a wagon-rope, sinfulness." What does a "wagon-rope" mean? (See Succah, p. 80, line 3.) But what means in reality the verse "Lotan's sister was Thimna"? Thimna was a princess, as it reads [Gen. xxxvi. 40]: "Duke Thimna," and a dukedom is a kingdom without a crown; and she desired to become a proselyte, but Abraham, Isaac, and Jacob did not accept her. And she went and became the concubine of Eliphaz b. Esau, saying it is better to be a servant in this nation than to be a princess of another.

And the offspring from her was Amalek, who troubled Israel as a punishment to their parents, who ought not to have driven her out.

"*Reuben went in the days of harvest,*" etc. Said Rabha b. Itz'hak in the name of Rabh: Infer from this that the upright do not stretch their hands out to robbery. What are the *du-daim* which Reuben found? According to Rabh they were *jabruchen*, and according to Samuel mandrake flower. R. Alexandri said: Those who occupy themselves with the Torah for her own sake cause peace to reign in the heavenly household and in the household here below, as it reads [Isa. xxvii. 15]: "If he but take hold of my strength, make peace with me, make peace with me." And Rabh said: He is considered as if he had built both palaces of heaven and earth, as it reads [ibid. li. 16]: "And I have placed my words in thy mouth, and with the shadow of my hand have I covered thee: to plant the heavens and to lay the foundations of the earth." R. Johanan said: He is also considered as a protector of the world, as it reads "with the shadow of my hand have I covered thee." Levi said: He makes redemption sooner, as this verse ends "to say to Zion, Thou art my people." Resh Lakish said: He who teaches the Torah to his neighbor's son the verse considers him as if he had created him, as it reads [Gen. xii. 5]: "And the persons they had obtained in Charan." R. Elazar said: He is considered as if he has created the law, as it reads [Deut. xxix. 8]: "Keep ye therefore the words of the covenant, and do them." And Rabha said: He is considered as if he created himself from the same verse; do not read *authom*, but *athem* (ye yourselves). R. Abuhu said: He who hastens his neighbor to do a meritorious act, the verse considers him as if he himself has done it, as it reads [Ex. xvii. 5]: "And thy staff wherewith thou smotest the river take in thy hand and go." Did he, then, smite the river? Did not Aaron do this? Hence it was written to teach that the verse considers him as if he himself has done it.

"*Epicurcan,*" etc. Both Rabh and R. Hanina said: He who disgraces a scholar is meant. And both R. Johanan and R. Jehoshua b. Levi said: He who disgraces his neighbor in the presence of a scholar. It is correct according to them who said that an Epicurean is he who has done as in the latter case, as then he who disgraces a scholar himself is considered as explaining the Torah a wrong way. But according to them who

say that he who disgraces a scholar himself is considered only an Epicurean, who then is considered as explaining the Torah wrongly? *E.g.*, Menassah b. Hiskia. There were those who taught the same concerning the latter part of the Mishna, "who explains the Torah not according to the true law." And to this Rabh and R. Hanina said: He who disgraces a scholar. And Johanan and Jehoshua b. Levi said: He who disgraces his neighbor in the presence of a scholar. And the question was, if he who disgraces his colleague in the presence of a scholar is considered as explaining the Torah wrongly, who then is considered an Epicurean? Said R. Joseph: *E.g.*, those who say, What good do the rabbis do to us? They read and study the Torah for their own sake. Said Abayi to him: Such are also considered as explaining the Torah wrongly, as it reads [Jer. xxxiii. 25]: "Thus said the Lord, If my covenant be not day and night, I would not have appointed the ordinances of heaven and earth." * This is inferred also from [Gen. xviii. 26]: "Then will I spare all the places for their sake." So R. Na'hman b. Itz'hak. And an epicurean is considered—*e.g.*, if one sits before his master and recollects a Halakha stated somewhere else and says, so and so we have learned there, but does not say: And the master said so. Rabha, however, said: An epicurean is considered—*e.g.*, the disciples of Benjamin the physician, who used to say, What good have the rabbis done for us? They have never permitted us to eat a crow, and they have not prohibited us to eat a dove (hence all remains as it is in the Scriptures). It happened that a question of legal or illegal meat was brought before Rabha from the house of Benjamin the physician, and he saw a reason to permit the use of it, and he said then: See, I have permitted you a crow. The same happened again and he saw a reason to prohibit it, and also said: See, I have prohibited a dove to you. R. Papa said: Even he who speaks of the rabbis in the same language as when he speaks of common people. However, he himself forgot his statement in talking about the rabbis, and thereafter when he recollected it, he fasted. Levi b. Samuel and R. Huna b. Hyya used to prepare mantles for the holy scrolls in the college of R. Jehudah. When they came to the Book of Esther, they said: For this certainly no mantle is needed. Said R. Jehudah to them: Even such a language is as used by the followers of

* Translated according to the Talmud.

Epicurus. R. Na'hman said: He who named his master by his name without adding "my master." As R. Johanan said: Why was Gehazi punished? Because he named his master by his name [II Kings, viii. 5]: "This is our son whom Elisha restored." R. Jeremiah was sitting in the presence of R. Zera and said: The Holy One, blessed be He, will create a river in the future, which will issue from the holy of holy chamber, and on its edges the best fruit will be grown, as it reads [Ezek. xlvii. 12]: "And by the stream upon its banks, on this side and on that side, shall grow up all kinds of trees for food, the leaves of which shall not fade, and the fruit of which shall not come to an end, every month shall they bring forth new ripe fruit; because its water is that which issueth out of the sanctuary; and their fruit shall serve for food, and their leaves for remedies."

And there was a certain old man who said: Thanks, so also said R. Johanan. Said R. Jeremiah to R. Zera: Is such a language also not used by the epicureans? And he answered: Nay, he is only supporting you, and if you have heard that such a language must not be used, it is what is said in Last Gate (pp. 210 and 211, from "it is written" to "Rabha"). What means "leaves for remedies"? R. Itz'hak b. Abudimi and R. Hisda. One said: To make the dumb speak. And the other: To open the womb when there is a difficulty in bearing the child. And so also was it taught by Hiskia, to open the mouth of the dumb and by Bar khapara, to open the womb. R. Johanan, however, said: It is to be explained literally remedies for everything. R. Samuel b. Na'hmani said: It means a remedy for the appearance of those who have studied with their mouth, as R. Jehudah b. Simon lectured: He who makes his face black by studying the Torah in this world, the Holy One, blessed be He, will make radiant his face in the world to come, as it reads [Sol. Song, v. 15]: "His countenance is as Lebanon, excellent like the cedars." R. Tanhun b. Hanilai said: He who starves because of the words of law in this world, the Holy One, blessed be He, will satiate him in the world to come, as it reads [Ps. xxxvi. 9]: "These will be abundantly satisfied with the fatness of thy house; and of the stream of thy delight wilt thou give them to drink." When Abdimi came from Palestine, he said: The Holy One, blessed be He, will give in the future to every upright his handful of reward, as it reads [ibid. lxviii. 20]: "Blessed be the Lord; day by day he loadeth us (with benefits); our God is our salvation." Said Abayi to him:

How is it possible to say so? Is it not written [Isa. xl. 12]: "Who hath measured in the hollow of his hand the waters, and meted out the heavens with the span"? And he answered: Why are you not used to study Haggadah? It was said in the West in the name of Rabha b. Mari: The Holy One, blessed be He, will give in the future to every upright man, three hundred and ten worlds, as it reads [Prov. viii.]: "That I may cause those that love me *ו*," etc., and these two letters count 310. (And this is called a handful.)

There is a Boraitha: R. Mair said: The measure with which one measures will be measured out to him—*i.e.*, as man deals, he will be dealt with, as it reads [Isa. xxvii. 8]: "In measure, by driving him forth, thou strivest with him." Said R. Jehoshua to him: How is it possible to say so? *E.g.*, if one gives to a poor man a handful of charity, will then the Holy One, blessed be He, give the donator His handful? Does it not read "he meted out the heavens with a span"? Said he to him: And you do not say so? What measure is greater of good or of evil? You must say that the former is greater than the latter, as concerning good it reads [Ps. lxxviii. 23 and 24]: "Then he ordained the skies from above, and the doors of heaven he opened; and he let rain down upon them manna to eat, and the corn of heaven gave he unto them." And concerning evil it reads [Gen. vii. 11]: "The windows of heaven were opened." (It is said elsewhere that the size of a door is as the size of four windows.) Now, come and read what is written about chastisement. [Isa. lxvi. 24]: "And they shall go forth and look upon carcasses of the men that have transgressed against me; for their worm shall not die, nor shall their fire be quenched; and they shall be an abhorrence unto all flesh." And how is this to be understood? We know that in this world, if a man puts his finger in the fire, immediately he is burned. You must then say, that as the Holy One, blessed be He, gives strength to the wicked to receive their punishment. The same is the case with the upright; he gives them strength to be able to accept their reward.

"*The books of the Hizumui.*" In a Boraitha it was taught: In the books of the atheists. R. Joseph said: One must not read even in the book of Ben Sirra. Said Abayi to him: Is it because it reads: Thou shalt not take off the skin of a fish, even that of the ear, as the skin will be damaged, but roast it in fire, and eat with it two loaves of bread? Is not similar to

this also written in the Scripture [Deut. xx. 19]: "Thou shalt not destroy the trees thereof," etc.? And if because it reads: "A daughter to a father is a false treasure, as because he is afraid of her, he does not sleep in the night. When she is a minor, perhaps she will be seduced. When she becomes of age, perhaps she will sin, when she becomes vigaros, perhaps she will not marry. If she is married, perhaps she will have no children. And when she becomes old, perhaps she will become a witch?" Similar to this, the rabbis also said: The world cannot be without males and females, however happy are those who have male children, etc. And if because there is written "Thou shalt not bring worry in thy heart," as such has killed strong men. This was also said by Solomon [Prov. xii. 25]: "If there be care in the heart of a man, let him suppress it." (See Yomah, p. 140, for explanation.) And if because it reads: "Prevent many people to enter thy house," as not all of them are fit to come into it; this was said also by Rabbi in a Boraitha elsewhere. Therefore we must say, because it reads there, "He who has a long and thin beard is shrewd." And he who has a thick one is a fool. He who blows off the foam, it is sign that he is not thirsty. And he who says with what he shall eat his bread, take the bread away from him. And he whose beard is parted in two, the whole world will not overrule him.

Said R. Joseph: However, the good teachings which are in this book may be proclaimed. It reads there: A good woman is a good gift, she may be given to one who fears God. A bad woman is leprosy to her husband, and there is no remedy for him till he divorces her, and be cured. A beautiful woman, happy is her husband, the numbers of his days are doubled. Turn away thy eyes from a beautiful woman, as thou canst be easily caught in her net. Abstain thyself from drinking beer and wine with her husband, as by the appearance of a beautiful woman many were destroyed. And numerous are those who were killed by such.

A great number of pedlars were wounded by the husbands who found them trading with their wives. As a spark kindles a coal, or like a coop full of birds, so are their houses full of deceit. Many may be who wish you peace, however thy secrets you may reveal only to one from thousand. Be careful with words even with her that lies on thy bosom. Don't worry of the morrow, as thou knowest not what the morrow may bring. For perhaps thou wilt not exist any more to-morrow,

and thou hast worried for a world which belongs not to thee. All the days of a poor are bad. Ben Sirra said: Also the nights, as his roof is lower than others, the rain from these falls on his. And his vineyard is usually on the top of the mountain, and the manure which he brings up for it is blown off to the other vineyards which are lower. (Here is repeated from Last Gate, p. 328, paragraph commencing with R. Zera in the name of Rabh said, till Mishna VI. See there also footnote.)

The rabbis taught: If one reads a verse of the Songs of Solomon in a different manner than it is written, and makes a song of it; or any other verse in the drinking-places not in its proper time, causes evil to the world, because the Torah, dressed in a sack, stands before the Holy One, blessed be He, and says: Lord of the Universe, thy children have made of me a fiddle on which frivolous persons play. And He said to her: My daughter, with what else, then, shall they occupy themselves while they are eating and drinking? And she said before Him: Lord of the Universe, if they are masters in the Scriptures, they may occupy themselves with the Pentateuch, Prophets, and Hagiographa; if they understand Mishnayoth, they may study Mishna, Halakha, and Haggadah, and if they are Talmudists they may study Halakhas in time of Passover on Pesach. Of Pentecost at that time. And the Halakhas of Feast of Tabernacle at that time. R. Simeon b. Elazar in the name of R. Simeon b. Hanania testified: If one reads a verse in its proper time, he benefits the world, as it reads [Prov. xv. 23]: "And a word spoken at the proper time, how good is it."

"He who mumbles over a wound," etc. Said R. Johanan: Provided he also spits, as the name of Heaven must not be mentioned by spitting. It was taught: Rabh said: Even a verse which does not contain the name of Heaven—e.g., a plague, if it will be on a man. And R. Hanina said: Even the words: And He has called to Moses.

The rabbis taught: One may ask the fortune tellers who tell fortunes by certain oils or eggs. But it is not advisable to do so, because they often lie. They usually mumble over the oil in a utensil, but not over that which is in the hand, and therefore one may use the oil from the hand, but not that in a utensil. R. Itz'hak b. Samuel b. Marta happened to be in a certain inn. They brought him oil in a utensil, and he anointed himself with it, and blisters came out on his face. When he went to the market a certain woman saw him, and said: I see

on your face a sickness caused by witchcraft. And she did something for him and he was cured.

Abba said to Rabba b. Mari: It reads [Ex. xv. 26]: "I will put none of those diseases upon thee . . . as I the Lord will heal thee." Now if he did not put any, why the cure? Said R. Johanan: This verse explains itself. "If thou wilt diligently hearken," etc., I will not put disease upon thee, but if thou wilt not hearken, I will. However, at any rate, I will heal thee.

Rabba b. b. Hana said: When R. Eliezar became sick his disciples came to make him a sick call, and he said to them, I have high fever, and they began to weep. R. Aqiba, however, smiled. And to the question: Why are you smiling? he returned the question: Why are you weeping? And they answered: Is it possible not to weep when we see the Holy Scrolls are in such a distress? Rejoined he: And therefore I smile, for so long as I have seen our master's wine does not become sour, his flocks undamaged, his oil unspoiled, and his honey unfermented, I was afraid that perhaps he received all his reward in this world, now as I see him in trouble, I rejoice. Said he to him: Aqiba, have I failed to perform or transgressed anything of that what is written in the whole Torah? And he answered: You, master, yourself taught us [Ecc. vii. 20]: "For no man is so righteous upon earth, that he should do always good and never sin."

The rabbis taught: When R. Eliezar became sick four elders entered to make him a sick call—R. Tarphun, R. Jehoshua, R. Elazar b. Asaryah, and R. Aqiba. Exclaimed R. Tarphun: You are better to Israel than drops of rain, as the latter are only in this world, while you are in both, in this and in the world to come. Exclaimed R. Jehoshua: You are better to Israel than the planet of the sun, which is only in this world, while you are in both. And R. Elazar b. Asaryah exclaimed: You are better to Israel than a father and mother, who are only in this world, etc. R. Aqiba, however, exclaimed: Pleased are chastisements. And R. Eliezar answered: Support me, and I will hear the statement of Aqiba, my disciple, who says: "Pleased are chastisements." And he said: Aqiba, whence is this known to you? And he answered: From the following: It reads [II Kings, xxi. 1 and 2]: "Twelve years old was Menasseh when he became king, and fifty and five years did he reign in Jerusalem . . . and he did what is evil in the eyes of the Lord." It reads also [Prov. xxv. 1]: "Also these

are the proverbs of Solomon, which the men of Hezekiah, the king of Judah, have collected." Could it be possible that Hiskia taught the law to the whole world, but not to his son Menasseh? It must then be said that of all the troubles which Hiskia has troubled himself to bring him, and from all his toil to correct him nothing was done, and only until chastisement had turned him over to the better side, as it reads [II Chron. xxxiii. 10-14]: "And the Lord spoke to Menasseh, and to his people; but they listened not. Wherefore the Lord brought over them captains of the army belonging to the king of Assyria; and they took Menasseh prisoner with chains, and bound him with fetters, and led him off to Babylon. And when he was in distress he besought the Lord his God, and humbled himself greatly before the God of his fathers. And he prayed unto Him, and He permitted Himself to be entreated by him, and heard his supplication and brought him back to Jerusalem unto his kingdom. Then did Menasseh feel conscious that the Lord is indeed the (true) God." Learn from this that chastisements are pleased.

The rabbis taught: Three men (biblical personages) came with indirectness (instead of praying in a straightforward manner), and they were Cain, Esau, and Menasseh. Cain who says [Gen. iv. 13]: "My sin is greater than I can bear." He said before Him: Lord of the Universe, is then my sin greater than that of the six hundred thousand Israelites who will sin before Thee in the future, and Thou wilt forgive them? Esau said [Ex. xxvii. 38]: "Hast thou then but one blessing, my father?" And Menasseh, who at the beginning called to many gods, and only finally called to the God of his parents.

"*Abba Shaul*," etc. There is a Boraitha: Provided he does so out of the sanctuary in a profane language.

"*Three kings*," etc. The rabbis taught: Jeroboam means who made Israel quarrel among themselves. According to others, who has made a controversy between them and their Heavenly Father. Ben Nebat means the son of him who had a vision, but did not see (interpret it properly). As the following Boraitha Nebat is identical with Michah and with Sheba ben Bichri Nebat because of the reason said above. And Michah, because he became poor while occupying himself with building. And his real name was Sheba ben Bichri.

The rabbis taught: There were three who had a vision, but have not seen it properly. Nebat Achitopel and the astrol-

ogers of Pharaoh. Nebat saw that some light will come out from him. He thought he himself will become a king, and he erred, as this was his son Jeroboam. Achitopel saw also the same. He thought that he himself will become a king, but he erred, as it was his daughter, Bath Sheba, from whom Solomon came out. And the astrologers of Pharaoh, who saw that the redeemer of Israel will be beaten through water, and therefore advised Pharaoh to command. [Ex. i. 22]: "Every son that is born ye shall cast into the river." And they erred, as this was [Num. xx. 13]: "These are the waters of Meribah where the children of Israel quarreled." But whence do we know that Jeroboam has no share in the world to come? From [I Kings, xiii. 34]: "Blotted out, and destroyed from the face of the earth. Blotted out from this world and destroyed from the world to come. Said R. Johanan: What has Jeroboam done that he was rewarded to be king? Because he rebuked Solomon. And why was he punished? Because he rebuked him in public, as it reads [ibid. xi. 27]: "And this was the occasion that he lifteth up his hand against the king: Solomon built up the Milo and closed up the breach of the city of David his father." He said to him: David, thy father hath broken in holes in the surrounding wall of Jerusalem, for the purpose that it shall be easier for Israel to enter the city. And thou hast fenced it for the purpose to make an *angaria* to Pharaoh's daughter. What means "and he lifteth up his hands"? Said R. Na'hman: He took off his phylacterious in his presence.* R. Na'hman said again: The insolence of Jeroboam destroyed him from the world, as it reads [ibid. xii. 26-28]: "And Jeroboam said in his heart, Now may the kingdom return to the house of David. If this people go up to prepare sacrifices in the house of the Lord at Jerusalem, then may the heart of this people turn again unto their lord, even unto Rehoboam, the king of Judah, and they might kill me, and return to Rehoboam, the king of Judah." He said: We have a tradition that in the Temple there are no seats except for the kings of the house of David. Now if they see that Rehoboam, the king, is sitting and I am standing, then they will say that he is the king and I am his servant. And if I will sit, Rehoboam's people will say that I am a rebel, and they will kill me, and therefore (28): "Whereupon the king took counsel, and he made two calves

* An explanation to this you will find in our "Amulets," Charms and Talismans, p. 28.

of gold, and saith unto the people, You have been long enough going up to Jerusalem; behold here are thy gods, O Israel, which have brought thee up out of the land of Egypt." What is meant by "the king took counsel"? Said R. Jehudah: He has conjoined an upright to a wicked, and said to them: Will you sign your name to all what I will command you? And they said: Yea. "Even to worship an idol"? The upright answered: God forbid. But the wicked saith to him: Do you think a man like Jeroboam will worship idols? He wants only to try us. And in this thing even Achiyah, the Shilonite, erred and signed his name. As Jehu, who was one of the greatest of upright about whom it reads [II Kings, x. 30]: "Forasmuch as thou hast acted well in doing what is right in my eyes, and hast done in accordance with all that was in my heart unto the house of Achab: children of the fourth generation after thee shall sit upon the throne of Israel." And thereafter it reads (31): "And Jehu took no heed to walk in the law of the Lord the God of Israel with all his heart: he departed not from the sins of Jeroboam, who induced Israel to sin." But what caused him to sin? Said Abayi: There is a covenant to one's lips. He said [ibid., ibid. 18]: "Achab hath served Baal a little: Jehu will serve him much." And Rabha said: He saw the signature of Achiyah the Shilonite and he erred, as reads [Hosea, v. 2]: "And for murdering they who had rebelled (against God) concealed themselves in deep places; but I will inflict correction on them all." Said R. Johanan: The Holy One, blessed be He, said: They laid deeper plans than that of mine: I said: He who does not ascend to Jerusalem for the festivals transgresses a positive commandment only, and they say that he who will ascend to Jerusalem shall be slain by the sword.

It reads [I Kings, xi. 29]: "And it came to pass at that time when Jeroboam went out of Jerusalem, that the prophet Achiyah the Shilonite found him on the way; and he had clad himself with a new garment; and these two were alone by themselves in the field." It was taught in the name of R. Jose: "At that time" means the time which was designated for chastisement. [Jer. ii. 18]: "In the time of their punishment shall they vanish," was also taught in the name of the same authority. means at the time designated for chastisement. [Isa. xlix. 8]: "In the time of favor have I answered thee," according to the same authority: The time which is designated for doing good [Ex. xxxii. 8]: "But on the day when I visit I will visit their

sins upon them," according to the same, at the time which is designated for chastisement. And the same is with Gen. xxxviii. 1: "And it came to pass at *that time*." It reads [I Kings, xii. 1]: "And Rehoboam went to Shechem (. . .) to make him king." It was taught in the name of R. Jose. That place was designated for trouble. In Shechem, Dina was assaulted in the same place, Joseph was sold by his brothers, and in the same place the kingdom of David was divided. And (ibid. 29) "Jeroboam went out of Jerusalem." Said R. Hanina b. Papa: It means he went out of the destiny of Jerusalem (*i.e.*, was to have no share in the welfare of Jerusalem). "And the prophet Achiyah . . . with a new garment," what does it mean? Said R. Na'hman: As a new garment has no spots so also the wisdom of Jeroboam was clean, without any error. According to others: They renewed things which no ear has ever heard of. And what is meant by "The two were alone in the field"? Said R. Jehudah in the name of Rabh: All other scholars were like the plants of the field in comparison with them. According to others: All the reasons for the commandment of the Torah were revealed to them as a field.

It reads [Michah, i. 14]: "Therefore shalt thou have to give presents to *Moreshe thgath*: the houses of Achzib shall become a deception to the kings of Israel." Said R. Hanina b. Papa: A heavenly voice was heard saying: "To him who has killed Goliath the Philistine and inherited to you the city of Gath, should ye send away his descendants?" Therefore the house of Achzib shall be a deception to the kings of Israel. It reads [II Kings, xvii. 21]: "And Jeroboam misled Israel from following the Lord, and caused them to commit a great sin." Said R. Hanina: As one throws a stick by means of another stick—*i.e.*, he makes Israel to sin against their will. Said R. Aushia: Until Jeroboam came, Israel had to bear the iniquity of one golden calf, and from that time farther on for two and three. Said R. Itz'hak: Every evil dispensation which came upon Israel contained in it a twenty-fourth part as punishment for the golden calf, as the above cited verse [Ex. xxxii.] states. Said R. Hanina: After twenty-four generations this verse was fulfilled, as it reads [Ezek. ix. 1]: "The '*pkudas*' of the city came already at an end."*

* Leeser translates Ex. xxxii. 8 *pokdi* and *pokadi* with "will visit," and here he translates the same term with "charge" (by the way, both translations are wrong). The Talmud, however, has its way of saying that the *pokdi* of that verse had ceased

It reads [I Kings, xiii. 33]: After this event Jeroboam returned not from his evil way. After what! Said R. Abba: After the Holy One, blessed be He, held Jeroboam by his garment, saying: Repent, and I and David Ben Yishai and thou will walk in the Garden of Eden. And to Jeroboam's questions: Who will have the preference? he said: Ben Yishai. And he rejoined: If so I don't want it.

R. Abuhu used to lecture about the three kings and became sick, and he made up his mind not to lecture about them, and he was cured. However, he lectured about them as before, and to the question of his disciples: Have you not made up your mind not to lecture any more about them? he answered: Did they then repent that I shall do so?

R. Ashi appointed a time for lecturing about the three kings, and said: On the morrow we will begin our lecture about our colleague Menasseh. He then appeared to him in a dream, and said to him: You call me a colleague and a colleague of your father? Answer me the question: Where must one begin to cut the bread by the benediction of *thamotzi*? And he said: I don't know. Rejoined Menasseh: If you are not aware to answer even that what I questioned you how can you call me a colleague? Rejoined R. Ashi: Teach this to me, and tomorrow I will proclaim it in your name in the college. And he said: From that part where it begins to bake when in the oven. Said R. Ashi again: If you are so wise, why did you worship idols? And Menasseh answered: If you would have been at that time you would have lifted up the edges of your dress, that they shall not impede you to run after me to worship the idols. On the morrow said R. Ashi to the rabbis: Let us lecture about the great men. Achab—means "Ach," a thorn to Heaven, and "ab," a father to idolatry, as it reads [I Kings, xvi. 31]: "And it came to pass as if it had been too light a thing for him to walk in the sins of Jeroboam." Said R. Johanan: The lenient things which were done by Achab were more rigorous than the rigorous things done by Jeroboam. And why then does the Scripture make Achab dependent on Jeroboam, because Jeroboam was the beginner and all his followers were dependent upon him.

It reads [Hosea xii. 12]: "Their altars also are as stone

at that time. It is important that it counts from Moses to Ezekiel twenty-four generations.

heaps." Said R. Johanan: There was not one heap in the land of Israel upon which Achab had not placed an idol and bowed himself to it. And whence do we know that he has no share in the world to come? From [I Kings, xxi. 21]: "Behold, I will bring evil upon thee, and I will sweep out after thee and will cut off from Achab every male and the guarded and fortified in Israel." "Guarded" means in this world, and "fortified" in the world to come.

R. Johanan said: For which good deeds was Omri (Achab's father) rewarded that he obtained the kingdom? Because he added one great city to the land of Israel, as it reads [ibid. xvi. 24]: "And he bought the mount Samaria of Shemer for two talents of silver, and built on the mount, and called the name of the city which he had built, after the name of Shemer, the lord of the mount, Samaria."

R. Johanan said again: Why was Achab rewarded by the prolongation of his kingdom for twenty-two years? Because he respected the Torah which is written with the twenty-two letters of the alphabet, as it reads [ibid. xx. 2, 7, and 9]: "And he sent messengers to Achab, the king of Israel, into the city. And he said unto him: Thus hath said Ben-hadad, Thy silver and thy gold are mine; thy wives also and thy children, even the best are mine. And the king of Israel answered and said, According to thy word, my lord, O king, thine am I, and all that I have. And the messenger returned and said: Thus hath said Ben-hadad, to say (to thee) I have indeed sent unto thee, saying, 'Thou shalt give unto me thy silver, and thy gold, and thy wives, and thy children. Nevertheless, about this time to-morrow will I send my servants unto thee, and they will search through thy house, and the houses of thy servants, and it shall be, that whatsoever is pleasant in thy eyes, they shall place it in their hand, and take it away.' Then did the king of Israel call for all the elders of the land, and said, Mark, I pray you, and see that this man seeketh mischief, for he hath sent unto me for my wives, and for my children, and for my silver, and for my gold, and I have not refused them to him. Wherefore he said unto the messengers of Ben-hadad: Say to my lord the king, all that thou didst send for to thy servants at the first will do; but this thing I am not able to do. And the messengers went away, and brought him word again." What is meant by "pleasant in thy eyes" if not the holy-scrolls? But perhaps it means an idol. This cannot be supposed, as it reads farther on

(8): "And all the elders, and all the people said unto him, Thou must not hearken nor consent." But perhaps it means the elders of the same kind as was Achab, as we find such in [II Sam. xvii. 4], that they are also named the elders of Israel. There it does not read "all the people," but here it does; and it is impossible that among them were no righteous, as it reads [I Kings xix. 18]: "And I will leave in Israel seven thousand, all the knees which have not bent unto Baal and every mouth which has not kissed him." Said R. Na'hman: Achab's sins and good deeds were just equal, as it reads [ibid. xxii. 20]: "Who will persuade Achab," hence it is difficult to punish him, as his sins did not overweigh his good deeds. R. Joseph opposed: He of whom it reads [ibid. xxi. 25]: "But indeed there was none like unto Achab," etc., etc. And you say that his sins and good deeds were equal? The reason, however, that it was necessary to persuade him, is because he was liberal with his money and assisted many scholars from his estate, and therefore half his sins were atoned. And there came out a spirit," etc. (see above). It reads [ibid. xvi. 33]: "And Achab made a grove; and Achab did yet more, so as to provoke the Lord the God of Israel to anger, than all the kings of Israel that had been before him." Said R. Johanan: He wrote on the gates of Shemer: Achab denies the God of Israel, and therefore he has no share in Him.

Menasseh means "he has forgotten the Lord." According to others it means that he made Israel to forget their Heavenly Father. And whence do we know that he has no share in the world to come? From [II Kings, xxi. 3]: "And he built up again the high places which Hezekiah hath destroyed and he reared up altars for Baal and made a grove as Achab the king of Israel hath done." As Achab has no share in the world to come the same is the case with Menasseh.

"*R. Jchudah said Menasseh has a share,*" etc. Said R. Johanan: Both infer their theory from one and the same passage [Jer. xv. 4]: "And I will cause them to become a horror unto all the kingdoms of the earth on account of Menasseh the son of Hezekiah." According to one: Because Menasseh has repented and the other kings have not. And according to others: Because he himself had not repented. Said R. Johanan: He who said that Menasseh has no share in the world to come weakens the hands of those who are repenting. As a disciple taught before. R. Johanan: Menasseh repented thirty-

three years, as it reads [II Kings, xxi. 1-3]: "And fifty-five years did he reign in Jerusalem . . . and he made a grove as Achab did." How long did Achab rule? Twenty-two years; take off the twenty-two from the fifty-five years which Menasseh reigned, there remains thirty-three years.

R. Johanan said in the name of R. Simeon b. Jo'hai: It reads [II Chron. 13]: "And he prayed unto Him, and He permitted himself *v'ychtar** instead of *voyethar*. Infer from this that the Lord made for him an opening like a *machteres* (opening) in the Heaven to receive him; because of the opposition of the divine attribute.

The same said again in the name of the same authority: In [Jer. xxvi., xxvii. and xxviii., the first verses]: "In the beginning of the reign of Yehoyakim. . . . The beginning of the reign of Zedekiah." Were there not rulers before them? But this signifies that the Lord was about to return the world to *tahu vebahu* because of Yehoyakim. But when he looked upon his generation who were upright, he reconsidered it. And the reverse was the case with Zedekiah. He wanted to destroy the world because of his generation, but when he looked upon him he reconsidered it.

But does it not also read about Zedekiah [II Kings, xxiv. 18]: "And he did what was evil in the eyes of the Lord"? This was because he had to warn them, but did not do so.

The same said again in the name of the same authority: It reads [Prov. xxix. 9]: "If a wise man contend with a foolish man, whether he be angry or whether he laugh, he will have no rest." The Holy One, blessed be He, said: I became angry with Achaz and delivered him to the king of Damascus. What had he done? He sacrificed and smoked incense to their gods, as [II Chron. xxviii. 2]: "And he sacrificed unto the gods of the people of Damascus, who had smitten him; and he said, "Because the gods of the kings of Syria do help them (therefore) will I sacrifice unto them, that they may help me." But they only became to him a stumbling-block for him and for all Israel. I smiled on Amazia and had delivered the kings of Edom to his hand. And what has he done? He brought their gods and bowed himself to them, as it reads [II Chron. xxv. 14]: "After Amasyahu was come home from

* Such a word is not found. However, perhaps it was in the Bible of the author of this saying (see Marsho).

smiting the Edomites he brought the gods of the children of Le'ir, and set them up unto himself as gods, and before them he used to prostrate himself and unto them he used to burn incense." Said R. Papa: This is what people say: You can do nothing with the ignoramus; weep before him, laugh with him, he does not care. Woe is to him who does not understand between good and evil. It reads [Jer. xxxix. 3]: "In the middle gate." Said R. Johanan in the name of R. Simeon b. Jo'hai: This was the place the Sanhedrin decided upon Halakhas. Said R. Papa: This is what people say: Should the hook which was used by the herd, etc. (see Middle Gate, p. 216, line 14 from the bottom). R. Hisda said in the name of R. Jeremiah b. Aba: It reads [Prov. xxiv. 30-31]: "By the field of a slothful man I once passed along, and by the vineyard of a man void of sense: And, lo, it was all grown over with thorns, nettles had covered its surface, and its stone wall was broken down." "By the field of a slothful man," etc., means Achaz, "void of sense" means Menasseh, "with thorns" means Amon, "nettles had covered," etc., means Yehoyakim, "broken down"—Zedekiah, in whose days the temple was destroyed.

The same said again in the name of the same authority: Four sects will not receive the glory of the Shekhina; viz., the scorers, as it reads [Hosea, vii. 5]: "He groweth his land with scorers"; liars, as it reads [Ps. ci. 7]: "He that speaketh falsehood shall not succeed in my eyes"; hypocrites, as [Job, xiii. 16]: "For a hypocrite cannot come before Him," and slanderers, as [Ps. ii. 5]: "For thou art not a God that hath pleasure in wickedness. Evil cannot abide with thee," and thereafter it reads [7 and 10]: "Thou wilt destroy those that speak lies . . . For there is not in their mouth any sincerity."

The rabbis taught: Menasseh used to learn fifty-five arguments (ways of interpretation) concerning the book of Leviticus, as many as the years of his reign. Achab, eighty-five, and Jeroboam, one hundred and three.

There is a Boraitha: R. Mair used to say: Absalom has no share in the world to come, as it reads [II Sam. xviii. 15]: "Smote Absalom"—in this world, and "slew him"—in the world to come.

R. Simeon b. Elazar said in the name of R. Mair: Achaz, Achazyah and all the kings of Israel about whom it is written,

"and he did evil in the eyes of the Lord," will not be restored at the time of resurrection, but are also not sentenced to Gehinem.

It reads [II Kings, xxi. 16]: "And also innocent blood, did Menasseh shed in very great abundance, till he had filled (therewith) Jerusalem from one end to another; beside his sin wherewith he induced Judah to sin, to do what is evil in the eyes of the Lord." Here in this college it was explained because he had slain Isaiah. In the West it was explained that he made an image the weight of a thousand persons. And those who were engaged in carrying it from one place to another would die because of the great exertions.

According to whom is what Rabba b. b. Hana said? One soul of an upright is equalized to the whole world—*i.e.*, if one kills an upright, he is considered as if he would slay the whole world. It is in accordance with him who says that Menasseh has killed Isaiah.

Achaz placed the images in the attics of the Temple, as it reads [II Kings, xxiii. 12]: "Altars that were on the upper chamber of Achaz." And Menasseh placed them in the Temple, as it reads [ibid. xxi. 7]: "And he placed a hewn image of the Asherah that he had made, in the house of which the Lord had said to David, and to Solomon, his son, In this house, and in Jerusalem, which I have chosen out of all tribes of Israel will I put my name forever." And Amon placed them in the holy of holy chamber, as it reads [Isa. xxviii. 20]: "For the bed shall be," etc. (See Yomah, p. 10, line 14. for the explanation and continuation which are repeated here. By the way, we have to remark that there is a misprint, Jeremiah instead of Isaiah.)

Achaz abolished the worship and sealed the Torah, as it reads [ibid. viii. 16]: "Bind up the testimony, seal up the law among my disciples." Menasseh cut the divine names out (of the Scriptures) and destroyed the altar. Amon burned the Torah and caused spider-webs to be on the place where the altar stood, as it reads [II Chron. xxxiii. 23]: "For he, Amon, made his guiltiness great."

Questioned Rabha, Rabha b. Mari: Why did not the Mishna also count Yehoyakim, of whom it reads [ibid. xxxvi. 8]: "And the rest of the acts of Yehoyakim, and his abominable deeds which he did, and which was found upon him," which, according to one of the sages, means that he engraved the name

of the idol upon his body? And he answered: Concerning kings I have not heard, but I have heard concerning common men thus: Why did not the Mishna count Michah? Because his house was open to travellers (who used to eat and drink there without being charged).

It reads [Zech. x. 11]: "And he will pass through the sea (with) distress, and he will smite in the sea the waves." Said R. Johanan: This is the image which Michah had made in Egypt and which passed with him the Red Sea. There is a Boraitha: R. Nathan said: From the city of Grab to the city of Shilah (where the tabernacle was temporarily) is a distance of three miles, and the smoke from the altar in Shilah used to mix itself with the smoke from the altars which were made for the image of Michah. And the angels wanted to put Michah aside, but the Holy One, blessed be He, said to them: Leave him alone because his house is open to travellers. And for this were punished the men who took revenge in the case of the concubine of Gibah (Judges, xix. and xx.). And the Holy One said to them: Ye took revenge for the honor of a man, but did not act so for my honor—*i.e.*, they did not care to destroy the image of Michah, etc.

R. Johanan said in the name of R. Jose b Kisma: Great are *λυγμοί* entertainments, for a little refreshment plays an essential part, for its refusal estranged two tribes from Israel (Ammon and Moab), as it reads [Deut. xxiii. 5]: "For the reason that they met you not with bread and with water, on the way." And R. Johanan himself said: It estranges relatives and brings near strangers; shuts the eye not to look upon the wicked, makes the Shekhina rest on the prophets of Baal, and even an error in this affair is considered as if it would be done intentionally. (Now the illustrations.) It estranges relatives—*c.g.*, Ammon and Moab (who were relatives to Israel). It brings near strangers—*c.g.*, Jithro, as he said elsewhere that the reward for [Ex. ii. 20]: "Call him that he may eat bread" was that his descendants were rewarded to sit among the Sanhedrin in the chambers of the Temple, as it reads [I Chron. ii. 55]: "And the families of the scribes who dwelt at Jabez; the Thirathites, the Shimathites and the Suchathites. These are the Kenites that came from Chammoth, the father of the house of Rechab, and [Judges, i. 16]: "And the children of the Kenite, the father-in-law of Moses, went up out of the city of palm-trees with the children of Judah into the wilderness of

Judah, which is south of Arad, and they went and dwelt with the people." Shuts the eye not to look upon the evil deeds of the wicked, *e.g.*, Michah, as said above. Makes the Shekhinah to rest upon the prophets of Baal, as [I Kings, xiii. 20]: "And it came to pass as they were sitting at the table, That the word of the Lord came unto the phophets, who had brought him back." And even an error is considered as if done intentionally, as R. Jehudah in the name of Rabh said: If Jonathan would have supplied David with some loaves of bread the priests of the city of Nob would not have been slain, Doeg, the Edomite would not have been lost, and Saul and his three sons would not have been killed.

Why does not the Mishna count Achaz among those who have no share in the world to come? Said R. Jeremiah b. Aba: Because he was placed between two uprights (Jotham, his father, and Hezekiah, his son).

And R. Joseph said: Because he was ashamed before the prophet Isaiah, as [Isa. vii. 3]: "And the Lord said unto Isaiah, Go forth now to meet Achaz, thou with Shear Yashub, thy son, to the end of the aqueduct of the upper pool, on the highway of the washers' field." Why is mentioned the washers' field"? Because Achaz was ashamed to look at Isaiah, and to put upon his face the *αβλυο* of the washers when he passed Isaiah in order not to be recognized.

And why was Amon not counted? Because of the honor of his son, Yeshiyahu. If so, let them not count Menasseh, because of the honor of Hezekiah? There is a tradition that a son can save his father, but not a father his son, as it reads [Deut. xxxii. 39]: "And no one can deliver out of my hands," which means Abraham cannot save Ishmael, and Isaac, Esau. Now, when we come to this theory it may be said that Achaz was not counted because of the honor of Hezekiah. However, the above question, why Yehoyakim was not counted is as yet unanswered. It is because of what was said by Hyya b. Abuiha that on the head of Yehoyakim was written "This and something else"—*i.e.*, one revenge more will be taken from it. The grandfather of R. Prida found a skull in the gates of Jerusalem upon which was engraved: "This and something else." He buried it once and twice, but it came out again. He then said that it must be the skull of Yehoyakim, of whom it reads [Jer. xxii. 19]: "With the burial of an ass shall he be buried, dragged about and cast forth beyond the gates of Jerusalem."

He then said: It is the skull of a king, and it must be nicely treated. He wrapped it in a silk garment and put it in a bag. When his wife saw this she thought it was the skull of his first wife, whom he does not want to forget. And she heated the oven and burned it. This was what was engraved upon it: "This and nothing else."

There is a Boraitha: R. Simeon b. Elazar said: Hiskia praised himself [II Kings, xx. 3]: "And have done what is good in thy eyes" caused what is said [ibid., ibid. 8]: "What sign," etc., and this caused that idolaters were invited to his table [ibid., ibid. 13]. And these altogether caused the exile of his descendants [ibid., ibid. 17]. This is a support to Hiskia, who said that he who invites an idolater to his house and serves on him, causes exile to his children, as it reads [ibid., ibid. 18]: "And of thy sons . . . they shall be court servants in the palace," etc.

Lamentation I. begins with *aichoh* (O'how). Said Rabha in the name of R. Johanan: Why was Israel beaten with aichoh? Because they transgressed thirty-six things to which Korath applies, and the word aicho counts 36. And he said again: Why is Lamentations written according to the alphabet? Because they have transgressed what is written in the Torah, which is written with the letters of the alphabet.

"Doth she sit solitary?" said Rabha in the name of R. Johanan: The Holy One, blessed be He, said: I said [Deut. xxxiii. 28]: "And then dwelt Israel in safety, alone, the fountain of Jacob; in a land of corn and wine; also, its heavens shall drop down dew." And now solitary is their sitting. "The city that was full of people." Said Rabha again in the name of the same authority. They used to marry a minor to an adult and *vice versa*, for the purpose that they shall have many children. "Is become like a widow." Said R. Jehudah in the name of Rabh: Like a widow, but not a widow. Like a woman whose husband has departed to the cities of the countries of the sea, who intends to return. "She that was so great among the nations, the princess among the provinces." Said Rabba in the name of R. Johanan: Everywhere they came they became masters of their masters, as the rabbis taught: It happened with two men who were captured in the mountain of Carmel, and their capturer was walking behind them. Said one of the captured to his colleague: The camel which walks in front of us is blind in one eye and carries two bags, one of wine and the other of

oil. And the men who lead it, one of them is an Israelite, and the other is a heathen. Said the capturer to them: Hard-necked people, whence do you know this? And they answered: From the grass which is in front of the camel that is consumed only from one side, hence from the side on which he sees he consumes, and on the other side on which he is blind he leaves it. It carries two bags of wine and oil; because drops of wine sink, and drops of oil float. And the leaders, one of them is an Israelite and the other a heathen; because an Israelite when he needs to do his necessity, usually turns aside, and the heathen does it on the way. The capturer then ran after them and found that it was as they said. He then kissed them on their heads, brought them to his house, prepared for them a great meal, danced before them, saying: "Blessed be He who chose the descendants of Abraham and gave them of his wisdom, and everywhere they go they become masters of their masters." He freed them, and they went in peace to their home.

"*Weeping, are they weeping?*" * Why two weepings? Said Rabba in the name of R. Johanan: One for the first Temple, and the other for the second Temple.

"*In the night*," means because of what happened in a former night [Num. xiv. 1]: "And the people wept that night." And Rabba in the name of R. Johanan said: This day was the ninth of Ab, and the Holy One, blessed be He, said: "Ye have cried on this night in vain, and I shall ordain it that your generations shall lament on this day forever." (See Taanith, p. 88, line 9.) According to others: In the night, because he who weeps in the night, it looks like the stars and planets are weeping with him. And so also with human beings. He who hears one weeping in the night, weeps with him, as it happened with Rabban Gamaliel, whose female neighbor wept because her son died, and he wept with her until the eyelids dropped. On the morrow his disciples recognized it, and they made her move away from his neighborhood. "And her tears are on her cheeks." Said Rabba in the name of R. Johanan: As a woman weeps for the husband of her youth, as it reads [Joel, i. 8]: "Lament like a woman girded with sackcloth for the betrothed of her youth." "Her adversaries are become chiefs." Said Rabba in the name of R. Johanan: Every one who op-

* It is impossible to follow Leeser's translation of the Bible in the Chapter of Haggadah, as the Talmud translates literally.

presses Israel becomes a chief, as it reads [Isa. viii. 3]: "For no fatigue befalleth him that oppresseth them." And the same said again in the name of the same authority: That from the same verse is inferred that an oppressor of Israel never becomes tired.

"*Not for you, ye travellers, behold and see,*" etc. Said Rabba in the name of R. Johanan: From this may be inferred that the Scripture is particular that if one tells his troubles to his neighbor, he should add, "May it not happen to you." "All that pass this way." Said R. Amram in the name of Rabh: They (the nations) have made of me the perpetrator of a crime to whom burning applies, as about Sodom it reads [Gen. xix. 24]: "And the Lord rained upon Sodom." And here it reads [13]: "From on high hath he sent a fire into my bones."

It reads [ibid. iv. 6]: "For greater is the iniquity of the daughter of my people than the sin of Sodom." Said Rabba in the name of R. Johanan: Jerusalem was punished with such that even Sodom was not. As concerning Sodom, it reads [Ezek. xvi. 49]: "Behold, this was the iniquity of thy sister Sodom: Pride, abundance of food . . . but the hand of the poor and needy did she not strengthen." And concerning Jerusalem, it reads [Sam. iv. 10]: "The hands of merciful women choked their own children." [Ibid. i. 15]: "The Lord hath trodden under foot all my mighty men in the midst of me." As one says to his neighbor: This coin is already out of current.

[Ibid. ii. 16]: "All thy enemies open wide their mouth against thee." (The whole portion is in alphabetical order. Here, however, the *peh* is before the *ayin*, and why? Said Rabba in the name of R. Johanan: Because of the spies, who said with their mouths (*peh*) what they had not seen with their eyes (*ayin*).

It reads [Ps. xiv. 4]: "Who eat up my people, as they eat bread (while), they do not call on the Lord." Said Rabba in the name of R. Johanan: It is so the custom of Israel's enemies that he who robs Israel and consumes his bread feels a good taste, while he does not feel any taste if he has not done so. "They do not call on the Lord," means the judges. So Rabh. And Samuel said that it means the teachers of children who are doing their work falsely. (However, what was said in the Mishna) of having and not having a share in the world to come? Who were they who have decided so? Said R. Ashi: The men of the great assembly. Said R. Jehudah in the name of Rabh:

They wanted to count one king more, and the appearance of his father's face came and spread itself before them, but they did not care. And then a fire from heaven came and charred the benches on which they were sitting, but they did not care. Then a heavenly voice said to them [Prov. xxii. 29]: "Seest thou a man that is diligent in his work? Before kings may he place himself: let him not place himself before obscure men." He has built his house during thirteen years, and my house during seven years. But not this only, but he built first my house and then his house. Should he have such luck? And still they did not care. Then came another heavenly voice [Job, xxxiv. 33]: "Should He then according to thy view send a recompense, because thou hast rejected him? Because thou must choose and not I?"

However, the interpreters of notes said that all of them have a share in the world to come, as it reads [Ps. lx. 9 and 10]: "Mine is Gilead," which means Achab, who fell at Ramoth Gilead. "Menasseh"—literally, "Ephraim the stronghold of my head," means Jeroboam, who was an outcome of the tribe Ephraim. "Judah are my chiefs," means Achitopel, who was of the tribe of Judah. "Moab my washpot," means Gehazi, who was beaten because of the business of washing. "Upon Edom will I cast my shoe," means Doeg the Edomite. "Philistia, triumph thou but over me." The angels said before the Holy One, blessed be He: Lord of the Universe, if David, who has killed the Philistines, would come before Thee and would complain to that what Doeg and Achitopel shared in the world to come, what wilt Thou say to him? And He answered: It is for me to make them friends.

It reads [Jer. viii. 5]: "A perpetual backsliding." Said Rabh: A victorious answer has the assembly of Israel given to the prophets. The prophet said to Israel: Repent ye of your sins, as you may look upon your parents who have sinned, where are they? And they answered: And your prophets who have not sinned, where are they? As it reads [Zech. i. 5]: "Your fathers, where are they? and the prophets, could they live forever?" He then said to them: But your parents have repented and confessed, as it reads [ibid., ibid. 6]: "But my words and my decrees, which I commanded my servants, the prophets, behold, they did overtake your fathers: and (then) they returned and said, Just as the Lord of hosts had purposed to do unto us, in accordance with our ways, and in accordance

with our doings, so hath he dealt with us." Samuel said: The victorious answer was thus: Ten men came to the prophet and sat down. And the prophet said to them: Repent of your sins. And they answered: A slave whom his master has sold, and a woman whom her husband has divorced, has then one something to do with the other? Said the Holy One to the prophet: Go and say to them [Isa l. 1]: "Where is your mother's bill of divorcement, wherewith I have sent her away? or who of my creditors, is it to whom I have sold you? Behold, for your iniquities were ye sold, and for your transgressions was your mother sent away?" And this is what Resh Lakish said: This is what is written [Jer. xliii. 10]: "Nebuchadnezzar my slave." It was known before Him, who said a word and the world was created, that Israel will claim so in the future, and therefore He said in advance, "Nebuchadnezzar my slave." And to whom, then, belongs the property of a slave, if not to his master?

It reads [Ezek. xx. 32-34]: "And that which cometh up into your mind shall not at all come to pass (namely), that ye say, We will be like the nations, like the families of the other countries to serve wood and stone. As I live, saith the Lord Eternal, surely, with a mighty hand, and with an outstretched arm and with fury poured out, will I rule over you." Said R. Na'hman: With such an anger may the Merciful One be angry with us and redeem us.

[Isa. xxviii. 26]: "For his God had instructed him rightly, taught him (so to do)." Said Rabba b. b. Hanna: The prophet said to Israel: Repent. And they answered: We cannot, as we are under the dominion of the evil spirit. And he said to them: Overrule him. To which they answered: This can be done only by his God.

It reads concerning Bil'am [Num. xxii. 5]: "The son of Beor." And [Num. xxiv. 3]: "Bil'am, his son Beor." Said R. Johanan: His father was a son to him what concerns prophecy. The Mishna says that Bil'am has no share in the world to come, but other nations will have. Our Mishna is in accordance with R. Jehoshua of the following Boraitha: It reads [Ps. ix. 18]: "The wicked shall return into hell, all the nations that are forgetful of God." "The wicked" means the transgressors in Israel. "All the nations," means idolaters. So R. Eliezar. Said R. Jehoshua to him: Does it read, "*And* all the nations"? It reads "All the nations." This passage is

to be explained thus: The wicked shall return to hell, means all the nations that are forgetful of God. And even Bil'am gave a sign concerning himself with his saying [Num. xxiii. 10]: "May my soul die the death of the righteous, and may my last end be like his." If I will die a death of the righteous, then will be my end like his, and if not [ibid. xxiv. 14]: "I am going with my people."

It reads [Num. xxii. 7]: "And the elders of Moab and the elders of Midian departed." There is a Boraitha: Midian and Moab were always enemies with each other. This is a parable to two watch-dogs who were jealous of each other. But it happened that a wolf came to fight one of them. Said the other: If I will not help him the wolf will kill him to-day, and to-morrow he will kill me. And they therefore conjoined together and killed the wolf. Said R. Papa: This is what people say: The *χρηκος* and the cat (who are always enemies with each other) made a wedding meal of the fat of Bichgada.

It reads [ibid., ibid. 8]: "And the princess of Moab abode with Bil'am." And what became of the princess of Midian? As soon as they heard that Bil'am told them to stay there over night, they thought: Does then exist a father who dislikes his son? (The Holy One is the father of Israel, and will certainly not advise him to curse Israel.)

Said R. Na'hman: Impudence affects even Heaven, as [ibid., ibid. 12] reads: "Thou shalt not go with him," and finally [20]: "Go with them." Said R. Shesheth: Impudence is a kingdom without a crown, as [II Sam. iii. 39]: "And I am this day yet weak, and just anointed king; and these men, the sons of Zeruyah, are too strong for me."

R. Johanan said: Bil'am was lame on one foot and blind on one eye, as [Num. xxiv. 3]: "Whose one eye is open."

[Num. xxxiv. 16]: "Knoweth the knowledge of the Most High." Is it possible for him, who does not know the knowledge of his ass, to be aware of the knowledge of the Most High? It means he was aware of that moment when the Holy One, blessed be He, became angry. And this is what the prophet said to Israel [Michah, vi. 5]: "O my people, do but remember what Balak the king of Moab resolved, and what Bil'am the son of Beor answered him, from Shittim unto Gilgal, in order that ye may know the gracious benefits of the Lord." What do the last words mean? The Holy One, blessed be He, said to Israel: Beware of the gracious benefits

I have done to ye, that I have not become angry on that day in the time of Bil'am, for if I would have done so, there would not remain one living soul from ye. And this is what Bil'am said to Balak: What is the use of my anger when God was not angry these days in spite of what he used to do every day, as it reads [Prov. vii. 12]: "God is indignant (with the wicked) every day." How long is the duration of the anger? One second, as it reads [Ps. xxx. 6]: "For his anger is momentary." And if you wish, it is from [Isa. xxvi. 20]: "Go, my people, enter thou into thy chamber, and shut thy door behind thee: hide thyself for a little moment, until the indignation be passed away." And at what time in the day does He become angry? In the first three hours when the comb of a cock becomes white. But is the comb not white at any other time of the day? At any other time there are red points in the white, and at that time it is white without any points.

There was a Min in the neighborhood of R. Jehoshua b. Levi who caused him great trouble. And on a certain day Jehoshua tied a cock on the posts of his beds, thinking that when the comb will become white I will caution him. However, when that time arrived he slumbered. He said then: I understand from this that such a thing must not be done, even to Minnim.

There is a Boraitha in the name of R. Mair: When the sun rises and the kings put their crowns on their head, and bow themselves down to the sun, the Lord immediately becomes angry.

It reads [Num. xxiv. 21]: "And Bil'am rose up in the morning and saddled his ass." There is a Boraitha in the name of R. Simeon b. Elazar: Love abandons the custom of great men, and the same animosity does. Love abandons their custom, as we have seen by Abraham, who himself saddled his ass (because of his love to the Creator), and the same we saw by Bil'am, who himself saddled his ass, because of his animosity to Israel.

R. Jehudah said in the name of Rabh: One shall always occupy himself with the Torah and divine commandments, even not for the sake of heaven, as finally he will come to do so for its sake. This can be inferred from Balak, who offered forty-two sacrifices, and was rewarded by that what Ruth was the outcome from him. As R. Jose b. Huna said: Ruth was the daughter of Eglon, the grandson of Balak, king of Moab.

Rabba said to Rabba b. Mari: It reads [I Kings, i. 47]: "May God make the name of Solomon more famous than thy name, and make his throne greater than thy throne." Is it the usual way of saying to a king thus? And he answered: It is not to be taken literally; they meant to say "similar to thy name," as if you would not say so, how is to be understood [Judges, v. 24]: "Dwelling in the tent may she be blessed"? Who is meant by "dwelling in the tent," if not Sarah, Rebekha, Rachel, and Leah? Does, then, this passage mean that Ja'el shall be more blessed than they? Hence it is not to be taken literally; and it means "similar to them"; and the same is the case here. However, Rabba b. Mari differs with R. Jose b. Huni, who said that usually one becomes jealous of every one but of his son and disciple. Of his son, as we see from the above-cited verse concerning Solomon. And of his disciple [II Kings, ii. 9]: "And Elisha said, Let there be, I pray thee, a double portion of thy spirit upon me," and if you wish, from [Num. xxvii. 23]: "And he laid his *hands* upon him," though he was commanded [ibid., ibid. 18]: "Thou shalt lay thy *hand* upon him."

It reads [ibid. xxviii. 16]: "And put a word in his mouth." Said R. Johanan: From all the blessings of that wicked you may learn what he intended to say, if he would not have been prevented. He wanted to say: Israel shall not possess any houses of assembly and of learning. And what was he compelled to say [ibid., ibid. 5]: "How beautiful are thy tents, O Jacob." He intended to say that the Shekhina shall not rest upon them, and said, "Thy dwellings, O Israel."

He intended to say that their kingdom shall not be prolonged, and said, "As streams are they spread forth." He intended to say that they shall not possess olives and vineyards, and said, "As gardens by the river's side." They shall have a bad odor, and said, "As aloe-trees which the Lord had planted." They shall not have kings of nice appearance, and said, "And cedar-trees beside the waters." Their kings shall not be descendants of kings, and said, "Water runneth out of His buckets." Their kingdom shall not rule over other nations, and said, "That his seed may be moistened by abundance of waters." Their kingdom shall not be strong enough, and said, "And exalted above Agag shall be his king." And their kingdom shall not be feared, and said, "And raised on high shall be his kingdom." Said R. Abba b. Kahana: All

Bil'am's blessings were overturned to cautions, except concerning houses of assembly and of learning, as [Deut. xxiii. 6]: "And the Lord thy God changed unto thee the curse into a blessing, because the Lord thy God loved thee." It reads "curse," singular, but not "curses," plural.

Samuel b. Na'hman in the name of R. Jonathan said: It reads [Prov. xxvii. 6]: "Faithful are the wounds of a friend; but deceptive are the kisses of an enemy." The caution that Achiyah the Shilonite cautioned Israel is better for them than the blessings that Bil'am has blessed them. The former cautioned Israel with a reed, as it reads [I Kings, xiv. 15]: "As the reed is shaken in the water." As this reed stands in water-places, the branches of it change, but its roots are many, and even all the winds of the world when blowing upon it are not able to uproot it, but it bends in every direction of the wind. However, when the wind ceases it remains straight in its place. But Bil'am, the wicked, blessed them with a cedar, which does not stand in water-places, does not change its branches, and its roots are few, and although no winds can affect it, however, as soon as a south wind comes it uproots it and turns it over on its face. Moreover, a pen for writing the Holy Scrolls, Prophets, and Hagiographa was made from a reed.

Farther on it reads [Num. xxiv. 21]: "And he looked on the Kenites. . . . Strong is thy dwelling-place," etc. Bil'am said to Jithro: Kenite, wast thou not with us at the time we consulted to destroy Israel? How, then, does it come that thou art placed now among the strongest of the world? And this is what R. Hyya b. Aba in the name of R. Simlai said: The following three—Bil'am, Job, and Jithro—were the advisers of Pharaoh, concerning his command of throwing in the river the children of Israel. Bil'am, who gave this advice, was killed; Job, who kept silent, was punished with chastisement; and Jithro, who ran away, was rewarded by having his descendants placed among the Sanhedrin, in the chamber of the Temple, as the above-cited verse [of I Chron. ii. 55, p. 327] reads.

"And he took up his parable, and said, Alas, who shall live when God doth appoint this one?" [Num. xxiv. 23]. Said R. Johanan: Woe will be to that nation which will try to prevent the redemption of Israel, when the Holy One, blessed be He, will do it to his children. Who can prevent a lion to come together with his lioness at the time they are both free?

It reads [ibid., ibid. 14]: "And now, behold, I am going unto my people: come, I will advise thee against what this people will do to thy people in the end of days." This people to thy people! It ought to be the reverse: "I will advise thee against what thy people will do to this people." Said R. Abah b. Kahana: It is similar to one who intends to caution himself, and does it by cautioning his neighbor. (Rashi explains this that Bil'am said as it ought to be, but the verse changed its language.) Bil'am said to Balak: The God of this nation hates incest, and they, I am aware, are fond of linen dresses. Put up shops for them, and place therein prostitutes, an old woman outside, and a young one inside, and they shall sell them linen dresses. He put up shops from Har Shelek to the place of Beth Hayishimon, and placed therein prostitutes accordingly. And when Israel were eating, drinking, and rejoicing themselves and taking a walk, the old woman said to him: Do you want to buy a linen dress for a reasonable price? But the young woman from inside offers it to him thrice cheaper, and finally she says to him: You are at home, choose what you like. And there stood a pitcher full of Ammonite wine, which was not as yet prohibited. And she treats him with a goblet of wine. And after he drinks it, it kindles him as a fire, and he makes his proposition to her. She, however, takes out her idol from her bosom, saying: Worship it. And to his answer: I am a Jew, she said: What is it, it is required only of you to uncover yourself before it. While he was not aware that so was the custom of its worship, as it reads [Hosea, ix. 10]: "But they, too, went to Baal Peor, and devoted themselves unto that shameful idol, and became abominations as those they loved."

It reads [Num. xxv. 1]: "And Israel dwelt in Shittim." Said R. Johanan: Everywhere such an expression is to be found it brings infliction. Here the people began to commit incest. [Gen. xxxvii. 1]: "And Jacob dwelt in the land of his fathers sojourning," and (2) "Joseph brought evil reports of them to his father." [Ibid. xlvii. 27]: "And Israel dwelt in the land of Egypt, in the country of Goshen," and [ibid. 29]: "And the days of Israel drew near that he was to die." [I Kings, v. 5]: "And every man dwelt in safety," and [ibid. xi. 14]: "And the Lord stirred up an adversary unto Solomon, Hadad the Edomite."

It reads [Num. xxxi. 8]: "And the kings of Midian they

slew, besides the rest of their men that were slain . . . and Bil'am, the son of Beor, they slew with the sword." What hath Bil'am to do there? Said R. Johanan: He went to take the reward for the twenty-four thousand Israelites who were killed through his advice. Said Mar Zutra b. Tubia in the name of Rabb: This is what people say: A camel wanted to get horns, and therefore the ears he possessed were cut off.

[Josh. xiii. 22]: "And Bil'am, the son of Beor, the soothsayer." The soothsayer! Was he not a prophet? Said R. Johanan: At the beginning he was a prophet, but thereafter became a soothsayer.

A Sadducaer said to R. Hanina: Are you aware of Bil'am's age when he was slain? And he answered: There is nothing written about it, but from [Ps. lv. 24]: "Let not the men of blood and deceit live out half their days," I understand that he must have been thirty-two or thirty-three when he was killed. And the Sadducaer answered: Thou sayest well, as I saw the record of Bil'am, and it was written therein thirty-three years was Bil'am when he was killed by Pinehas, the murderer.

Said Mar b. Rabbina to his son: About all the commoners who are mentioned in the Mishna, you have not to be anxious to lecture of them to their disadvantage, except Bil'am, about whom you may lecture as much as you like.

About Doeg is found in the Scripture this word differently, in some places with an *aleph* and in others with double *yods* instead of an *aleph*. Said R. Johanan: At the beginning Heaven was worrying that perhaps this man will go out in a wrong way, and after it happened so, it was exclaimed that this man is lost by his bad habits.

R. Itz'hak said: It reads [Ps. lii. 3]: "What vauntest thou thyself of wickedness, O mighty man? the kindness of God endureth all the time." The Holy One, blessed be He, said to Doeg: Art thou, then, not mighty in the Torah? Why art thou fond of slandering?

And the same said again: It reads [Ps. l. 16]: "But unto the wicked God saith, What hast thou to do to relate my statutes?" The Holy One, blessed be He, said to Doeg the wicked: What hast thou to relate my statutes when thou reachest the portion of murderers and the portion of slanderer (which thou hast done both)? How wouldst thou explain them?

"Why bearest thou my covenant upon thy mouth?"

[ibid.]. Said R Ami: Infer from this that the study of Doeg was only with his mouth, but not with his heart.

R. Itz'hak said: It reads [Job, xx. 15]: "The wealth which he hath swallowed, will he have to vomit up again: God will drive it out of his belly." David said before the Holy One, blessed be He: Let Doeg die. And he was answered: Thou must wait until he will have forgotten the Torah, which he has swallowed. And he prayed again: Let God drive it out of his belly.

R. Itz'hak said again: It was said before David: Let Doeg have a share in the world to come. And he answered [Ps. lli. 7]: "Therefore God will also destroy thee forever." Let there at least a Halakha be mentioned in his name in the college. And he answered: "Pluck thee out of his tent." Let his descendants be rabbis. "And root thee out of the land of life."

The same said again: It reads [Isa. xxxiii. 18]: "Where is he who wrote down? where is he that weighed? where is he that counted the towers?" (All this passage is concerning Doeg.) Where is he who counted the letters of the Torah? Where is he who weighs the lenient and rigorous things mentioned therein? Where is he who counted three hundred decided Halakhas (about Levitical cleanness) concerning a turret flying in the air? Said R. Ami: Four hundred questions had Doeg and Achitophel asked concerning turrets flying in the air, and not one of them could be decided. Said Rabha: Is it also a great thing to ask questions?

In the years of R. Jehudah all their studies were confined to the Section of Damages, etc. (See Taanith, p. 71, from line 12 to the end of that chapter.) However, here the answer is: The Holy One, blessed be He, wants the heart of one, but not his mouth, as it reads [I Sam. xvi. 7]: "But the Lord looketh on the heart." Said R. Ami: Doeg was not dead before he had forgotten all his studies, as it reads [Prov. v. 23]: "He will indeed die for want of correction; and through the abundance of his folly will he sink into error." Said R. Johanan: Three angels of destruction attended to Doeg: one who had made him forget his study, and one who burned his soul, and the third who scattered his ashes in prayer and learning houses.

The same said again: Doeg and Achitophel did not see each other, as Doeg was in the days of Saul and Achitophel in the days of David.

And he said again: Both Doeg and Achitophel have not lived

half of their days. So also we have learned in the following Boraitha: All the years of Doeg were only thirty-four, and those of Achitophel thirty-three. R. Jehudah said in the name of Rabh: One shall not bring himself into temptation, as David, king of Israel, placed himself in the power of a trial and stumbled. He said before Him: Lord of the Universe, why is it said the God of Abraham, Isaac, and Jacob, and not the God of David? And he was answered: Because they were tried by Me, and thou wast not. And he said before Him: Lord of the Universe, try me, as it reads [Ps. xxvi. 2]: "Try me, O Lord, and prove me." And he was answered: You will be tried, and, furthermore, I will do with thee a thing which I have not done with the patriarchs, as them I have not informed that I will try, and thee I inform that thou wilt be tried with a case of adultery. And this is what it reads [II Sam. xi. 2]: "And it happened at evening tide that David arose," etc. Said R. Jehudah: He did in the daytime what is usually done at night. And he overlooked a Halakha: There is a small member in the body of a man which is always hungry if one is trying to satisfy it, and is always satisfied if one starves it. "And he walked upon the roof of the king's house; and he saw from the roof a woman bathing herself, and the woman was of a very beautiful appearance." Bath Sheba used to wash her head under a bee-hive. The Satan then appeared before David as a bird, and he shot an arrow at it, and the arrow fell on the bee-hive and broke it, so that Bath Sheba was visible to David. And immediately [ibid., ibid. 3 and 4]: "David sent and inquired after the woman; and some one said, Behold, this is the Bath Sheba, the daughter of Eliam, the wife of Uriyah the Hittite. And David sent messengers and took her; and she came in unto him, and he lay with her, and she had just purified herself from her uncleanness: and she returned unto her house." And this is what it reads [Ps. xvii. 3]: "Thou hast proved my heart; thou hast thought of me in the night; thou hast refined me—thou couldst find nothing; my *zamuthi* (purpose) doth not pass beyond (the words of) my mouth," which means it would be better for me that a *zmama* (a bit) should have been put in my mouth than to have prayed: Try me.

Rabha lectured [Ps. li. 6]: "To thee, thee only, have I sinned, and what is evil in thy eyes have I done; in order that thou mightest be righteous when thou speakest, be justified

when thou judgest." David said before the Holy One, blessed be He: It is known before Thee, that if I would want to overrule my impulse (concerning Bath Sheba) I would be able to do so. But I didn't, so people shall not say that the slave has conquered his master. He lectured again: It reads [Ps. xi. 1]: "In the Lord have I put my trust; how can ye say to my soul, Flee to your mountain as a bird?" David said before the Holy One, blessed be He: Lord of the Universe, forgive me this sin for the purpose that people shall not say that your mountain was lost through a bird (as said above that the Satan appeared to David as a bird). He lectured again: It is written [ibid. xxxviii. 18]: "For I am prepared for (my) downfall, and my pain is continually before me." From the six days of creation Bath Sheba was destined for David; however, she came to him only by infliction. And so also taught the disciples of R. Ishmael: Bath Sheba, the daughter of Eliam, was destined to David, but he enjoyed her as an unripe fruit (did not wait until she was his legitimate wife). (Here is repeated from Middle Gate, p. 138, from "Rabha lectured" until "Rabha said.")

R. Jehudah said in the name of Rabh: David was about to worship idols, as it reads [II Sam. xv. 32]: "When David was come to the head where he used to bow himself to God." By "head" is meant an idol, as it is to be found in Daniel that the head of the image was of gold. "Behold, Chushai, the Arkite, came to meet him with his coat rent, and earth upon his head." And he said to him: Is it proper that a king like thyself shall be an idolater? And he answered: Is it proper that a king like myself should be slain by his son? It is better for me to worship an idol privately than that the Holy Name should be profaned publicly. Said Chushai to him: Why, then, hast thou married a handsome woman? And to his answer: The Merciful One has allowed to marry such. Rejoined Chushai: Why have you not given your attention to the interpretation founded on the facts of local junction of texts, as after "A woman of handsome form is near" [Deut. xxi. 11], the 18th verse, which speaks of "A stubborn son"?

R. Dusthai, of the city of Biri, lectured: David's following prayer is similar to a peddler who wanted to sell out his stock little by little. He said before the Holy One, blessed be He [Ps. xix. 13-15]: "Lord of the Universe, who can guard against errors?" And he was answered: They will be forgiven to you.

"From secrets (faults) do thou cleanse me," and the same answer was given. "Also from presumptuous sins withhold thy servants," and he was also answered that it will be forgiven. "Let them not have dominion over me"—the rabbis shall not talk about me, and he was also promised that so it will be. "Then shall I be blameless"—my sins shall not be written. And he was answered: This is impossible as the *Jod* which I took away from the name of Sarai complained before me several years, until Joshua came and I added it to his name, as it reads [Deut. xiii. 16]: "And Moses called Hoshea, the son of Nun, Joshua." How then can I omit a whole portion of the Torah? "Clear from any great transgression"—He said before Him: Lord of the Universe, forgive me the whole sin. And he was answered: It is revealed before Me what Solomon, thy son, will say by his wisdom in the future [Prov. vi. 27-30]: "Can a man gather up fire in his lap, and shall his clothes not be burnt? Can a man walk along hot coals, and shall his feet not be burnt?" So it is with him that goeth in to his neighbor's wife: no one that toucheth her shall remain unpunished. He then exclaimed: If so, I am lost. And he was answered: Accept chastisements upon thyself. And he did so.

Said R. Jehudah in the name of Rabh: Six months was David afflicted with leprosy; the Shekhina left him, and the Sanhedrin separated themselves from him. "Inflicted with leprosy" [Ps. li. 9]: "Cleanse me from sin with hyssop." etc. "The Shekhina left him" [ibid., ibid. 14]: "Restore unto me the gladness of thy salvation." "The Sanhedrin separated themselves" [ibid. cxix. 79]: "Let those that fear thee return unto me and those that know thy testimonies." And whence do we know that all this lasted full six months? From [I Kings, ii. 11]: "And the days that David reigned over Israel were forty years; in Hebron he reigned seven years, and in Jerusalem he reigned thirty and three years. And in [II Sam. v. 5]: "In Hebron he reigned over Judah seven years and six months, and in Jerusalem he reigned thirty-three years over all Israel and Judah." Hence we see that the six months more which are counted in II Samuel are not counted in I Kings, and this was because the six months in which he was afflicted with leprosy were not counted. (Here is repeated from Minor Festivals, p. 13, line 6: Said R. Jehudah in the name of Rabh—to the end of the par. See there.) Now about Gechazi. It reads [II Kings, viii. 7]: "And Elisha came to Damascus." What did he do there?

Said R. Johanan: He went to make Gechazi repent of his sins. He tried to do so, but he did not want, saying: I have a tradition from thee, that he who sins and causes others to sin, Heaven gives no opportunity to him to repent. But what has he done to cause others to sin? According to some he put a magnet over the casts made by Jeroboam, and they were suspended in the air. And according to others, he engraved a holy name on its mouth, and it heralded: "I am the God," etc. And according to still others, he drove away disciples from Elisha's college, as it reads [ibid. vi. 1]: "Behold now the place where we dwell before thee is too narrow for us." (And this was after the departure of Gechazi, hence it was not narrow when he was there, because he drove away many disciples.)

The rabbis taught: Exclusion shall always be with the left hand, and inclusion with the right hand, *i.e.*, if one is compelled to repudiate some one, he shall do it easy as with his left hand, and at the same time try to admit him again with his right hand. And not as Elisha has done with Gechazi, whom he rejected with both hands, as it reads [II Kings, v. 23, 27]: "And Naaman said, Give thy assent, take two talents. And he urged him. . . . Whence comest thou, Gechazi?" And he said, Thy servant went not hither or thither. And he said unto him, "My mind was not gone when the man turned around from his chariot to meet thee. Is it time to take money, and to take garments, and oliveyards, and vineyards, and sheep, and oxen, and men-servants, and maid-servants?" Hath then Gechazi taken all this? He took only silver and garments. Said R. Itz'hak: At that time Elisha was occupied with the study of the chapter of eight reptiles (the 14th chap. of Tract Sabbath). Naaman, the captain of the king of Syria, was afflicted with leprosy, and his servant girl, who was captured from Israel, told him that if he will go to Elisha he will be cured. And when he came and was told to dip himself in the Jordan, he said: They ridicule me. But the men with him induced him to do so. He followed their advice and he was cured. And he brought all what he had with him to Elisha, but he did not want to accept it from him. Gechazi, however, departed from Elisha, took what he took, and hid it,* and when he came before Elisha again he saw that the leprosy was flying over his head. Then he said

* See Samuel Eigdus Marsho, who tries to explain why all this is repeated here after it is narrated in the Bible. However, he did not succeed.

to him: Has then the time come that you should be rewarded for my studying of the chapter of eight reptiles, as you took from him the value of the eight things mentioned in this passage? And therefore he went out of his presence a leper (as white) as snow. It reads [ibid. vii. 3]: "And there were four leprous men at the entrance of the gate." Said R. Johanan: These were Gechazi and his three sons. There is a Boraitha: The animal impulses of man, a child and a woman, should always be repulsed with the left hand, and at the same time embraced with the right hand. The rabbis taught: Thrice Elisha became sick, etc. (See Middle Gate, p. 229, which is repeated here with the change that the paragraph "until the time of Abraham there was no mark of age," in line 15, reads here after the paragraph, "The rabbis taught," in line 21. See there.)

MISHNA II.: The generation of the flood have no share in the world to come, and are also not judged, as it reads [Gen. vi. 3]: "*Lau jodun ruchiy bheodom*," literally "My spirit shall not judge in man"—no judgment and no spirit. The generation of dispersion (cf. to ibid., chap. 11) have also no share in the world to come, as it reads [ibid. 8]: "And the Lord scattered them abroad"; and it reads also (9): "From there the Lord scattered them"—"scattered them" in this world, and "from there the Lord scattered them"—in the world to come. The men of Sodom have also no share in the world to come, as it reads [ibid., ibid. 13]: "For the men of Sodom were wicked, and sinners before the Lord exceedingly"—"wicked" in this world, and "sinners" in the world to come. However, they are standing for judgment. R. Nehemiah said: Both of the following are not standing for judgment, as it reads [Ps. i. 5]: "Therefore shall the wicked not be able to stand in the judgment"—the generation of the flood. And "sinners in the congregation of the upright"—men of Sodom. But he was told by the sages: The latter do not stand up among the congregation of the upright, but they stand among the congregation of the wicked. The spies have no share in the world to come, as it reads [Num. xiv. 37]: "Died by the plague before the Lord." "Died"—in this world, "plague"—in the world to come. The generation of the desert has no share in the world to come, as it reads [ibid., ibid. 35]: "In this wilderness shall they be spent"—in this world, and "therein shall they die"—in the world to come. So R. Aqiba. R. Eliezar, however, maintains: To

them is written [Ps. l. 5]: "Gather together unto me my pious servants, who make a covenant with me by sacrifice." The congregation of Korah will not be restored at the time of resurrection, as it reads [Num. xvi. 33]: "And the earth closed over them"—in this world, and "they disappeared from the midst of the congregation"—in the world to come. So R. Aqiba. R. Eliezar, however, maintains: To them it reads [I Sam. ii. 6]: "The Lord killeth and maketh alive: he bringeth down to the grave, and bringeth up."

GEMARA: The rabbis taught: The generation of the flood has no share in the world to come, as it reads [Gen. vii. 23]: "And it swept off every living substance"—in this world, "and they were swept from the earth"—in the world to come. So R. Aqiba. R. Jehudah b. Bathyra said: They will neither be restored nor judged, as it reads in the cited verse of the Mishna: "No judgment and no spirit." R. Menahem b. Jose said: Even at the time the Holy One, blessed be He, will return the souls to the corpses, the souls of the generation in question will still be judged hard in the Gehenim, as it reads [Isa. xxxiii. 11]: "Ye shall be pregnant with hay, (and) ye shall bring forth stubble: your breath is a fire, which shall devour you."

The rabbis taught: The generation of the flood were exalted only because of the overflowing goodness, the Holy One, blessed be He, overflowed them, as concerning them it reads [Job, xxi. 9-14]: "Their houses are at peace without any dread, and no rod of God (cometh) over them. The bull of each one gendereth and disappointeth not: the cow of each one calveth, and casteth not her young. They send forth their little ones like a flock, and their children skip about (with joy). They sing to the timbrel and harp, and rejoice at the sound of the pipe. They wear out their days in happiness." The verse continues, and "in a moment they go down to the nether world." This was caused by what they said, "Depart from us and the knowledge of thy ways we desire not," etc. They said: We need the Almighty only for the drops of rain with which He supplies us; however, we possess springs and rivers, of which we can make use. Said the Lord: With the same good I have overflowed them they anger me, I will therefore punish them with the same. I will bring a flood of water, etc.

R. Jose said: The generation of the flood were exalted because the sclerotic coat of the eye which resembles water, as

it reads [ibid., ibid. 2]: "And they took themselves wives of all whom they chose," and therefore they were punished with water, which resembles the eye, as [ibid. vii. 11]: "On the same day, were all the fountains of the great deep broken up, and the windows of heaven were opened."

R. Johanan said: The generation in question sinned with the word *rabbha*. [ibid. vi. 5]: "God saw that *rabbha* the wickedness of men, and they were punished with the same word [ibid. vii. 11]: "All the fountains of the deep *rabbha*." And he said again: Three of the hot springs of that time remained forever, and they are, of Gedda, of Tiberius and the great springs of Biram.

It reads [ibid. vi. 12]: "For all flesh has corrupted his way upon the earth." Said R. Johanan: Infer from this that cattle, beast and men had intercourse with each other. Said R. Aba b. Kahana: All of them returned to their usual manner of propagation, except the bird Thushl'mi.*

It reads [ibid., ibid. 13]: "The end of all the flesh is come before me." Said R. Johanan: Come and see how severe is the force of robbery, as the generation of the flood had committed all kinds of crimes and their evil decree was not sealed until they stretched out their hand to robbery, as it reads (13) "for all the earth is filled with violence through them, and I will destroy them with the earth," and also [Ezek. vii. 11]: "The violence is grown up into the staff of wickedness: nothing is left of them, and nothing of their multitude and nothing of theirs; and there shall be no lamenting for them." Said R. Elazar: Infer from this passage that the violence itself has grown up as a cane and placed itself before the Lord, saying: Lord of the Universe; nothing shall be left of them, etc.

The disciples of R. Ismael taught: In that evil decree Noah was included, but found favor in the eyes of the Lord, as it reads [Gen. vi. 7 and 8]: "For it repenteth me that I have made them. But Noah found grace in the eyes of the Lord."

It reads [ibid., ibid. 6]: "And it repenteth the Lord that he had made man on the earth." When R. Dime came from Palestine, he said: (The Lord said) I have not done well that I prepared for them graves in the earth. (As it might be that if I would leave them alive, they would repent.) And this is inferred from the analogy of the expression "and it repented,"

* It is a kind of bird unknown to the commentators, as well as to us.

which is to be found here and in [Ex. xxxii. 14]: "And the Lord bethought himself."

It reads [Gen. vi. 9]: "Noah was a just, perfect man in his generation;" according to R. Johanan in his generation, but not in others who were more righteous. And according to Resh Lakish: In his generation, which was wicked, so much the more in other generations. Said R. Hanina: As a parable to that of R. Johanan, may be, *c.g.*, if one places a barrel of wine among barrels of vinegar. In that place, the good smell of wine is marked, which would not be the case if placed among other barrels of wine. And a parable to that of Resh Lakish, said R. Oshia, may be, *c.g.*, a glass of perfume which was placed in a filthy place, and the smelling was marked, so much the more would it be marked if placed among spices.

It reads further on [Gen. vii. 23]: "And it swept off," etc. If man sinned, what were the sins of the animals? It was taught in the name of R. Jehoshua b. Kar'ha: It is similar to one who made a canopy for his son, and prepared all kinds of delicacies for the wedding-meal, but his son dies before the wedding and he destroys all what he prepared, saying: All this was done only because of my son; now, as he is dead, to what purpose do I need the canopy and all what I prepared? So the Holy One, blessed be He, said: To what purpose have I created cattle and beast, only for the sake of man; now, when man has sinned and is to be destroyed, to what purpose do I need all other creatures? [Gen. vi. 22]: "All that were on dry land died," but not the fishes in the sea.

R. Jose of Tcsarius lectured: It reads [Job, xxiv. 18]: "Swift are such men (to flee) on the face of the water; accursed is their field on the land." Infer from this that Noah, the upright, warned them, saying: Repent and pray to God, for if not He will bring the flood upon you and will make your corpses swim upon the water like bags filled with air; and not only this, but ye will be accursed to future generations (*i.e.*, one will curse this enemy that his lot shall be like yours). And they answered: Let him do so, who prevents him? And he answered: There is one pigeon among ye which must be taken away from this evil (*i.e.*, Methusheleah, the upright, who must depart, not to see the evil). And they answered: If it is so, then we will continue on our way and will not hide ourselves in the vineyards.

Rabha lectured: It reads [Job, xii. 5]: "To the unfor-

tunate there is given contempt—according to the thoughts of him that is at ease—prepared (also) for those whose foot slippeth.” Infer from this that Noah, the upright, warned them in hard words. But they scorned him, saying: Thou old man, why buildest thou the ark? And to his answer: The Lord will bring the flood, they said: A flood of what? If a flood of fire, then we have an animal by the name of Elita which extinguishes fire. And if of water, we have iron plates with which we can pave the ground (to prevent water coming up). And if of the sky, we have a thing named Akeb or Ikosh, which can prevent it. And Noah answered: He will bring you (the flood) from under your heels, as the just cited verse reads, “prepared for those whose foot slippeth.”

Said R. Hisda: With their hot blood have they sinned, and they were punished with hot water, and it is inferred from an analogy of the expression [Gen. viii. 3]: “And the water was appeased,” and [Esther, vii. 10]: “And the fury of the king was appeased.”

It reads [Gen. vii. 10]: “And it came to pass after the seven days that the waters of the flood were upon the earth.” Seven days of what? Said Rabh: The seven days’ mourning for Methushelech. From this you may learn that the lamentation of uprights delays the chastisement to come. Another explanation: The Lord appointed for them at first a long time for repenting, and thereafter a short time. And still another explanation: The seven days in which was given them a taste of the world to come, for the purpose that they shall know what good they are losing.

[Ibid., ibid. 2]: “Of every clean heart thou shalt take to thee seven pair of each, the male and his female.” Have these animals wives? Said Samuel b. Na’hman in the name of R. Jonathan: It means from those with whom a crime was not committed. And whence did he know this? Said R. Hisda: He passed them by the ark, and those who were accepted by the ark he was certain that no crime was committed, and those who were not, he was certain that a crime was committed. R. Abuhu said: It means from those animals which came by themselves.

[Ibid. vi. 14]: “An ark of gopherwood.” What is meant by gopher? R. Adda, in the name of the school of Shila, said: It means an oak tree, and according to others, a cedar tree.

[Ibid., ibid. 16]: “A window shalt thou make.” Said R.

Johanan: The Holy One, blessed be He, said to Noah: Put there diamonds and pearls, that they shall give you light as the middle of the day.

"With lower second and third stories shalt thou make it." The lower for manure, the second for animals and the third for man.

[Ibid. viii. 7]: "He sent forth a raven." Said Resh Lakish: A victorious answer has the raven given Noah: Thy master hates me and thou doest the same. Thy master hates, as from the clean he took seven and from the unclean only two, and thou hatest me as thou sends a creature of which you have only two, while from others you have seven. If I would be killed by heat or by cold would not the world be lacking my creation?

[Ibid., ibid. 8]: "He then sent forth a dove *from him*." Said R. Jeremiah: Infer from this that clean fowls may be kept in the residence of uprights.

[Ibid., ibid. 11]: "And the dove came in to him at the time of evening." Said R. Elazar: The dove said before the Holy One, blessed be He: Lord of the Universe, may my food be bitter like an olive, but I shall receive it from thy hand rather than that it should be sweet like honey, and I shall receive from beings of blood and flesh.

"Plucked off *tereph*." And whence do we know that *tereph* means food? From [Prov. xxx. 8]: "Let me eat the bread," in which the same term *tereph* is used.

It reads farther on [Gen. viii. 19]: "After their families." Infer from this that each family was placed separate. R. Hana b. Bisna said: Eliezar, the servant of Abraham, questioned Shem the Great: As all the animals were placed separately, where was your family placed? And he answered: We had great trouble in the ark to feed all the animals. The creature whose habit it is to eat in the daytime we had to feed in the day, and those whose habit it is to eat in the night, we have to feed in the night. A chameleon, my father did not know what its food is. It happened one day that he cut a pomegranate and a worm fell out of it, and the above consumed it, and from that time prepared its food from the worms found in rotten apples. The lion was fed by his fever, as Rabh said: No less than six and no more than twelve months one can live in fever without taking any food. The Aurshina my father found that it slept in a corner of the ark; and to his question: Dost thou

need any food, it answered: I saw thou art very busy, and I thought I would not trouble thee. And he blessed her that it shall never die, and this is what it reads [Job, xxix. 18]: "As the chaul (aurshina) shall I have many days."

R. Hana b. Levai said: Shem the Great questioned Eliezar, the servant of Abraham: When the kings of the West and East came to fight you, what have you done? And he answered: The Holy One, blessed be He, took Abraham, sat him down to His right, and we, however, took earth, threw it, and they became swords. Straw and they became arrows, as it reads [Ps. cx. 1]: "Sit thou at my right hand, until I place thy enemies a stool for thy feet." And also [Isa. xli. 2]: "Who waketh up from the east the man whom righteousness met in his steps? He giveth up nations before him, and maketh him rule over kings. That his sword may render them as the dust, as driven stubble his bow." (Here is repeated from Taanith, p. 56, the legend of Nahum of Gim-zu.)

"*The generation of dispersion has no share,*" etc. What had they done? The school of R. Shila said: They wanted to build a tower to ascend to the sky and split it with hatchets, so that the contained water shall pour down. This legend was ridiculed in the West. If they intended to ascend to the sky they ought to have built the tower on a mountain, and not in a valley. Therefore, said R. Jeremiah b. Elazar: They were divided into three parties. The first party said: Let us go there to dwell; the second: Let us go there and worship their idols, and the third: Let us go there to fight. The party that said, Let us go there to dwell, were scattered all over the world, and the party that said, Let us go there and fight, became demons, devils, etc. And the party that said, Let us go there and worship their idols, were scattered to Babylon, to which it reads [Gen. xi. 9]: "Therefore is the name Babel, because the Lord did there confound the language."

Said R. Johanan: From the tower, a third of it was burned, the second was swallowed and a third is still in existence.

"*Men of Sodom,*" etc. The rabbis taught: Men of Sodom have no share in the world to come, as the verse cited in the Mishna. And in addition to it, said R. Jehudah: They were wicked with their bodies and sinners with their money. With their bodies, as it reads [ibid. xxxix. 9]: "How then can I do this great evil and sin against God?" and sinners with their money, as it reads [Deut. xv. 9]: "It will be sin in thee." Be-

fore the Lord means blasphemy. "Exceedingly"—all their sins were intentionally. In a Boraitha it was taught the reverse: wicked with their money, as it reads [*ibid.*, *ibid.* 9] "And thy eye be thus evil against thy needy brother," and sinners with their bodies [Gen. xxxix. 9]: "And sin against God." "Before the Lord" means blasphemy, and "Exceedingly" means bloodshed, as it reads [II Kings, xxi. 16]: "And also innocent blood did Menasseh shed exceedingly." The rabbis taught: The men of Sodom were exalted because of the overflowing goodness of the Lord. Concerning them it reads [Job, xxviii. 58]: "The earth out of which cometh forth bread, is under its surface turned up as it were with fire. Her stones are the place whence the sapphire cometh; and golden dust is also there. On the path which no bird of prey knoweth, and which the vulture's eye hath not surveyed," etc. And they said: As our land supplies us with sufficient bread, why shall we leave in travellers who come only to lessen our money? Let our land forget that there is a foot of stranger, as it reads [*ibid.*, *ibid.* 4].*

He said again: It reads [Ps. lxii. 2]: "How long will ye devise mischief against a man? Will ye all assault him murderously, as though he were a falling wall, a tottering fence?" Infer from this that they used to place a wealthy man under a tottering wall and pushed the wall over him, and robbed him of his money.

He said again: It reads [Job, xxiv. 16]: "They break into houses in the dark, in the daytime they lock themselves in: they know not the light." Infer from this that when they saw a wealthy man they used to deposit with him balsam, which usually the depositories placed in their treasure box, and in the night they scent the balsam and rob him.†

R. Jose lectured the same in Ciporias. And the night after that three hundred burglaries were committed through the smell of balsam, the town-men troubled him, saying: "You have shown a way to the thief." And he answered them: How could I know that all of you are thieves?

The following was enacted in Sodom. He who possessed one ox had to pasture all the cattle of the city one day, but he who possessed none at all had to pasture them two days. There

* The translation does not correspond.

† Here is also referred to some passages from the Scripture, but which have no direct bearing, and are therefore omitted.

was an orphan, the son of a widow, to whom they gave their oxen to pasture, and he killed them, saying: Who has one ox shall take one skin, and he who has none at all shall take two skins. And to the question: What is this? he said to them: The final trial must be at the beginning of it. You enacted that he who has one ox shall pasture them one day, and he who has none at all shall pasture them two days. The same is the case with the skins.

He who passed the river on a boat had to pay one zuz. And he who passed the river on foot had to pay two. If one had a row of bricks, every one of them came and took one, saying: I am not causing you any damage by taking one. The same they used to do when one scattered garlic or onions to dry. There were four judges in Sodom. Every one of them had a name which meant false, lie, etc. If it happened that one struck a woman and she miscarried, they used to decide that the woman should be given to the striker, and he shall return her when she will be pregnant again. If it happened that one cut off the ear of his neighbor's ass, they used to decide that the ass should be delivered to the striker, till it shall be cured. If one wounds his neighbor, they decided that the striker shall be paid for bleeding him. He who passed the river on a bridge had to pay four zuz. And he who passed it with one foot had to pay eight zuz. It happened once that a washer came there and they required of him four zuz. And to his claim that he had passed the water on foot, they required eight. And because he didn't pay they wounded him, and when he came to the judge, he decided that he shall pay for bleeding and eight zuz for passing the water.

Eliezar, the servant of Abraham, happened to be there, and was wounded, and when he came to the judge to complain he said: "You must pay for bleeding." And he took a stone and wounded the judge, saying: The payment for bleeding which you owe to me pay them, and my money shall remain with me. They made a condition that he who invites one to a wedding shall be stripped of his garments. There was a wedding at the same time Eliezar happened to be in the city, and none of them wanted to sell him any bread for a meal. He then went to the wedding and took a place at the very end of the table. And when he was asked who had invited him, he said to him who was sitting near by, Thou hast invited me. And for fear that they will believe that he has invited him and that he will be

stripped of his garment, he hurried to take his mantle and run away. And so he did to the remainder, and they all ran away, and he ate the whole meal. They had a bed for strangers. If he was too long for this bed they made him shorter, and if too short they stretched him. When Eliezar was there they told him to sleep in the bed, to which he answered: Since my mother is dead I vowed not to sleep in a bed. When a poor man happened to be there every one used to give him a dinar, on which his name was engraved, but they did not sell him any bread until he died. And then each one took his dinar back. There was a girl who used to supply a poor man with bread, which she used to hide in a pitcher while going for water. And when this was found out they smeared her body with honey, put her on the roof of the surrounding wall, and bees came and killed her, and this is what it reads [Gen. xviii. 20]: "Because the sin against Sodom and Gomorrah is great," etc.

"*Spics . . . and the congregation of Korah,*" etc. The rabbis taught: The congregation of Korah has no share in the world to come, as it reads: "And the earth covered them"—in this world, and "they disappeared from the midst of the congregation"—in the world to come. So R. Aqiba. R. Jehudah b. Bathyra said: They are as a lost thing for which the loser inquires, as it reads [Ps. cxix. 176]: "I have gone erringly astray, like a lost sheep; seek thy servant, for thy commandments have I not forgotten." It reads [Num. xvi. 1]: "And Korah took (*vayikah*)."
Said Resh Lakish: He purchased for himself a very bad undertaking. "Korah" means, he has made Israel bald-headed. "Ben Yizhar," he who made the world hot as in the middle of the day. "Ben Kehath," he who made blunt the teeth of his parents. "Ben Levi," he who became a companion to the Gehenna. But why is not also written "ben Jacob"? Said R. Samuel b. Itz'hak: Jacob prayed [Gen. xlix. 6]: "Unto their secret shall my soul not come," means the spies. "Unto their assembly my glory shall not be united," means the congregation of Korah. Rabh said: "The wife of On ben Peleth" saved him from being among the congregation of Korah. She said to him: What is the difference to you? If Moses will be master, you are only a disciple, and the same will be for you if Korah will be the master. And to his answer: What shall I do, I was with them in consultation, and swore to take part with them? she said: I know that the whole congregation is holy, as it reads [Num. xvi. 3]:

"For the whole of the congregation are all of them holy;" remain in your house and I will save you. She made him drink wine to intoxication, and she made him sleepy in the house, and she herself sat outside at the entrance of the house, uncovered her head and dishevelled her hair. And every one coming to his house, to call upon On, when he saw the uncovered head of the woman, he returned. She, however, continued to sit there, till the congregation was swallowed. On the other hand, the wife of Korah said to him: See what Moses did. He proclaimed himself as a king, his brother he made high-priest, the sons of his brother for adjuncts of the high-priests. Heave-offering he commanded to give to the priests, and even from tithes, which are for the Levites, he commands to give again one-tenth to the priest. And not only this, he made of you fools by commanding all the Levites to shave off all their hair. And to his answer: He himself also did so, she said: As all the glory belongs to him, he does not care, etc. And this is what it reads [Prov. xiv. 1]: "The wise among women buildeth her house"—the wife of On ben Peleth. But the foolish pulleth it down with her own hands—the wife of Korah.

It reads farther on [Num. xvi. 2]: "So that they rose up before Moses, with certain men of the children of Israel, in number two hundred and fifty"—the distinguished of the congregation. "Called to the assembly"—who were able through their wisdom to intercalate months and establish leap years. "Men of renown"—whose name was renowned through all the world. "And Moses heard it, and fell upon his face." What had he heard? Said Samuel b. Na'hman in the name of R. Jonathan: That they suspect him of adultery, as it reads [Ps. cvi. 16]: "Moreover, they envied Moses."

"And Moses went to Dathan and Abiram." Said Resh Lakish: Infer from this that one must do all that he can not to strengthen a quarrel (as he himself who was a king went to Dathan and Abiram [Num. xvi. 25]). As Rabh said: He who strengthens a quarrel transgresses a negative commandment. [Ibid. xvii. 5]: "That he become not as Korah and as his company." R. Ashi said: Such is worthy to be punished with leprosy, as here it reads "by the hand of Moses," and [Ex. iv. 6]: "And he put his hand into his bosom, and when he took it out, behold, his hand was leprous, white as snow."

R. Jose said: He who fights against the kingdom of David deserves to be bitten by a snake, as [I Kings, i. 9]: "By the

stone Zoheleth," and [Deut. xxxii. 24]: "With the poison of *Zochle aphar* (serpents)."

R. Hisda said: He who quarrels with his master is considered as if he would quarrel with the Shekhina, as it reads [Num. xxvi. 9]: "At the time they quarrelled against the Lord." R. Hama b. Hanina said: He who has a controversy with his master is considered as if he would do so against the Shekhina, as it reads [ibid. xx. 13]: "These are the waters of Meribah, where the children of Israel quarrelled with the Lord." And R. Hanina b. Papa said: He who murmurs against his master is considered as if he would do so against the Shekhina, as it reads [Ex. xvi. 8]: "Not against us are your murmurings, but against the Lord." And R. Abuhu said: Even one whose thoughts are against his master is considered as if his thoughts would be against the Shekhina, as it reads [Num. xxi. 5]: "And the people spoke against God and against Moses."

It reads [Eccl. v. 12]: "Riches reserved for their owner to his own hurt." Said Resh Lakish: This means the riches of Korah. It reads [Deut. xi. 6]: "And all . . . on their feet." * Said R. Elazar: It means the money which makes one stand on his feet. And R. Levi said: The keys of Korah's treasure were of such a weight that three hundred white mules had to carry them. R. Hama b. Hanina said: Three treasures were hidden by Joseph in Egypt, one was found by Korah, and the second by Antoninus ben Arsirus, and the third is still hidden for the upright in the future. R. Johanan said: Korah was not from those who were swallowed and not from those who were burned. Not those from who were swallowed, as [Num. xvi. 32]: "And all the men that appertained unto Korah," but not Korah himself. And not from the burned. [Ibid. xxvi. 10]: "The fire devoured the two hundred and fifty men, but not Korah." In a Boraitha, however, it is stated that Korah was both burned and swallowed. "Swallowed," as in the just-cited verse, "And swallowed them up together with Korah," and "burned," as [ibid. xvi. 35]: "And there came out a fire . . . and consumed two hundred and fifty," and Korah was among them.

Rabha said: It reads [Habakkuk, iii. 11]: "At the light of thy arrows they walked along." Infer from this that the sun and the moon ascended to Zebul (one of the seven heavens

* Leeser's translation does not correspond.

mentioned elsewhere), and said: Lord of the Universe, if thou wilt take revenge for Ben Amram we will go out to our work, and if not, we will not. And they were standing until he shot arrows at them, saying, When my own glory is affected (by that people are worshipping ye) ye did not protest; and for the honor of a being of blood and flesh ye do.

Rabha lectured [Num. xvi. 30]: "But if the Lord do create a new thing, and the earth open her mouth." Moses said before the Holy One, blessed be He: If such is already created, well and good, but if not, the Lord shall create. Shall create! Does it not read [Eccl. i. 9]: "And there is nothing new under the sun"? to bring the opening of the Gehenna near to them.

It reads [Num. xxvi. 11]: "But the sons of Korah did not die." In the name of Rabbi it was taught: A place was prepared for them in Gehenna, in which they sat and sung a song. (Here is repeated Rabba b. b. Hana's legend from Last Gate, p. 206, concerning the children of Korah.)

"*The generation of the desert has no share,*" etc. The rabbis taught (in addition to the verse cited in the Mishna) [Ps. xcv. 11]: "So that I swore in my wrath, that they should not enter into my rest." So R. Aqiba. R. Eliezar, however, said they have a share, as it reads, "Gather unto me my pious servants." And the verse "I swore in my wrath" is therefore to be explained: I retract from it because it was sworn while I was in anger. R. Jehoshua b. Karha said: The verse cited by R. Eliezar was said only for the future generations. "Gather together unto me my pious servants," means the righteous which are to be found in every generation. "Who make a covenant," means Hanania, Meshael and Asaryah, who delivered themselves to the caldron. "By sacrifice," means R. Aqiba and his colleagues, who had delivered themselves to be slain because of the words of the Torah. R. Simeon b. Menasia said: They will have a share in the world to come, as it reads [Isa. xxxv. 10]: "And come to Zion with song!" Said Rabba b. b. Hana in the name of R. Johanan: R. Aqiba's saying is against his piety, as it reads [Jer. ii. 2]: "I remember unto thee the kindness of thy youth, the love of thy espousals, thy going after me in the wilderness, through a land that is not sown." Hence we see that from their reward even their descendants will be benefited, so much more they themselves.

MISHNA III.: The ten tribes who were exiled will not be returned, as it reads [Deut. xxix. 27]: "And he cast them into

another land, as this day." As that day will not return, so will they not return. So R. Aqiba. R. Eliezar said: As this day means as usually a day becomes clouded and thereafter lights up again, so the ten tribes, who are now in darkness, the future will lighten upon them.

GEMARA: The rabbis taught: The ten tribes have no share in the world to come, as it reads: "And the Lord plucked them out of their land of anger, and in wrath and in great indignation," means in this world, "and he cast them into another land," means in the world to come. So R. Aqiba. R. Simeon b. Jehudah, the head of the village of Aku, said in the name of R. Simeon: If their acts will be as on that day, they will not return, but if they will repent, they will. Rabbi, however, said: They will have a share in the world to come, and they will return, as it reads [Isa. xxvii. 13]: "And then shall come those who are lost in the land of Asshur," etc. Said Rabba b. b. Hana in the name of R. Johanan: R. Aqiba's saying is against his piety, as [Jer. iii. 12]: reads: "Go and proclaim these words towards the north, and say, Return, thou backsliding Israel, saith the Lord; I will not cause my anger to fall upon you, for I am full of kindness, saith the Lord, I will not bear grudge forever." What is the kindness? As in the following Boraitha: The minors of the wicked of Israel will not have a share in the world to come, as it reads [Malachi, iii. 19]: "For behold, the day is coming which shall burn as an oven; and all the presumptuous, yea, and all who practice wickedness shall be stubble; and the day that is coming shall set them on fire, saith the Lord of hosts, who will not leave them root or bough." "Root," in this world, and "bough," in the world to come. So Rabban Gamaliel.

R. Aqiba, however, said: They will have a share in the world to come, as it reads [Ps. cvi. 1]: "The Lord preserveth *pethayim* (fool)." And in the countries of the sea (Arabia), a child is called *pathia*. And also [Dan. iv. 11 and 12]: "Hew down the tree and lop off its branches, strip off its leaves and scatter its fruit; let the beasts flee away from under it, and the fowls from among its branches. Nevertheless leave the body of its root in the earth." But what is meant in the former verse, and "he shall not leave them a root or bough"? It means that he shall not leave one commandment or a part of it which they will observe unrewarded, however they will be rewarded for it in this world, but will have no share in the world to come. An-

other explanation, "root" means the soil, and "bough" the body. However, the minors, children of idolaters, all agree that they will not have a share in the world to come.

It was taught: From what age has a minor a share in the world to come? R. Hyya and R. Simeon b. Rabbi differ. According to one, immediately after birth, and according to the other, from the time he commences to speak. The former infers it from [Ps. xxii. 32]: "Will tell his righteousness to a people just born," and the latter infers it from the previous, "*Sera* (children) shall serve him; there shall be related of the Lord unto future generations."

It was taught: Rabhina said: From the time he is formed; and R. Na'hman b. Itz'hak said: From the time he was circumcised, as it reads [Ps. lxxxviii. 16]: "I am afflicted and perishing from my youth up." There is a Boraitha in the name of R. Mair: From the time he can answer "Amen," as it reads [Isa. xxvi. 2]: "Open ye the gates, that there may enter in the righteous nation which guardeth the truth (*amunim*). Do not read *amunim*, but *amen*. What is meant by "amen"? It is an abbreviation of *El mclech neman* (literally, God, King of Truth).

It reads [Isa. v. 14]: "Therefore hath the deep enlarged her desire, and opened her mouth without measure (*chok*)."
Said Resh Lakish: It means him who failed to perform even one (*chok*) law of the Torah. Said R. Johanan to him: Your saying is not satisfactory to their creator. Say the reverse, even he who has studied but one law does not belong to the Gehenna.

[Zech. xiii. 8]: "And it shall come to pass that in all the land, saith the Lord, two parts (of those) therein shall perish, but the third part shall be left therein." Said Resh Lakish: It means a third of Shem's descendants. And R. Johanan said to him: Your saying is not satisfactory for their Lord. And even if you should say: A third of Noah's children will remain and two-thirds will be destroyed, it would also not satisfy Him, but it means one-third of the wicked will remain.*

[Jer. iii. 14]: "I will take you one of a city and two of a family, and bring you to Zion." Said Resh Lakish: It means

* Rashi tries to explain this at length, basing it on a Midrash of which we are not aware. And as it is very complicated, he also tries to give his own explanation, but it seems to us still more complicated, and therefore we have translated almost literally.

literally. And R. Johanan said again to him: Their Lord is not pleased with such an interpretation, but it means one righteous in a city saves the whole city, and two from a family save the whole family. And the very same said Rabh to R. Kahana when he was sitting before him interpreting the just-cited verses literally.

Rabh saw R. Kahana washing his head and improving his complexion, and thereafter came to study in Rabh's college. And he read to him [Job, xxviii. 13]: "And she is not to be found in the land of the living." And to the questions of R. Kahana: Do you caution me? he replied: I only tell you the interpretation of this passage. The Torah cannot be found with him who adorns himself before studying.

There is a Boraitha: R. Simai said: It reads [Ex. vi. 7]: "I will take you to me as a people," and (ibid. 8): "I will bring you in unto the land." The Scripture compares their exodus from Egypt to the coming in their land. As in entering the land only two from six hundred thousand who made their exodus from Egypt, viz., Joshua and Kaleb, had entered, but all others from the age of twenty to sixty died in the desert, so also from those who made their exodus from Egypt were only two from every six hundred thousand, notwithstanding that they numbered six hundred thousand.

Said Rabha: And so it will be in the time of the Messiah, as it reads [Hosea, ii. 17]: "She shall be inflicted there, as in the days of her youth and as on the day of her coming up out of the land of Egypt."

There is a Boraitha: R. Elazar b. Jose said: It happened once that I was in Alexandria of Egypt, and I found a certain old Gentile who said to me: Come, and I will show you what my great-grandfathers have done to yours. A part of them they threw in the sea, a part they slew with the sword and a part they have crushed in the buildings. Says the Gemara: And for this evil Moses, our master, was punished, as it reads [Ex. v. 23]: "He hath done more evil to this people." To which the Holy One, blessed be He, answered: Woe for those who are lost, as such are not to be found now. Several times I have revealed myself to Abraham, Isaac, and Jacob by the name Almighty God, and they have never thought against my retribution, and did not question me for my proper name. I said to Abraham [Gen. xiii. 17]: "Arise, walk through the land in the length of it and in the breadth of it, for unto thee will I give

it." And thereafter when he was searching for a grave for his wife Sarah, he could not get it until he bought one for four hundred silver shekels, and, nevertheless, his thoughts were not against my retribution. I said to Isaac [ibid. xxvi. 3]: "Sojourn in this land, and I will be with thee and bless thee," and thereafter when his bondmen wanted to drink water they could not get it without quarrel, as [ibid., ibid. 20]: "And the herdsmen of Gerar did strive with Isaac's herdsmen, saying, The water is ours," and he also had no thought against my retribution. I said to Jacob [ibid. xxviii. 13]: "The land whereon thou liest, to thee will I give it," and thereafter when he wanted to spread a tent for himself, he could not get it until he paid a hundred kessitah, and his thoughts were not against my retribution and he did not ask for my proper name. Thou, however, first hast asked for my proper name, and now thou sayest to me [Ex. v. 23]: "Thou hast in nowise saved thy people." And therefore [ibid. vi. 1]: "Now shalt thou see what I will do to Pharaoh," but thou wilt not live to see the war with the thirty-one kings in the time of Joshua.

It reads [ibid. xxxiv. 8]: "And Moses made haste, and bowed his head." What had he seen that he bowed himself? R. Hanina b. Gamla said: He saw the words "long-suffering." And the rabbis say: He saw the word "truth." There is a Boraitha in accordance with him, who said he had seen long-suffering, viz., When Moses ascended to heaven, he found the Holy One, blessed be He, writing the words "long-suffering." And he said before Him: Lord of the Universe, does this mean long-suffering for the righteous ones? And he was answered: Even for the wicked. And to Moses' exclamation: May the wicked be lost! he answered: In the future thou wilt see that my previous words will be necessary for thee. Thereafter when Israel sinned, the Lord said to Moses: Didst thou not say long-suffering for the righteous? And Moses said before Him: Lord of the Universe, but hast Thou not said to me "also to the wicked"? And to this it is written [Num. xiv. 17]: "And now, I beseech thee, let the greatness of the power of the Lord be made manifest as *Thou* hast spoken."

R. Hagga, ascending the steps of the school of Rabba b. Shila, heard a child saying [Ps. xciii. 5]: "Thy testimonies are exceedingly steadfast. In thy house abideth holiness. O Lord, to the utmost length of days." And immediately he began [ibid. xc. 1]: "A prayer of Moses." And he then

said: I infer from this that Moses has seen the words "long-suffering."

R. Elazar, in the name of R. Hanina, said, etc. (Here is repeated from Tract Megilla, p. 38, line 23 to p. 39, line 3: However, here is some change at the end of the paragraph which is unimportant.)

* It reads [Isa. viii. 12]: "Call ye not a conspiracy all that this people may call a conspiracy." What conspiracy does it mean? The conspiracy of Shebna, as his college had thirteen great men, and Hiskia's college had only eleven. When Sanherib came to attack Jerusalem, Shebna wrote a note that he and his society are willing to make peace, however Hiskia and his society are not. And this note he put in an arrow and shot it into the camp of Sanherib, as it reads [Ps. xi. 2]: "For lo, the wicked bend their bow, they arrange their arrow upon the string." And Hiskia was afraid, that perhaps the inclination of Heaven will be towards the majority, whose desire was to deliver themselves to the enemy. The prophet then came to him, saying: "Call ye not a conspiracy," etc., *i.e.*, this conspiracy is wicked, and a conspiracy of the wicked is not counted. The same Shebna wanted also to hew out a cave for a grave for himself among the kings of David's house, and this is what the prophet said to him [ibid., ibid. 16 and 17]: "What hast thou here? and whom hast thou here, that thou hast hewn out for thyself here a sepulchre? . . . Behold, the Lord will thrust thee about with a mighty throw. Oh, *man!*" Said Rabh: From this is to be inferred that travelling is harder for a man than for a woman, as, from the expression of the last word of this verse, R. Jose b. Hanina infers that Shebna was punished with leprosy, as the same expression is to be found concerning leprosy [Lev. xiii. 45].

"He will roll thee up as a bundle, and (toss thee) like a ball into a country of ample space." There is a Boraitha: His (Shebna's) desire was to disgrace the house of his master, and therefore his own honor was turned over to disgrace, for when he came out to Sanherib with his society, Gabriel shut the door in the face of his society. And when Sanherib questioned him: Where is thy society? he answered: They have retracted. Exclaimed Sanherib: I see thou hast ridiculed us. And they bored holes in his heels, tied them to the tails of their horses, and dragged his body over thorns.

* Transferred from 26a. See also footnote, p. 75.

In the interpretation of [Ps. xi. 3]: "For (if) the foundations be torn down, what would the upright do?" R. Jehudah and R. Eina differ. According to one it means, if his kin and his association would be destroyed, how would the promise of the Lord be? And according to the other, should the Temple be destroyed by Sanherib, in accordance with the advice of Shebna, what would become of the wonderful miracles of the Lord? And according to Ula, this passage is to be explained negatively. If the thoughts of that wicked (Shebna) would not have been destroyed, what would have become of the upright, Hiskia? It is correct, the explanation of Ula, and of him who explains the word "foundation" to mean the Temple, as according to the former, it means the previous verse (2) which was the basis of his thoughts. And also concerning the Temple we found in Mishna, which states that a stone was placed in the Temple from the time of the first prophets, with the name *shethiha* (foundation). But he who explains the passage to mean Hiskia and his society, where is to be found that by the word foundation the upright are meant? [I Sam. ii. 8]: "For the Lord's are the pillars of the earth, on which he hath set the world." "Pillars" are the upright, "on which he hath set"—the foundation.

*The rabbis taught: Man was created on the eve of Sabbath. And why? The Minnim shall not say that he was a partner to the Lord, in the creation of the world. Another explanation is, if a man becomes haughty it may be said to him: At the time of creation even a fly was created before thou wert. Still another explanation is that his first act should be meritorious, in keeping the Sabbath, and also he shall partake of the Sabbath meal immediately. This is similar to a human king who built a palace, accomplished it, prepared a banquet and thereafter invited guests, as it reads [Prov. ix. 1-4]: "Wisdom hath built her house; she hath hewn out her seven pillars. She hath killed her cattle; she hath mingled her wine; she hath also set in order her table. She hath sent forth her maidens; she invited (her guests) upon the top of the highest places of the town." "Wisdom hath built her house"—it is one of the divine affairs of the Holy One, blessed be He, who has created the whole world with wisdom. "Seven pillars"—the seven days of the creation. "Killed her cattle," etc.—

* Transferred from 38a. See footnote at the end of Chap. IV.

means the seas, the rivers, and all what was necessary for the world. "She sent forth her maidens"—Adam and Eve upon the top of the highest places.

Rabba b. b. Hana propounded a contradiction from *ibid.* 3, which reads, "on the top of the height," to *ibid.* (14), on the chair in the high places. And he himself answered: First they were placed on the top, and thereafter on a chair. "Void of sense," the Holy One, blessed be He, said: Who made a fool of Adam the first? The woman who told him, etc., as it reads [*ibid.* vi. 32]: "Whoso committed adultery with a woman lacketh sense." There is a Boraitha: R. Mair used to say: From the whole world was gathered the earth, from which Adam the first was created, as it reads [Ps. cxxxix. 16]: "My undeveloped substance did thy eyes see." R. Oshia said in the name of Rabh: The body of Adam the first was taken from Babylon, his head from Palestine, and all other members, hands, feet, etc., from all other countries, and the earth for his rump, said R. Aha, was taken from Akra of Agma. R. Johanan b. Hanina said: A day consisted of twelve hours, the first hour the earth for his creation was gathered, the second hour it became an unformed body, and in the third his limbs were shaped; in the fourth the soul entered the body, in the fifth he arose on his feet, in the sixth he named all his beasts and animals, in the seventh Eve was brought to him, in the eighth they went to bed, two persons, and four persons came out of it; in the ninth he was commanded not to eat of the tree, in the tenth he sinned, in the eleventh he was tried, and in the twelfth he was driven out of the Garden of Eden, as it reads [Ps. xlix. 13]: "And Adam though in his splendor endureth not."

R. Jehudah said in the name of Rabh: At the time the Holy One, blessed be He, was about to create a man, He created a *coetus* of angels, and said to them: Would ye advise me to create a man? And they asked Him: What will be his deeds? And He related before them such and such. They explained before Him: Lord of the Universe, what is the mortal, that Thou rememberest him, and the son of men, that Thou thinkest of him? [Ps. vii. 5]. He then put His little finger among them and they were all burnt. And the same was with the second *coetus*. The third one, however, said before Him: O Creator of the world! the first angels who protested, did they effect? The whole world is Thine, and all what it is pleased before Thee Thou mayest do. Thereafter at the time of the gen-

eration of the flood and the generation of dispersion whose deeds were criminal, the same angels said before Him: Creator of the Universe, were not the first angels right with their protest? And He answered: "And even unto old age I am the same, and even unto the time of hoary hairs will I hear" [Isa. xlv. 4].

R. Jehudah said again in the name of the same authority: Adam the first was from one end of the world to the other, as it reads [Deut. iv. 32]: "Since the day that God created Adam upon the earth, and from the one end of the heavens unto the other end." After he had sinned, the Holy One, blessed be He, laid His hand upon him and reduced him [Ps. cxxxix. 5]. "Behind and before hast Thou hedged me in, and Thou placest upon me Thy hand." R. Elazar said: Adam the first was tall from the earth to the sky, as the above cited verse: "The day Adam was created upon the earth and to one end of the heaven." And when he sinned He laid His hand upon him, and diminished him, as the cited verse [Ps. cxxxix.] reads.

R. Jehudah said again in the name of Rabh: Adam the first spoke with the Aramaic language, as [ibid., ibid. 17]: "And how precious are unto me thy thoughts," and the terms in the original Psalm are Aramaic. And this is what Resh Lakish said: It reads [Gen. v. 1]: "This is the book of the generation of Adam." Infer from this that the Holy One, blessed be He, showed to Adam every generation with its scholars, every generation with its lecturers. And when Adam saw the generation of R. Aqiba, he was pleased with his wisdom, but was dejected seeing his death, and said: "How precious are unto me thy thoughts."

The same said again in the name of the same authority: The Minnim* of this generation say that Adam the first was also of their sect. And they infer it from [Gen. iii. 9]: "And the Lord God called unto Adam and said unto him: Where art thou?" *i.e.*, to what is thy heart inclined?

Said R. Johanan: Every place where the Minnim gave their wrong interpretation, the answer of annulling it is to be found in the same place—*e.g.*, they claim from [Gen. i. 26]: "Let *us* make man." Hence it is in plural. However, in [ibid. 27] it reads: "And God created man in his image" (singular). [Ibid. xi. 7]: "Let *us* go down" (plural); however,

* In accordance with the commentary of Hananel.

[ibid., ibid. 5]: "And the Lord came down" (singular). [Ibid. xxxv. 7]: "And there God appeared" (the term in Hebrew is plural); however [ibid., ibid. 3]: "Unto the Lord who answered me" (singular). [Deut. iv. 7]: "For what great nation is there that hath *gods* so nigh unto it?" However, it reads farther on, "as is the Lord our God every time we call upon *him*." [II Lam. vii. 23]: "Which God went?" (the term in Hebrew is plural). However [Dan. vii. 9]: "I was looking down until chairs were set down, and the Ancient of days seated himself" (singular). But why are all the above-mentioned written in plural? This is in accordance with R. Johanan, who said elsewhere that the Holy One, blessed be He, does not do anything until he consults the heavenly household, as it reads [ibid. iv. 14]: "Through the resolve of the angels is this decree, and by the order of the holy ones is this decision." However, this answer is for all the plurals mentioned, except the last one, "the chairs." Why are they in plural? One for Him and one for David. So R. Aqiba in a Boraitha. Said R. Elazar b. Azaryah to him: Aqiba, how do you dare to make the Shekhina common? It means one chair for judgment and one for mercy. Did Aqiba accept this, or not? Come and hear the following Boraitha: One for judgment and one for mercy. So R. Aqiba. Said R. Elazar b. Azaryah to him: Aqiba, what hast thou to do with Haggada? Give thy attention to Negain and Ohaloth. It means one for a chair to sit upon and one for a footstool.

Said R. Na'hman. He who knows to give a right answer to the Minnim like R. Aidith may discuss with them, but he who is not able to do so, it is better for him that he discuss not with them at all. There was a Min who said to R. Aidith: It reads [Ex. xxiv. 1]: "Come up unto the Lord." It ought to be, "Come up to me." (And when God said to him: Come up to the Lord, there must be one lord more?) And he answered: That is the angel Mattatron (name of the chief of the angels) about whom ibid. xxiii. 20 speaks, as he bears the name of his master [ibid., ibid. 21]: "Because my name is in him." If so, rejoined the Min, let us worship him. It reads, ibid., ibid., *al tamer be*, and this term means also "exchange." Hence it means thou shalt not exchange him for Me.

Said the Min again: But does it not read "he will not pardon your transgression"? And Aidith answered: Believe me, that even as a guide we refused to accept him, as it reads

[ibid. xxxiii. 15]: "If thy presence go not (with us), carry us not up from here."

A Min asked Ismael b. R. Jose: It reads [Gen. xix. 24]: "And the Lord rained upon Sodom and Gomorrah brimstone and fire. From the Lord," etc. From the Lord! It ought to be from Him (hence there was one more lord). And a certain washer said to Rabban Gamaliel, Let me answer him. It reads [Gen. iv. 23]: "And Lemech said unto his wives, Adah and Zillah, Hear my voice, ye wives of Lemech," etc. Wives of Lemech! "My wives," it ought to be? You must then say that so is it customary in the language of the verse, the same is the case here. And to question of R. Ismael to the washer: Whence do we know this? he answered: From the lectures of R. Mair. As R. Johanan used to say, R. Mair's lectures consisted always of a third Halakha, a third Haggadah, and the last third parables. And he said also: From R. Mair's three hundred fox fables we have only three: (a) [Ezek. xviii. 2]: "The fathers have eaten sour grapes, and the teeth of the children have become blunt;" (b) [Lev. xix. 36]: "Just balances, just weights," and (c) [Prov. xi. 8]: "The righteous is delivered out of distress, and the wicked cometh in his stead." *

There was an atheist who said to Rabban Gamaliel: Your God is a thief, as it reads [Gen. ii. 21]: "Lord God caused a deep sleep . . . and he slept; and he took one of his ribs." Said R. Gamaliel's daughter to him: Let me answer him. And she said to him: Would you assist me to take revenge on a thief

* In the text nothing is mentioned of what the fables were. Rashi, however, explains it thus: The fox said to the wolf: If you would go in a Jewish yard on the eve of Sabbath to assist them in the preparation of meals for Sabbath, they would invite you for their best meal on Sabbath day. And when the wolf was severely beaten while doing so, he wanted to kill the fox. He, however, told him, this was because your father in assisting them to prepare their meal, consumed the best of it and ran away. And to his question: Should I be beaten because of my father? he answered: Yea, the fathers have eaten sour grapes, etc. However, if you will follow me I will show you a place where you can eat to satiation, and he led him to a well in which two pails were pulled up and down by means of a rope attached to a beam. And the fox entered in one pail, which dropped down to the bottom. And to the question of the wolf: For what purpose did you enter the pail? he answered: I see here meat and cheese which will be sufficient for both of us. And he showed him the reflection of the moon on the water, which he mistook for a round cheese. And asking the fox how he can get it, he was told to enter the other pail, which was on top. And as he was heavier than the fox, the pail with the wolf dropped down and that of the fox came on the top. And to the cry of the wolf: How can I come out? he answered: The righteous is delivered out of distress, etc.

who robbed me this night, by stealing a silver pitcher, however he left a golden one instead? And he said to her: I would like that such thief would come to me every day. Then she said: Was it not better for Adam that one bone was taken from him, and in its stead was given a woman to him, who shall serve him? Rejoined the atheist: I mean why stealing; could He not take it from Adam when he was awake? She then took a piece of meat, put it in glowing ashes, and when roasted took it out and gave it to him to eat. To which he said: It is repulsive to me. Rejoined she: Eve would also have been repulsive to Adam if he could have seen how she was formed.

The same atheist said to Rabban Gamaliel: I am aware of what your God is doing now. R. Gamaliel sighed deeply. And to the question: Why are you singing? he said: I lost every information of my son who is now in the sea countries. Can you perhaps assist me by informing me where he is? And he rejoined: Where shall I know this from? Rejoined Rabban Gamaliel: You don't know what is in this world, and you claim to know what is in heaven?

At another time the same said to Rabban Gamaliel: It reads [Ps. cxlvii. 4]: "Who counted the number of the stars," etc. What prerogative is this? I also can do this. R. Gamaliel took some grain, put it in a sieve, and while straining told him to count the grain. And he rejoined: Let the sieve stand and I will count it. Rejoined R. Gamaliel: The stars are also always moving. According to others R. Gamaliel answered him: Can you tell me how many teeth are in your mouth? And he put his hand in his mouth and began to count them. Rejoined R. Gamaliel: You are not aware of the number of teeth in your mouth, and you claim to know how many stars there are in heaven?

A Min said to R. Gamaliel: He who created the mountains has not created the wind, as it reads [Amos, iv. 13]: "He that formed the mountains and created the wind." And he answered: If so, then concerning a man, of whom it reads [Gen. i. 27]: "And God created," and [ibid. ii. 7]: "And the Lord God formed," should also mean that he who has formed has not created, and *vica versa*. There is in the body of man one span square, in which two holes are to be found—one in the nose and one in the ear. It must be also that he who created one of them did not create the other, as it reads [Ps. xciv. 9]: "He that hath planted the ear, shall he not hear? Or he that

hath formed the eye, shall he not see?" And the Min said: Yea, I am of this opinion. Rejoined Gamaliel: How is it, then, when death comes? Are both creators reconciled, to kill their creation together?

A magician said to Rabban Gamaliel: The lower half of your body is created by *ahermes* (God), but the upper half by Hermes (Mercury). And he answered: If it is so, why does then *ahernes* leave the dirty water coming from the upper half to pass the lower half?

The Cæsar said to R. Tanhum: Let us unite and be a people of one and the same creed. And he answered: Very well; but we who are circumcised cannot be like your people. However, ye are able to be like us if ye will circumcise yourself. And the Cæsar answered: Your answer is right. However, it is a rule that he who conquers the king must be thrown in the *vivarius* to be devoured by the beasts. He was thrown in the vivarius and was not touched. And there was a Min who said to the king: They did not devour him, because they were not hungry. And they then threw him in the vivarius and he was devoured.

Another atheist said to R. Gamaliel: You say that upon every ten Israelites the Shekhina rests. How many Shekhina have you then? Gamaliel then called the servant of the atheist, struck him with a whip, saying: Why didst thou leave the sun enter the house of your master? His master, however, answered: Every one is pleased with the sun. Rejoined Gamaliel: The sun, which is only one of the hundredth millions servants of the Lord, is pleasant to every one, so much the more the Shekhina of the Holy One, blessed be He, Himself.

A Min said to R. Abuhu: Your God is a jester. He commands Ezekiel to lie on his left side and then on his right side [Ezek. iv. 4-6]: "At the same time a disciple came and questioned him: What is the reason of the Sabbath year?" And Abuhu answered: I will now say something which will be an answer to both of you. The Holy One, blessed be He, said to Israel: Work up the earth for six years and release the seventh for the purpose that you shall be aware that the earth is mine. However, they did not do so, but sinned, and were exiled. It is custom of a human king if a country has rebelled against him to kill all of them if he is a tyrant, and to kill half of them if he is merciful. But if he is full of mercy he chastises

the leaders only; so was it with Ezekiel, the Holy One, blessed be He, chastised him for the sin of Israel.

There was a Min who said to R. Abuhu: Your God is a priest, as it reads [Ex. xxv. 2]: "Bring *Me* a *therumah*." Now when He buried Moses where did He dip Himself? (Took the legal bath prescribed for him who touches a corpse.) You cannot say that He did so in the water, as it reads [Isa. xl. 12]: "Who hath measured in the hollow of his hand the waters." And he answered (a joke to a joke): He dipped Himself in fire, as it reads [ibid. lxvi. 15]: "For behold, the Lord will come in fire." And to the question of the Min: Is it legal to dip in fire? he answered: On the contrary, the principal dipping is in fire, as it reads [Num. xxxi. 23]: "And whatsoever doth not come into the fire shall ye cause to go through water."

There was a Min who said to R. Abina: It reads [II Sam. vii. 23]: "And who is like thy people, like Israel, the only nation on the earth?" What is your proudness about? Are you not mingled among other nations, of whom it reads [Isa. xl. 17]: "All the nations are as naught before him"? And he answered: A prophet of nations themselves has testified concerning us [Num. xxiii. 9]: "And among the nations it shall not be reckoned."

R. Elazar propounded a contradiction from [Sam. iii. 25]: "The Lord is good unto those that hope in him" to [Ps. cxlv. 9]: "The Lord is good to all"? This question may be answered with the following parable to one who possesses a fruit garden. When he waters it, he waters all of them. And when he hoes to cover up the roots, he does so only to the best of them, *i.e.*, when He feeds, He feeds the whole world with discriminating, but to save from trouble He helps only those who hope in Him.

It reads [I Kings, xxii. 36]: "And there went a *rinah* (song) throughout the camp." Said R. Aha b. Hanina: This is what is written [Prov. xi. 10]: "And when the wicked perish there is *rinah*," means when Achab, the son of Omri, perished, there was *rinah*. Is this so? Is it then pleasant for the Holy One, blessed be He, the ruin of the wicked? Is it not written [II Chron. xx. 21]: "As they went out before the armed array and said: Give thanks unto the Lord; for unto everlasting endureth His kindness"? And R. Johanan said: Why is it not written here: "He is good," as [Ps. cxviii. 1]: Because the Holy One, blessed be He, is not rejoicing over the ruin of the wicked, as

R. Samuel b. Na'hman said in the name of R. Jonathan: It reads [Ex. xiv. 20]: "And the one came not near unto the other all the night." At that time the angels wanted to sing their song before the Holy One, blessed be He, but He said to them: "My creatures are sinking in the sea, and ye want to sing." *

It reads [I Kings, xviii. 3]: "And Rehab called Obadiah, who was the superintendent of the house;— now Obadiah feared the Lord greatly." To what purpose does the passage relate that Obadiah feared the Lord? Said R. Itz'hak: Achab said to him, concerning Jacob, it reads [Gen. xxx. 27]: "The Lord hath blessed me for thy sake." And concerning Joseph it reads [ibid. xxxix. 5]: "The Lord blessed the Egyptian's house for the sake of Joseph." I, however, keep thee and my house is not blessed. Perhaps thou art not fearing God? To this a heavenly voice was heard, saying: Obadiah fears the Lord greatly, but the house of Achab is not fit for blessings. Said R. Abah: It is more conspicuous what is said of Obadiah than of Abraham, as about Abraham it reads, "he feared God," and about Obadiah it adds "greatly." Said R. Itz'hak: For what deeds was Obadiah rewarded with prophecy? Because he hid one hundred prophets in a cave, as it reads [I Kings, viii. 4]: "And it happened when Isabel cut off the prophets of the Lord that Obadiah took a hundred prophets, and hid them fifty in one cave, and provided them with bread and water." Why fifty? Said R. Elazar: He learned this from Jacob, who divided his camp into two parts, for the reason that if it should happen that one would be lost the other would be saved. And R. Abuhu said: Because the cave could not hold more than fifty.

It reads [Ob. i. 1]: "The vision of the Lord . . . concerning Edom." And why? The Holy One, blessed be He, said: Obadiah, who lived among two wicked (Achab and his wife) and did not learn from them, shall prophesy to Esau who lived among two upright (Isaac and Rebecca) and did not learn from them. And Ephraim of Kashaha, a disciple of R. Mair, said in the name of his master: Obadiah was an Edomite-proselyte. And this is what people say that the handle of the hatchet to cut the forest is taken from the wood of the same forest. And this also applies to David, who was a descendant of Moab (according to R. Johanan, in the name of Simeon b. Jo'hai), who smote them [II Sam. viii. 2].

It reads [II Kings, iii. 27]: "Then took he his eldest son

* The answer is united.

that should have reigned in his stead, and offered him for a burnt-offering upon the wall. And there was great indignation against Israel." Rabh and Samuel. According to one, he sacrificed him to Heaven, and according to the other, to an idol. But if to an idol, why was there great indignation against Israel? It is in accordance with R. Jehoshua b. Levi, who propounded a contradiction from [Ez. v. 7]: "According to the ordinances of the nations have ye *not* acted," to [ibid. xi. 12]: "But according to the ordinances of the nations ye *have* acted." And he himself answered: Ye have not acted according to their good deeds, but ye have acted according to their crimes.

It reads [I Kings, i. 4]: "The maiden was *ad meod* exceedingly." Said R. Hanina b. Papa: She did reach even half the beauty of Sarah, of whom it reads [Gen. xii. 14]: "Behold the woman that she was *very* fair (*meod*).

*It reads [Gen. xxii. 1]: "And it came to pass after these things, that God did tempt Abraham." After what? Said R. Johanan in the name of R. Jose b. Senira: After the words of the Satan to those of [ibid. xxi. 8]: "And the child grew, and was weaned," etc. The Satan said before the Holy One, blessed be He, thus: Lord of the Universe, Thou hast favored this old man with an offspring at his hundredth birthday, and from all the great meals which he prepared for the people he did not sacrifice for Thee even one dove or pigeon. And he was answered: Does he not prepare all this only for the sake of his son? If I would tell him to sacrifice his son to me, he will do it immediately. Hence God tempted Abraham.

And He said: "Take *na* thy son," etc. Said. R. Simeon b. Aba: The expression "*na*" means request. This is similar to the fable of a human king who had to fight many wars, and who had one hero who was victorious in all of them. Finally a war was declared to the same king by a king with a very strong army, and he said to his hero: I pray thee be victorious also in this war; people shall not say that the former wars were not worthy of consideration. So the Holy One, blessed be He, said to Abraham: I proved thee with many temptations, and thou withstood all of them. I request thee withstand also this temptation, in order people shall not say that the former were not worthy of consideration. "Thy son." But Abraham said: I have two sons. "Thy only one." But Abraham said: Both

* Transferred from 89b, footnote, p. 260.

of them are the only ones to their mothers, "whom thou lovest," but I love both of them, even Isaac. And why so many words? For the purpose that he shall not become insane from such a sudden command.

The Satan preceded him on the way, saying [Job, iv. 2-6]: "If we essay to address a few words to thee, wilt thou be wearied? . . . Behold, thou hast (ere this) corrected many, and weak hands thou was wont to strengthen. Him that stumbled thy words used to uphold, and to sinking knees thou gavest vigor. Yet now, when it cometh to thee, thou art wearied; it toucheth even thee, and thou art terrified." And Abraham answered him [Ps. xxvi. 11]: "But as for me, I will walk in my integrity." And the Satan said again: "Is not then thy fear of God a stupidity?" * And Abraham answered: Remember . . . whoever perished being innocent. When the Satan saw that Abraham did not listen to him, he said to him [ibid. 12]: "But to me a word came by stealth." I have heard from behind the paragonda (the heavenly curtains) that the ram will be for a burnt-offering, but not Isaac. Rejoined Abraham: This is the punishment of liars, that even when they tell the truth, nobody believes them.

R. Levi, however, said: The above cited verse "after these things" means after the exchange of words between Ismael and Isaac. Ismael said to Isaac: I am greater than thee in performing the commandments of the Lord, as I was circumcised when I was thirteen years of age, and thou when thou wert only eight days. To which Isaac answered: Thou art proud against me because of only one member of thy body; if the Holy One, blessed be He, should command me to sacrifice my whole body to Him I would do it immediately, hence, "and God has tempted Abraham."

MISHNA IV.: The men of a misled town have no share in the world to come, as it reads [Deut. xiii. 14]: "There have gone forth men, Belial, from the midst of thee, and have misled the inhabitants of their city." However, they are not killed, unless the misleaders are from the same city and from the same tribe. And also not unless the majority are misled. And the misleaders also must be men; if, however, they were misled by women or minors, or a majority of the city were misled, or the misleaders were outsiders, they are to be considered as

* According to the interpretation of the Talmud.

individuals, and each of them must have two witnesses and be forewarned.

There is more rigorousness with individuals than with the majority in that respect, that individuals are to be stoned, therefore their property is saved for their heirs. And the majority are to be decapitated, therefore their property is also lost, as it reads [*ibid.*, *ibid.* 16]: "Then shalt thou smite the inhabitants of that city with the edge of the sword." A caravan with asses or camels, who are travelling from one place to another, who took their rest in a city which was guilty of idolatry, and the caravan while being there was persuaded and worshipped idols, and counting them to those people of the city who were misled, it will be a majority they save the money of the innocent inhabitants of the city, for the guilty ones are still considered individuals, as the caravan is not counted to complete a majority, as it reads, "Devoting it utterly, and all that is therein, and the cattle thereof, to the edge of the sword" (but not of strangers passing by). From this it was also said that the properties which are found in the city belonging to the innocent individuals are also lost in case the majority were misled, but their properties which are placed outside of the city are saved, while by the property of guilty there is no difference wheresoever it is found it must be destroyed, as it reads [17]: "And all its spoils shalt thou gather into the midst of its main street," etc.

If it happened that the city had no main street, such must be established. If there was one outside of the city, it must be taken in, as it reads, "Thou shalt burn with fire the city, and all its spoil entirely." "Its spoil," but not the spoil belonging to Heaven. From this it was said that if there were some goods belonging to the sanctuary, they are to be redeemed. If there was heave-offering, it must remain till it becomes rotten. Second tithe and books of the Holy Writ must be hidden. "Entirely unto the Lord thy God." Said R. Simeon: The Holy One, blessed be He, said: If ye will take judgment on a misled town, I will consider it as if ye would bring to me a burnt-offering. "A ruinous heap forever" means that from that place gardens and vineyards should not be made. So R. Jose the Galilean. R. Aqiba, however, maintains: It reads: "It shall not be built again," means it shall not be built as it was, but gardens and vineyards may be made from it. "There shall not cleave to thy hand aught of the devoted things," for

as long as the wicked exist the heavenly anger lasts. And when the wicked perish the heavenly anger ceases.

GEMARA: The rabbis taught: There have gone forth men, but not their messengers. "Men" (plural) no less than two. And according to others "men" and not "women," "men" and not "minors," "sons of Belial," sons who took off the yoke of Heaven from their necks. "From the midst of thee," but not if they were from the boundary. "The inhabitants of their city," but not of another one. "Saying"—infer from this that (if not a majority) witnesses and warning are needed for every one of them. It was taught: When the land was divided among Israel, it was allowed to divide one city for two tribes, according to R. Johanan. Resh Lakish, however, said: It was not. And R. Johanan objected to Resh Lakish from our Mishna: However, they are not guilty unless the misleaders are from the same city and from the same tribe. It is not to be assumed that even if the misleaders were from the same city they are guilty when they were men of their own tribe; hence we see that one city can be divided for two tribes? Nay, it may be said that his share in this city fell to him from an inheritance, or some one had made him a present of it. He objected to him again from [Joshua xxi. 16]: "Nine cities from those two tribes." Does it not mean four and a half for one tribe and four and a half for the other? Hence, one city was divided for two tribes. Nay, it means four from one and five from the other. But if so, let the Scripture say from which tribe five and from which tribe four. This difficulty remains.

The schoolmen propounded a question: How is it if they were misled by themselves without any seducer? Shall we say it reads "and they misled," but not if they were misled by themselves, or there is no difference? Come and hear. Our Mishna states: "If they were misled by women and minors," etc., they are to be judged as individuals. And why? If misled by themselves is the same as by leaders, let the misleading by women and minors be considered as if they were misled by themselves? Nay, these cannot be equalized, for when they were misled by themselves they acted according to their own deliberations, but if they were misled by women and minors, they acted according to the seducer's mind, which was not worthy of consideration.

"*Unless the majority was misled.*" How is it to be done?

According to R. Jehudah, when they saw two, three, or more guilty of idolatry, they were tried, sentenced, and kept in prison. And so the others, until they formed a majority of the city, and then they are decapitated and their property destroyed. Said Ula to him: By such an act the prisoners are tortured. And therefore said he in such a case those who are sentenced are also stoned, but their property is not to be destroyed until they number a greater part of the city. And only then if more cases happen they are slain, and the property of all who were executed till now is destroyed.

It was taught: R. Johanan was of the same opinion as Ula. Resh Lakish, however, said that if such a case happened courts who investigate all cases must be increased, and all of them turn it over to the supreme council, who sentences them, and they are then slain.

"Then shalt thou smite the inhabitants of the city," etc. The rabbis taught: A caravan with asses or camels, etc. (Here is repeated from Last Gate, p. 19, second line to the seventeenth. See there.)

"Devoting it utterly," etc. The rabbis taught: Devoting it and that is therein excludes the property of the innocent which is found out of town, and includes the property of them which is inside of the city.

"All the spoils," etc. Includes the property of the guilty, which is outside of the town. Said R. Simeon: Why does the Torah say that the property of the innocent, which is inside of the city, is to be destroyed? Because the reason of their residence in this city was their property, and therefore it must be destroyed. The master said: To include the property of the guilty which is outside. Said R. Hisda: Provided they are near by, so that they can be gathered in on the same day. And he said again: The deposits of a misled town are to be saved. Let us see how was the case. If it was deposited by another city in this city, it is self-evident that they are to be saved, as such deposits do not belong to this city at all. And if the men of this city had deposited in another city, why are they to be saved if they are placed near by, so that they can be gathered together on the same day? And if he speaks of those which are far away and cannot be gathered, why then the repetition, he said it already once? It means deposits of another city which are found in this city, but the depositors took the responsibility for them. And lest one say that in such a case

it is considered as if it would be their own property, he comes to teach us that it is not so.

R. Hisda said again: If there was an animal, a half of which belongs to one city and the other half to one of another city, it is invalid. However, if there was dough, half of which belongs to one of another city, it is valid; because it can be divided it is considered as already divided, which is not the case with a living animal. He (R. Hisda), however, was doubtful if the slaughtering of a cattle from a misled town effects to put it out of the category of a carcass. Shall we assume that "with the edge of a sword" there is no difference; if it was killed or legally slaughtered it is considered as any carcass, or the legal slaughtering effects that it is not so considered, and if one touches it he does not become unclean, while he does by touching other carcasses? This question was not decided.

"*In its main street,*" etc. The rabbis taught: If there was no main street, it does not become a misled town. So R. Ismael. R. Aqiba, however, said that if there was none, one must be established. And what is the point of difference? One holds that the Scriptures mean a main street which existed already when it became misled, and the other holds that there is no difference if one existed before or was established after.

"*Belonging to the sanctuary,*" etc. The rabbis taught: If there were cattle sanctified to the altar, they must be put to death. Sanctified things for improving the Temple must be redeemed. Heave-offering must be left till it becomes rotten. Second tithe and books of the Holy Writ must be hidden. R. Simeon said: "The cattle thereof," but not cattle of a first-born, and the tenth of cattle (cf. to Lev. xxvii. 30 and 32). "And all that is therein" excludes sanctified money, and money with which tithe is to be redeemed. But why should cattle sanctified to the altar be put to death? Said R. Johanan: Because it reads [Prov. xxi. 27]: "The sacrifice of the wicked is an abomination." And Resh Lakish said: It speaks of when the owners where they were found responsible for it, and it is then considered as if they would be the property of the owners according to R. Simeon.

The text reads: R. Simeon said: "The cattle thereof," etc. Let us see how was the case. If they were without any blemish it is self-evident, as it belongs to the sanctuary, and if they had a blemish, why then should they be different? Said Rabhina:

It speaks of when they were blemished; but "cattle thereof" means those which are consumed in the usual manner of cattle, but not those which were the property of Heaven, and only because of their blemish become the property of men and may be consumed; hence they cannot be considered as property belonging to the city. And he differs with Samuel, who said: An animal which is to be sacrificed when it is without blemish, and redeemed when with a blemish, is excluded from "the cattle thereof." And if it is to be sacrificed while without a blemish, and is not to be redeemed when with a blemish—*e.g.*, a first-born and the tenth of a cattle, it is included in "the cattle thereof."

"*Heave-offering . . . till it become rotten,*" etc. Said R. Hisda: Provided the heave-offering was in the hand of the priest already, but if it was still in the hand of an Israelite, it may be given to a priest of another city.

"*The books of Holy Writ,*" etc. Our Mishna is not in accordance with R. Elazar of the Boraitha mentioned above (p. 211), that even if there was one mezuzah it cannot be called a misled town. (See there.)

"*Garden and vineyards,*" etc. Shall we assume that the point of their difference is what was said by R. Abin in the name of R. Ilai: Everywhere you find a general expression in a positive commandment, and the explicit specification to it in a negative commandment, it must not be judged, as in other cases, that there is nothing in the general expression but what is specified in the explicit specification. The one who does not allow to make gardens of it does not hold this theory. And he who allows it holds this theory? Nay, all hold the theory of R. Abin. And the difference of their opinion is the expression "again." According to one "again" means again as it was built, and according to the other "again" means it shall not build for whatsoever. The rabbis taught: If there were uprooted trees, they are invalid, and if they are still attached they are valid. From another city, however, they are invalid even if they were attached. What does "another city" mean? Said R. Hisda: It means Jericho, as it reads [Josh. vi. 26]: "And Joshua adjured (the people) at that time, saying, Cursed be the man before the Lord that will rise up and build this city of Jericho: with his first-born shall he lay its foundation, and with his youngest shall he set up its gates."

There is a Boraitha: Any other city must not be built

under the name of Jericho, and also Jericho shall not be rebuilt under another name, as it reads [I Kings, xvi. 34]: "In his days did Chiel the Bethelite build Jericho; with Abiram, his first-born, laid he the foundation thereof, and with Segub, his youngest son, set he up the gates thereof." There is a *Boraitha*: From Abiram, his first-born, this wicked has to learn. What does it mean? Thus: To what purpose is it written that Abiram was his first-born and Segub his youngest son? To learn that he buried all his children, beginning from Abiram, the oldest, to Segub, his youngest son. And this wicked should have learned not to continue the building after burying Abiram. Achab was his friend, and both he and Elijah came to condole Chiel. Said the latter to Elijah: Perhaps Joshua's caution was to those who will rebuild Jericho even under another name, or any other city under the name of Jericho? And Elijah answered: Yea. Said Achab: How can it be supposed that Chiel's troubles were because of Joshua's caution, when even the caution of Moses his master does not effect, as it reads [Deut. xi. 16]: "Take heed to yourselves," etc., ". . . and serve other gods . . . that there be no rain," etc. And I am worshipping idols on every flower bed, and nevertheless rain did not cease to fall. Is it possible that the caution of Moses should not stand good while that of Joshua should? To this it is written [I Kings, xvii. 1]: "Then said Elijah the Tishbite, who was one of the inhabitants of Gilad, unto Achab, As the Lord God of Israel liveth, before whom I have stood, there shall not be in these years dew or rain, except according to my words." He prayed and the key of rain was transferred to him. It reads farther on (3) and (6): "Go away from here . . . and the ravens brought him bread and flesh in the morning." Where did they take it? Said R. Jehudah in the name of Rabh: From the kitchen of Achab. "And it came to pass . . . that the brook dried up," etc. When he saw that the whole world is in trouble he went to Zarephath according to the Heavenly command, and it happened (17) "that the son . . . fell sick," etc. And Elijah prayed again that the key of resurrection shall be given to him. And he was answered: Thou knowest that there are three keys in heaven which are not entrusted to a messenger—the key of birth, of rain, and of resurrection. Now when the key of resurrection shall also be given to thee, thou wilt have two keys and heaven only one. Bring, therefore, the key of rain, and then thou wilt receive

the key of resurrection. And this is what it reads [ibid. xviii. 1]: "Go, show thyself to Achab, and I will give rain." A certain Galilean lectured in the presence of R. Hisda: The parable of Elijah, to what is it similar? To one who shut his door and lost the key from it. (So Elijah has shut the door of rain and had to depend upon Heaven.)

R. Jose lectured in Ciporias: Father Elijah is sensitive (hot-tempered), dealing with Achab too severely. Elijah, however, who used to visit R. Jose every day, disappeared for three days. And thereafter when he appeared and was questioned by R. Jose: Why have I not seen the master three days? he answered: Because you called me sensitive. Rejoined R. Jose: Is this not true? Hast not thou, master, become angry because of my expression?

"*As long as the wicked exist,*" etc. Whom does it mean? Said R. Joseph: The thieves (who steal from the things which are legally to be devoted). The rabbis taught: With the appearance of a wicked anger comes to the world, as it reads [Prov. xviii. 3]: "When the wicked cometh, then cometh also contempt, and with dishonorable acts disgrace." And when the wicked perish good comes to the world, as it reads [Prov. xi. 10]: "And when the wicked perish there is joyful shouting." When an upright departs from this world evil comes to the world, as it reads [Isa. lvii. 1]: "The righteous perisheth, and no man layeth it to heart: and pious men are taken away without one considering that before the evil the righteous is taken away." And when an upright comes to the world goodness comes with him, as it reads [Gen. v. 29]: "This one shall comfort us concerning our work and the toil of our hands."

END OF TRACT SANHEDRIN, PART II. (HAGGADA).

AND OF VOLUME XVI.

A. 34-3



Widener Library



3 2044 105 344 857